

CONTRACT MA-280-23010579
FOR
JWA FACILITY ACCESSIBILITY IMPROVEMENTS PHASE 1

This Contract is made and entered into the ____ day of _____, 20____, by and between the County of Orange (“County”), and *Swinerton Builders*, (“D-BE”) with County and D-BE sometimes individually referred to as (“Party”), or collectively referred to as (“Parties”).

County and D-BE agree as follows:

1. CONTRACT DOCUMENTS

Contract Documents, which together comprise the complete Contract between County and D-BE, consist of the following: County approved Guaranteed Maximum Price (“GMP”) package(s), as approved by the Director of OC Public Works (“OC Public Works” or “OCPW”) or designee; this Contract; the General Conditions; Supplementary General Conditions; the Non-collusion Declaration; Addenda and Bulletins; Attachments; Appendices; Criteria Documents; Plans; and 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 Faithful Performance Bonds and the Labor and Material Payment Bonds for all work. The Contract Documents are complementary, and what is called for by anyone shall be as binding as if called for by all.

2. SCOPE OF WORK

D-BE shall perform all work as required by, and in strict accordance with, the Contract Documents, which consist of design and construction services for the JWA Facility Accessibility Improvements Phase 1 (“Project”).

3. CONTRACT PRICE and CONTRACT TIME

3.1. CONTRACT PRICE

County shall pay D-BE for all work required by the Contract Documents, the Total Contract Price, also referred to as the Guaranteed Maximum Price (“GMP”) of twenty-eight million, one hundred forty-three thousand, four hundred forty-six dollars (\$28,143,446), which includes Phase I – Design and Pre-Construction Phase Services (“Phase I”) and Phase II – Construction Phase Services (“Phase II”). The GMP may be adjusted pursuant to the “Changes” Section and the “GMP Updates” Section of the General Conditions and in accordance with the “Payments” Section of the General Conditions.

3.2. CONTRACT TIME

Within ten (10) calendar days of the Board of Supervisors’ award of the Contract, D-BE shall submit to County for its review of bonds (as detailed below); proof of insurance; and initial job Design and Construction Critical Path schedule. If County 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, County may, at its sole discretion, reduce the Contract Time by the number of days between County’s rejection of the second submission and County’s approval of the documents.

County of Orange, OC Public Works
Swinerton Builders

Upon County's approval of the bonds, insurance, and initial job Design and Construction Critical Path schedule, County will deliver to D-BE a signed copy of the Contract and a Notice to Proceed for Phase I. D-BE shall not design or commence construction until County issues a Notice to Proceed. D-BE shall complete all work required by the Contract, including Phase I and Phase II within **914** calendar days of the effective date of the Notice to Proceed ("Contract Time").

The County 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 Architect and Engineers, own trades and sub-contractors or to coordinate with others separate D-BEs.

Design and Construction Critical Path Schedule:

After receipt of the Contract Notice to Proceed ("NTP") for Phase I the D-BE shall initiate design, comply with all design submission requirements, and obtain County review of each submission. The Design and Construction Critical Path schedule shall contain all phases. Phase I shall include Design and Pre-Construction Services. Phase II shall include Construction Phase services, including construction work and any other additional work. D-BE may propose additional phases to County if determined necessary. The D-BE may begin construction on portions of the work for which the County has reviewed the phase submission and has issued the related NTP. A NTP shall be issued for each Phase.

Design and Construction Critical Path schedule shall include submission dates for all phases. Phase submission dates cannot be changed without County concurrence. County agrees to review all phase submittals within fourteen (14) calendar days of receipt. If County rejects any submitted proposal, D-BE will have seven (7) additional calendar days to resubmit to County then County will have seven (7) additional calendar days to review.

4. BONDS

Within ten (10) calendar days after award of the Contract, the successful D-BE shall furnish a Faithful Performance Bond and a Labor and Material Payment Bond, each in an amount equal to 100% of the Contract Price, issued by a surety in accordance with the requirements of the General Conditions of the Contract. The bonds shall be in the form of the models included in the Request for Proposal must be approved by County's Risk Manager and County Counsel. The successful D-BE shall submit the bonds, all of which shall bear original signatures. The signature of the surety representative must be notarized.

5. LIQUIDATED DAMAGES

In accordance with Government Code Section 53069.85, D-BE agrees to forfeit and pay to County the sum of **FOURTEEN THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$14,550.00)** 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, as may be adjusted by Change Order. County 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 County the difference.

6. 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 County, and hold harmless the County, 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.

7. 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."

8. PARTIES' REPRESENTATIVES

For D-BE:

Swinerton Builders
200 North Main Street
Santa Ana, CA 92701
Attn: Jose Acosta
Phone: 213-896-3405
E-mail: jacosta@swinerton.com

For County:

County of Orange, Public Works
601 North Ross Street
Santa Ana, CA 92703
Attn: Charlene Del Mundo, Project Manager
Phone: 714-667-4928
E-mail: Charlene.DelMundo@ocpw.ocgov.com

cc:

OC Public Works Procurement Services
601 North Ross Street
Santa Ana, CA 92703
Attn: Daisy Corona
Phone: 714-667-9643
E-mail: Daisy.Corona@ocpw.ocgov.com

8.1. COUNTY'S REPRESENTATIVES

- 8.1.1. OC Public Works: The Project is under the general direction of County's Board of Supervisors. The Board of Supervisors authorizes OC Public Works to be County's representative in connection with the Project.
- 8.1.2. Design and Construction Representative: The Design and Construction Representative shall be the County's Project Manager ("PM"), unless OC Public Works designates in writing an alternate person who will act as County's representative during design and construction of the Project. Unless otherwise expressly stated in the Contract Documents, County's designated representative will issue and receive all written communications on behalf of County for the Project. The designated representative shall also coordinate any communications to or from County's PM in connection with the Project.
- 8.1.3. County's Project Manager: County's Project Manager is the County's exclusive contact agent to the D-BE with respect to this Project during design and construction and until the completion of the Project. The County's communications with the D-BE shall be exclusively through the County's Project Manager.

8.2. COUNTY

County has the final authority in all matters affecting the work. County has the authority to enforce D-BE's compliance with the Contract Documents. County's decision is final and binding on all questions relating to design documents and requirements; 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 County.

- 8.2.1. The County shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work and will not be responsible for the D-BE's failure to carry out the work in accordance with the Contract Documents.
- 8.2.2. The County 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.

8.3. D-BE'S REPRESENTATIVES

- 8.3.1. 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. 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. County may rely on such representative or alternate as having the authority to execute Change Orders in any amount unless D-BE identifies to County 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 County 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.

- 8.3.2 D-BE's Project Manager: D-BE shall provide the services of a 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 this Project Manager shall be binding as if given to D-BE. County may require D-BE to replace its Project Manager whose conduct or performance is unsatisfactory. D-BE shall not change its Project Manager without County'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 is no longer with the Project, D-BE shall replace him or her within 24 hours (unless additional time is agreed upon by County) with a new, well-qualified Project Manager acceptable to County.
- 8.3.3. Architect/Engineer: D-BE shall designate in writing a representative who 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 attached Program Requirements.
- 8.3.4. 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. County may require D-BE to replace a superintendent whose conduct or performance is unsatisfactory. D-BE shall not change its superintendent without County's consent unless the superintendent is unsatisfactory to D-BE or ceases to be in D-BE's employ. If D-BE's superintendent is no longer with the Project, D-BE shall replace him or her within 24 hours (unless additional time is agreed upon by County) with a new, well-qualified superintendent acceptable to County.
- 8.3.5. Emergency Contacts: D-BE shall provide County 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.

9. 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.

10. SIGNATURE REQUIREMENTS

The Contract must be signed by officer(s) authorized to bind D-BE. If documentation demonstrating authority is not provided, then the Contract must be signed by those officers with

apparent authority to bind D-BE. If D-BE is a corporation, such signatures must comply with Corporations Code Section 313, as follows:

- A. The document must be signed by two (2) people. 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.
- B. One (1) 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.

11. ENTIRE CONTRACT

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

12. CONFIDENTIALITY

All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, and all written or other information submitted to A-E in connection with the performance of this Contract shall be held confidential by A-E and/or anyone acting under the supervision of A-E and shall not, without the prior written consent of County, be used for any purposes other than the performance of the Projects/Services described in Attachment A, nor be disclosed to any person, partnership, company, corporation or agency, not connected with the performance of the Projects/Services.

Nothing furnished to A-E which is generally known among counties in Southern California shall be deemed confidential.

A-E and/or anyone acting under the supervision of A-E shall not use County name or insignia, photographs of the work, or any other publicity pertaining to the work in any magazine, trade paper, newspaper, or other medium without the express written consent of County.

13. PUBLICATIONS

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

The A-E agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under, this Contract. A-E must first obtain review and approval of said media contact from County's Project manager. Any requests for interviews or information received by the media should be referred directly to the County. A-Es are not authorized to serve as media spokespersons for County's projects without first obtaining written permission from the County's Project Manager.

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"	Any day within the period between the date of the Notice to Proceed and County's acceptance of the work, except: Saturday; Sunday; or any day designated as a holiday by County. Notwithstanding the foregoing, any day will be treated as a working day if the Contract Documents require that it be so treated, or D-BE with County's approval elects to work on such day.
Abbreviations	The language of specifications and other Contract Documents is of the abbreviated type in certain instances, and implies words and meanings appropriately interpreted. Singular words will be interpreted as plural and plural words will be interpreted as singular where applicable and where full context of the Contract so indicates.
Addendum/Addenda	Written or graphic instrument issued prior to the opening of Bids which corrects or changes the Contract Documents.
Amendment	A written instrument issued after execution of the Contract Documents signed by the County 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.
Architect-Engineer ("A-E")	D-BE's Architect or Engineer of Record for the Project, hired to provide A-E services.
Approve	Where used in conjunction with the Architect or Engineer's response to submittals, requests, applications, inquiries, reports and claims by the D-BE, the meaning of the term "approved" will be held to limitations of the Architect or Engineer's responsibilities and duties as specified in General Conditions. In no case, will "approved" by the Architect or Engineer be interpreted as a release of the D-BE from responsibilities to fulfill requirements of the Contract, nor as any modification to those requirements.
Buy-Out Savings/Buy-Out Loss	Buy-Out Savings (Loss) occurs when a D-BE agrees to complete a Schedule of Values line item scope of work for a price that is below (above) the allocation originally indicated for that item in the GMP proposal.
Board of Supervisors	County's governing body.
Bulletin	Written or graphic instrument issued prior to the opening of Bids which clarifies or answers general questions about the Contract Documents.
CCR	California Code of Regulations.

Term	Definition
Change Order	A modification of the Contract as provided by the "Changes" Section of the General Conditions.
Change Order Request	County's request for D-BE to provide a proposal and price/time quote for County's desired Change Order, or County's description of work to be performed pursuant to D-BE's Request for Change.
Changed Conditions	Site conditions or materials of an expected 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.
Construction Schedule	D-BE's initial construction schedule after it has been accepted by County and designated as the Project Construction Schedule and updated by each monthly schedule update.
Contract	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.
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 Phase I, as it may be adjusted in accordance with the "Changes" Section of the General Conditions.
County	The County of Orange, a political subdivision of the State of California, and its representatives, alternate designation, County, a body corporate and public.
Design & Construction Critical Path Schedule	Critical Path Schedule, means the sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will extend the Substantial Completion date.
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.
Design-Build Entity	"Design-Build Entity" ("D-BE"), is used in the State's Public Contract Code section 20133(c)(3) to describe the partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.
Director	Except where otherwise provided, references to "Director" shall mean the Director of OC Public Works or his or her designee.

Term	Definition
Directed, Requested, etc.:	Where not otherwise explained, terms such as "directed," "requested," "authorized," "selected," "approved," "required," "accepted," and "permitted" mean "directed by A-E," "requested by A-E," "requested by A-E," and similar phrases. However, no such implied meaning will be interpreted to extend A-E's responsibility into the D-BEs area of construction responsibility.
Division 01 to 39 Specifications	Division 01-39 Specifications: refers to Construction Specification Institute ("CSI") format the organization of specifications organization. CSI is an organization that maintains the standardization of construction language as it pertains to building specifications.
Dust Control Plan	D-BE's plan for compliance with County'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 or Architect of Record	The California-registered architect or engineer in responsible charge for the design of the Project and whose seal appears on the Plans and Special Provisions.
Final Payment	The last and complete payment by County to D-BE under the Contract as provided by the "Payments" Section of the General Conditions.
General Conditions	The portion of the Contract Documents setting forth various conditions and requirements of the Contract.
General Requirements	The provisions of Division 01 (1) CSI sections that shall apply to the entire work.
GMP	Guaranteed Maximum Price
GMP Revisions	GMP revisions are modifications to the GMP proposal either reducing or increasing the original GMP values and executed when the SOV values differ from the initially accepted GMP values. GMP may be utilized to address reasonable unforeseen conditions, minor owner directed changes that are within the original character/scope of work and may be utilized to release any Unallocated Reserve amounts back to the Contract capacity. GMP revisions do not constitute a change to the original contract and the total of all GMPs shall not exceed the original contract value.
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 County 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.)

Term	Definition
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 County in accordance with Civil Code Section 8182 after completion of the work.
Notice of Termination	County's notice to D-BE specifying the effective date of a termination of the Contract (in whole or in part), as provided by the "Termination for Convenience Of County " Section of the General Conditions.
Offsite Costs	"Offsite Costs" means the actual costs incurred for the following: work in public right-of-way; utility extension and realignment costs; impact fees.
OCPW	Orange County Public Works, A County of Orange Agency/Department
Party / Parties	The County and/or D-BE.
Plans	The drawings, profiles, cross sections, standard plans, working drawings, and shop drawings, or reproductions thereof, approved by County, 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 County or D-BE representative identified in the Contract Documents or otherwise specified by County or D-BE in writing.
Request for Change	D-BE's request that County issue a Change Order as specified in the "Change Order" section of the General Conditions.
Retention	The amount of progress payments withheld by County 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.
Schedule of Values	Detailed breakdown by discipline or unit prices and costs as defined for the project in the Schedule of Values in the Construction Agreement and its General Conditions, as attached hereto.
Schedule Update(s)	D-BE's monthly update of work progress. (See the "Project Schedules" and "Payments" Sections of the General Conditions.)
Subcontractor(s)	Those D-BEs independently engaged by D-BE to perform portions of the work.
Submittals	Items that the Contract Documents require D-BE to submit to County after award of the Contract and issuance of the Notice to Proceed, as provided by the "Submittals" Section of the General Conditions.
Supplementary General Conditions	The portion of the Contract Documents identified describing additions and revisions to the General Conditions setting forth conditions and requirements particular to the Project.

Term	Definition
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.)
Unallocated Reserve	A Schedule of Values ("SOV") line item within each GMP proposal that contains no initial balance. As GMP updates are completed and should the D-BE agree to perform an SOV line item scope of work for a price that is below the allowance indicated for that item in a GMP proposal, the difference between the initial allowance and the final price of the SOV line item shall be assigned to Unallocated Reserve. Unallocated Reserve shall be updated as per Section 5.6.
Unilateral Change Order	A Change Order issued by the County where County and D-BE cannot reach an agreement on a proposed modification to the Contract.

2. A-E STATUS

Unless otherwise expressly stated in the Contract between D-BE and the County, the D-BE is responsible to the County for the preparation of adequate drawings, specifications, and reports within the scope of the contract. A-E services normally include checking of shop drawings, equipment submittals and material lists; recommendations to the County regarding proposed substitutions; furnishing consultation and advice to the County to clarify the intent of the drawings and specifications and on questions that may arise during construction. D-BE shall have access to observe work at all times wherever it is in preparation or progress. D-BE does not have the authority to act for the County or to stop work. Should the D-BE observe work which in D-BE's judgment, should be stopped to prevent damage, injury, loss, or error, D-BE should notify the County's representative without delay.

3. 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 County having jurisdiction over the Project.

4. 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.

4.1. LICENSED SUBCONTRACTOR

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

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 equally responsible for all work required by the Contract Documents and the acts and omissions of 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 County 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 County 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 a GMP except with County's written approval in compliance with the provisions of Public Contract Code Sections 4107 et seq.

5. SCOPE OF DESIGN BUILD RESPONSIBILITY**5.1. SITE AND EXISTING CONDITIONS**

- 5.1.1. D-BE is charged with all information and knowledge that a reasonable D-BE would ascertain from having performed required review, research and analysis as described below and described throughout the Contract.
- 5.1.2. The D-BE will be responsible for all necessary field investigations needed to confirm and document new and existing conditions. D-BE shall perform all testing required to adequately design the project such as: geotechnical investigations, utility surveys and potholing, video of sewer to confirm condition and capacity, topographic surveys, test borings, hazardous material testing, destructive testing (masonry investigation, concrete cores, and window removals), hydrant flow tests, etc., and review with the County Project Manager.
- 5.1.3. Using available existing building plans, site plans, geotechnical information, etc., provided by OC Public Works / A&E Project Management, the D-BE shall review existing drawings, reports and documentation that pertain to the project area. The County Project Manager may provide assistance in obtaining additional data. Available existing plans are provided to the DB-E for information purposes. D-BE shall notify County of questions, requests for clarifications, or missing documentation resulting from this review.
- 5.1.4. Make site visit arrangements through the County Project Manager.
- 5.1.5. Subsurface Conditions: D-BE shall make every effort to aid County and provide all necessary documentation in accordance with SB 865. Surveying by D-BE shall conform to the quality and practice required by County.

Additionally, D-BE is charged with providing:

- A. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that have been made available for informational purposes; and

- B. Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been made available for informational purposes.
- 5.1.6. These reports and drawings are not Specifications but as provided in Existing Conditions reports, D-BE may rely on the information in these reports and drawings. However, D-BE shall independently verify the information provided in the reports and shall prepare or have prepared new and updated reports in developing the design of the Project.
- 5.1.7. Records of existing structures on or in the vicinity of Site of Work may be supplied in Existing Conditions reports or may be on file in the County's offices and may be examined by D-BE (but subject to the conditions of Existing Conditions reports). D-BE should note that existing structures or facilities may differ from records on file, or may have been altered, and that no representation is made, nor responsibility taken, nor warranty given either express or implied, by the County as to the accuracy of locations and other data shown on records, except as otherwise provided in the Contract. After contract award, D-BE is to conduct all necessary investigations and become familiar with any and all actual as-built conditions. Compensation for unknown differing site conditions shall be allowed as provided in the Contract.

5.2. DESIGN

- 5.2.1. D-BE shall provide architectural and engineering design services as set forth below for the Project in accordance with the Request for Proposal ("RFP"), and County's AE Guide.
- 5.2.2. The standard of care for all architectural and engineering services performed under this Contract shall be the standard of care and skill ordinarily used by members of the architectural and engineering professions with expertise in the design and construction of public facilities, practicing under similar conditions in Orange County and at the same time as the services performed hereunder.
- 5.2.3. As the design documents are being prepared, D-BE will keep County apprised of the effects of any County-proposed changes on the project schedule and/or the Contract total amount. D-BE shall not incorporate any proposed changes into the Drawings unless and until it receives written direction to do so from the appropriate County's representative. The Contract Price shall not be changed without a Change Order. GMP revisions do not constitute a change to the original contract price and may be submitted so long as the sum does not exceed the original contract value.
- 5.2.4. During the course of design and construction, D-BE shall prepare and submit to County written Value Engineering Proposals ("VEP") for alternative systems, means, methods, finishes, equipment and the like that satisfy the general design criteria of the Work but result in savings of time or money in constructing or operating and maintaining the Work. Each VEP shall describe the proposed change, identify all aspects of the Work directly or indirectly affected by the change, specify the cost or time savings to be achieved if the VEP is accepted, and detail any anticipated effect on the service life, economy of operation, ease of maintenance, appearance, design or safety standards of the completed Work. Cost and time savings resulting from VEPs will remain in the Contract but will be established as "Reserves" to be applied at the County's discretion against the cost and schedule of Change Orders or future phases of Work.
- 5.2.5. D-BE shall utilize Autodesk Revit (2021 or newer, must be within three (3) revisions of current release) for the creation of documents and models. Design collaboration and reviews within Autodesk Construction Cloud is highly recommended. Construction Administration and project closeout tasks, including but not limited to submittal reviews, requests for information, meeting minutes, daily reports, cost management, schedule tracking and updates, asset data verifications, issues tracking, digital red-line sheets, document management, submission of requests/forms, and

punch lists shall be completed in Autodesk Construction Cloud. All work must be completed in accordance with applicable laws, statutes, ordinances, building codes, guidelines and standards.

5.3. SCHEMATIC DESIGN

- 5.3.1. D-BE shall cause to be prepared and furnish to County for review, Schematic Design documents consistent with the D-BE's Proposal and based upon County's requirements for the Work. These Documents will be for County's use in determining whether the proposed design of the Work is acceptable.
- 5.3.2. D-BE shall furnish to County for review Schematic Design documents at the 100% completion of Schematic Design. D-BE shall furnish to County a detailed Schematic Design update to the Contract Price prepared on a mutually agreeable basis for the purpose of monitoring project cost.
- 5.3.3. The County shall review and provide written comments to D-BE within fifteen (15) business days of receipt of a complete package of Schematic Design documents. If requested by County, D-BE and its D-BE's Design Professionals will meet with representatives of the County to discuss the Schematic Design documents.

5.4. DESIGN DEVELOPMENT

- 5.4.1. D-BE shall address all of County's comments on the Schematic Design documents to County's satisfaction, and upon County's written approval of a Schematic Design from County, D-BE shall prepare Design Development documents to fix the size and character of the Work. These Design Development documents shall be based on the Schematic Design documents approved by County and shall provide the basis for the final design and construction of the Work. D-BE shall highlight in the Design Development documents the modifications made to address County's comments on the Schematic Design documents.
- 5.4.2. D-BE shall furnish to County a detailed Design Development update to the Contract Price prepared on a mutually agreeable basis for the purpose of monitoring project cost.
- 5.4.3. D-BE shall furnish to County for review Design Development documents at 100% completion of the Design Development.
- 5.4.4. The County shall review and provide written comments to D-BE within fifteen (15) business days of receipt of a complete package of Design Development documents. D-BE's Design Professionals shall meet with representatives of the County to discuss the Design Development documents.

5.5. CONSTRUCTION DOCUMENTS

- 5.5.1. D-BE shall address all County's comments on the Design Development documents to County's satisfaction and upon written approval of the Design Development documents from County, D-BE shall prepare Construction Documents to fix the size and character of the Work. D-BE shall highlight in the Construction Documents the modifications made to address County's comments on the Design Development documents. The Construction Documents shall address County-requested changes to County's satisfaction.
- 5.5.2. The Construction Documents may consist of drawings, specifications, and other documents (including both paper and electronic data necessary to reproduce such documents). The Construction Documents shall be consistent with the County approved Design Development documents, provide information for the use of those in the building trades, and include all documents required for regulatory agency approvals.
- 5.5.3. D-BE shall furnish to County for review construction documents for the Construction Documents milestones. These documents are for County's use in determining that the design of the Work is

- being carried out in a manner consistent with the D-BE's Proposal and approved Design Development documents.
- 5.5.4. The County shall review and provide written comments to D-BE within fifteen (15) business days of receipt of a complete package of Construction Documents. D-BE shall be responsible for addressing all County comments to the County's satisfaction. Design Professionals will meet with representatives of the County to discuss the Construction Documents.
- 5.5.5. D-BE shall revise the construction documents to address the issues raised by the County and shall resubmit the Construction Documents to County. D-BE shall provide County with schedule for submittal of revised documents a minimum of fourteen (14) calendar days prior to submittal.
- 5.5.6. D-BE and County will continue to review and submit the Construction Documents until the County approves the completed (permit approved) Construction Documents in writing.
- 5.5.7. If the County discovers any inconsistencies or inaccuracies in the information presented by D-BE, it shall notify D-BE, who shall make appropriate revisions.
- 5.5.8. The Construction Documents shall be prepared in accordance with all legal requirements, building codes, rules, and regulations. D-BE represents that it has or will have carefully examined the site and all reports, studies and other documents provided by County; has performed all reasonable investigations essential to a full understanding of the difficulties that may be encountered in performing the Work, and will acquaint itself with the conditions under which the Work is to be performed, including without limitation, applicable laws, codes, and other restrictions, local labor conditions, local weather patterns, restriction in access to and from the Site, prior work performed by others on the Site, obstructions, and other conditions relevant to the Work, the Site, and its surroundings. With the exception of (i) Hazardous or Contaminated Materials as identified in Section 13.21, and (ii) subsurface conditions and physical conditions of the Site not reasonably identified in the documents and that could not reasonably be investigated or quantified on account of the existing improvements and/or operations at the Site, D-BE expressly assumes the risk of the actual conditions, either discovered or discoverable through reasonable investigation in the performance of contractual obligations under this Contract. D-BE will complete the Work for the compensation stated in this Contract and, except as provided elsewhere in this Contract, including any amendments, no claim of limitations that may exist or may arise affecting the Work or of difficulties in performing the Work will be an excuse for any failure or omission by D-BE to fulfill the requirements of the Contract for the agreed price.
- 5.5.9. Upon County's review, approval, and issuance of permit for the 100% Construction Documents submittal, D-BE shall furnish three (3) full-size printed sets of the final construction documents and specifications to County, along with four (4) sets of electronic copies of these materials in a PDF, CADD, and/or BIM format acceptable to County. The CADD documents and BIM models will be sealed, and all functions shall be active. In addition, D-BE shall establish and maintain a secured site on the Internet (e.g. Autodesk Construction Cloud) on which all documents will be posted. Each party shall be solely responsible for reproduction and distribution of all drawings, specifications and other documents for its own use and for the use of its separate consultants, D-BEs, suppliers and others as may be applicable.
- 5.5.10. D-BE shall provide all plans and other documents required to apply for and obtain approval of Federal, State, and local authorities as may be required for the initiation, prosecution and construction of the Work.
- 5.6. GMP UPDATES**
- 5.6.1. Subsequent to acceptance and approval of a GMP proposal, the D-BE shall update GMP proposal(s) regularly but not less than the Schematic Design, Design Development and Construction Document

milestones during Phase I. During Phase II, GMP updates shall be provided regularly as costs of Schedule of Values ("SOV") line items are finalized.

- 5.6.2. If the GMP Proposal is greater than the independent third party or Design Professional's estimate, the County may require the D-BE to reconfirm its GMP Proposal. D-BE shall accept the independent third party's or Design Professional's estimate for the Cost of Work as part of his GMP or present a report within seven days of a written request to the County identifying, explaining and substantiating the differences. D-BE may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the County. At that time the County may do one of the following:
- A. Accept the D-BE original or revised GMP Proposal, if within the County's budget, without comment.
 - B. Accept the D-BE original or revised GMP Proposal that exceeds the County's budget and indicate in writing to the D-BE that the Project Budget has been increased to fund the differences.
 - C. Reject the D-BE's original or revised GMP Proposal because it exceeds the County's budget, the independent third parties or Design Professional's estimate, in which event, the County may terminate this Contract and/or elect not to enter into an Amendment or separate agreement with the D-BE for Phase II associated with the scope of Work reflected in the GMP Proposal.
 - D. With the D-BE's Contract, wait to accept the GMP Proposal if the County believes adequate funding will be available in the future.
- 5.6.3. When the D-BE agrees to perform an SOV line item scope of work for a price that is below the initial allowance indicated for that line item in a GMP proposal, the difference between the allowance and the final price of the SOV line item amount shall be assigned to Unallocated Reserve.
- 5.6.4. As costs for SOV line items are finalized, the D-BE shall keep track of Buy-Out savings and Buy-Out losses as they occur. For each GMP update the Buy-Out savings and Buy-Out losses shall be summed together to establish an overall credit to, or debit from Unallocated Reserve. If this summation results in an overall deficit to Unallocated Reserve, the D-BE shall identify savings from other SOV line items and reduce the associated allocation or accepted price for that line item(s) equal to the deficit in Unallocated Reserve (i.e. Unallocated Reserve cannot be less than zero dollars for a submitted GMP update.).
- 5.6.5. Upon completion of the scope of work for a GMP proposal, the D-BE shall prepare a GMP Revision which reduces the GMP in the amount equal to the Unallocated Reserve. This GMP Revision does not reduce the overall Contract Price defined in Section 3.1 of the Contract.
- 5.6.6. D-BE shall request and ensure that the pre-qualified Subcontractors provide a detailed bid for the services requested. The Subcontractor bid, provided on the Subcontractors' letterhead, shall contain sufficient information (i.e. unit costs/amounts). D-BE shall resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

6. INTERPRETATION OF CONTRACT DOCUMENTS

6.1. PLANS AND SPECIFICATIONS

- 6.1.1. Omissions and Mistakes: D-BE shall call to County's attention as soon as identified any omissions in the Contract Documents or mistakes in details of work that are necessary to carry out the intent of the Contract Documents or that are customarily performed. County shall promptly notify D-BE in writing of the correction. If warranted, County shall issue a Change Order in accordance with the "Changes" Section of these General Conditions. If D-BE makes any adjustment to the work

without first receiving the County's written correction, such adjustment shall be at D-BE's own risk and expense.

- 6.1.2. 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 County with a set of manufacturers' recommendations and instructions.
- 6.1.3. "As-Built" Documents: D-BE shall maintain at the site a complete "As-Built" set of documents, including but not limited to plans and specifics, for the Project. D-BE shall update the As-Built documents each day. D-BE shall make As-Built documents available to County immediately upon request. Any delay by D-BE in providing County with access to properly updated As-Built Documents may result in a commensurate delay in County's processing of progress payment applications. Prior to final payment, D-BE shall deliver a complete set of the As-Built documents (plans, models, specifications, shop drawings, etc.) to County in formats (PDF, DWG, RVT, DOCX, etc.) acceptable to County and suitable for use in preparing a reproducible set of record drawings for the Project.
- 6.1.4. "Record" Documents: D-BE shall provide a complete set of "Record" documents for the project within 30 days of completion of work. Record documents include but are not limited to plans, specifications, and models. Record documents shall accurately depict the final constructed condition of the project in a clean state without markups and incorporate deviations from the permit set including but not limited to as-builts, RFIs, shop drawings (including fabrication models), and change orders. D-BE shall delivery a complete set of record documents to County in formats (PDF, DWG, RVT, DOCX, etc.) acceptable to the County.
- 6.1.5. Deviations: D-BE shall not deviate from the Plans and the dimensions shown therein, whether or not D-BE believes an error exists, without first obtaining County's written permission for the deviation. Deviations shall be tracked and accurately depicted, including locations, dimensions, pictures, final constructed condition, and other relevant information with Requests for Information (RFI), which shall be submitted by the D-BE to the County PM. After acceptance of deviation by County PM, the D-BE shall submit the RFI to County Building & Grading Plan Check for review and approval as a permit revision. D-BE shall be responsible for all costs associated with permit revisions. D-BE shall have all permit revisions available at time of inspection or rejection of inspection may occur. D-BE shall be responsible for all reinspection fees. All deviations and final constructed conditions shall be depicted accurately on as-built and record documents.
- 6.1.6. Failure to comply with these requirements and failure to deliver acceptable documents may result in a withholding of approximately 2% of total contract value.

6.2. PRECEDENCE OF CONTRACT DOCUMENTS

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

The precedence shall be:

- A. Permits and applicable regulations as may be provided by law or that govern the site;
- B. Use of Change Orders - in inverse chronological order, and in the same order as specific portions they are modifying (i.e., later-issued language shall take precedence and prevail over earlier conflicting versions or language);
- C. Contract;
- D. Supplemental General Conditions;
- E. General Conditions;
- F. Plans;
- G. Specifications; and

H. Attachments and Appendices

Any conflict between Plans and Specifications will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.

7. PRE-CONSTRUCTION

7.1. D-BE'S PRE-CONSTRUCTION OBLIGATIONS

Prior to beginning construction and again before starting a section of work, D-BE and each subcontractor shall carefully examine all preparatory work that has been executed to receive the work. D-BE shall check carefully, by whatever means are required, to ensure that the work and adjacent, related work, will finish to proper contours, planes, and levels. D-BE shall promptly notify the County of any defects or imperfections in preparatory work which will in any way, affect satisfactory completion of his work. Absence of such notification will be construed as an acceptance of preparatory work, and later claims of defects or delays therein will not be recognized. Under no condition shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials rests solely with the D-BE, who shall maintain coordination control at all times. 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.

8. BONDS, INDEMNITY, AND INSURANCE

8.1. BONDS

8.1.1. Payment and Performance Bonds

Within ten (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 in the Introduction and Instruction to D-BE and are subject to approval by the County.

8.1.2. County's Right to Replace Surety

If any surety upon any bond furnished in connection with this Contract becomes objectionable to County and fails to submit to County the documents described in California Code of Civil Procedure Sections 995.660(a)(1) through (a)(4) within the time specified in those Sections, then D-BE shall promptly furnish such additional security as may be required by County to protect the interests of County and of persons entitled to make a claim against the payment bond. Failure to furnish such additional security shall constitute a material breach of the Contract.

8.2. INDEMNIFICATION

To the maximum extent allowable by law, D-BE agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which County's Board of Supervisors

acts as the governing Board ("County Indemnitees") harmless from any loss, injury, liability claims, demands, costs and expenses whether incurred by or made against County or County Indemnitees of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by D-BE pursuant to this Contract. This indemnity applies even in the event of County Indemnitees' concurrent fault, except that nothing in this indemnification provision shall be construed to require D-BE to indemnify County Indemnitees for losses caused by 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 County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, D-BE and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

8.3. INSURANCE

County shall secure and maintain Builder's Risk insurance upon the entire Project for new construction amounting to 100% of the insurable value of the Project. The Builder's Risk policy is an All Risk policy, with the exclusion of earthquake and flood risks. D-BE and Subcontractors are included as loss payees, as their interests appear.

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

D-BE is responsible for the entire deductible amount of any and all Builder's Risk claims against County's Builder's Risk policy. The deductible applies per claim, and the deductible shall not exceed \$10,000 per claim. Any loss claim under this insurance is to be coordinated with County.

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

Prior to the provision of services under this Contract, the D-BE agrees to carry all required insurance at D-BE's expense, including all endorsements required herein, necessary to satisfy the County 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 the County during the entire term of this Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy.

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 carry 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 County 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 entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions ("SIR")'s shall be clearly stated on the Certificate of Insurance. Any SIR in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee. The County reserves the right to require current audited financial reports from D-BE. If D-BE is self-insured, D-BE will indemnify the County for any and all claims resulting or arising from D-BE's services in accordance with the indemnity provision stated in this Contract.

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

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

8.3.1. **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**).

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

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

8.3.2 **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:

<u>Coverage</u>	<u>Minimum Limit(s)</u>
Commercial General Liability	\$5,000,000 per occurrence \$5,000,000 aggregate

Automobile Liability including coverage for owned or scheduled, non-owned and hired vehicles	\$5,000,000 combined Single limit
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per accident or disease
Professional Liability	\$2,000,000 per claims made or per occurrence \$2,000,000 aggregate

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

<u>Coverage</u>	<u>Minimum Limit(s)</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned or scheduled, non-owned and hired vehicles	\$1,000,000 combined Single limit
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per accident or disease
Professional Liability	\$2,000,000 per claims made or per occurrence \$2,000,000 aggregate

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned or scheduled, non-owned and hired vehicles	\$5,000,000 combine single limit
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence

8.3.3 **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.

8.3.4 **Required Endorsements**

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:
 - a. An Additional Insured endorsement using ISO form CG 2010 04 13 or CG 2033 04 13 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers, employees, agents*** as Additional Insureds, or provide blanket coverage which shall state ***AS REQUIRED BY WRITTEN CONTRACT***.
 - b. A primary non-contributing endorsement using ISO form 20 01 04 13 or a form at least as broad evidencing that the D-BE's insurance is primary, and any insurance or self-insurance maintained by the County shall be excess and non-contributing.
 - c. A Products and Completed Operations endorsement using ISO Form CG 20 37 04 13 or a form at least as broad.
2. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, employees and agents*** or provide blanket coverage which shall state ***AS REQUIRED BY WRITTEN CONTRACT*** when acting within the scope of their appointment or employment.
3. All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees, and agents when acting within the scope of their appointment or employment.
4. D-BE shall provide thirty (30) days prior written notice to the County of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.
5. If D-BE's Professional Liability policy is a claims-made policy, D-BE shall agree to the following:

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

Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after expiration or earlier termination of Contract services.

If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Contract services, D-BE must purchase an extended reporting period for a minimum of three (3) years after expiration of earlier termination of the Contract.

6. The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).
7. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.
8. If the D-BE fails to provide the insurance certificates and endorsements within seven days of notification by the Project Manager or the agency/department, award may be made to the next qualified D-BE.
9. County 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 County.
10. County 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 County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to D-BE, and County shall be entitled to all legal remedies.
11. 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 in any way to reduce the policy coverage and limits available from the insurer.

8.4. RESPONSIBILITY FOR DAMAGES OR INJURY

- 8.4.1. County and its officers and employees shall not be liable in any manner for any loss or damage to any portion of the work, any loss or damage to any of the materials or equipment used in the work, or any injury to any person or property by any cause that might reasonably have been prevented by D-BE, its employees, or its Subcontractors. D-BE shall indemnify and defend County against any claims or liability under this section pursuant to the "Indemnification Provisions" Section of these General Conditions.
- 8.4.2. 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.
- 8.4.3. Payment of any penalties, fines, or other liability assessed to County 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.
- 8.4.4. D-BE shall pay any assessments or damages covered by this Section directly, or, at County's discretion, County may pay or retain the amount of such assessments or damages and deduct its costs from payments owed or as they become due to D-BE.

9. SCHEDULES, SUBMITTALS, SUBSTITUTIONS, AND INSPECTIONS

9.1. SCHEDULES

9.1.1. Design & Construction Critical Path Schedule:

D-BE will prepare and/or maintain a Design & Construction Critical Path Schedule ("Critical Path Schedule"), which may include the D-BE's professional opinions concerning: (a) Project milestone dates and the Design & Construction Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface

conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subcontracts to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, and (i) a matrix summarizing each parties' responsibilities and roles.

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, Oracle Primavera P6, or other scheduling software acceptable to County to configure all schedules. D-BE shall prepare the all schedules using the critical path format and shall allow no less than 10 days for County's review of each such submittal. An accepted Design & Construction Critical Path Schedule is a condition precedent to County's obligation to make the initial progress payment to D-BE.

The D-BE shall add detail to its previous version of the Critical Path Schedule as new information becomes available and at a minimum monthly to keep it current throughout the design until plans and specifications are complete and project is solely under construction. The Critical Path Schedule shall be updated to reflect the Contract Time as defined in the Contract.

- 9.1.2. Construction Schedules: As part of construction related GMPs, D-BE shall submit to County for County's review a Construction Schedule.

Schedule activities shall be of sufficient detail to assure that adequate planning has been done for proper execution of all of D-BE's work. The schedule shall show the sequence, duration, and interdependence of activities required for the complete performance of all of D-BE's work.

D-BE shall include on the Construction Schedule the schedule for submittals, shop drawings, procurement, fabrication, and delivery for major materials and equipment required for the Project. The Construction Schedule in conjunction with the Critical Path Schedule is a condition precedent to County's obligation to make the initial progress payment to D-BE.

- 9.1.3. Weekly Meetings and Look-Ahead Charts: During Construction, D-BE shall participate in weekly meetings with County during which the parties shall exchange information regarding the actual progress of construction. County 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 County's approval.

- 9.1.4. Monthly Construction Schedule Updates: Each month, D-BE shall submit to County for its review an update of the Construction Schedule. The monthly Schedule Update shall reflect agreed assessments of actual completion reached during weekly meetings. If County and D-BE cannot agree, then D-BE shall use County'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 County's acceptance of the monthly Schedule Update, it shall become the current accepted Construction Schedule. Any request for an extension of the Contract Time must be based on the accepted Construction 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 County's obligation to make such progress payment to D-BE.

- 9.1.5. Recovery Schedule: If any activity on the critical path is more than 7 days behind the accepted Construction Schedule and it appears that D-BE may not complete all work within the Contract Time, then County 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 County's request. If County finds the proposed recovery schedule unacceptable, it may require D-BE to submit a revised plan or to take actions that are, in County'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.

9.2. 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 County's review and approval of "Phase I" and draft total Contract Price line items. The Schedule of Values shall include sufficient detail and be supported by sufficient data as County, 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, subdivided into their various components for the costs of design, 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. Schedule of Values to be updated and resubmitted for County's review and approval within 14 calendars of issuance of Notice to Proceed for each GMP revision.

The data from the Schedule of Values shall be transferred and correspond directly to the appropriate construction activities on Construction Schedule. County will accept the Schedule of Values with review of the Construction Schedule. The Schedule of Values along with the Construction Schedule will be the basis for D-BE's Progress Payment Request and therefore, must be reviewed by County before the first Progress Payment Request is submitted to County.

To substantiate the accuracy of the Schedule of Values, County and D-BE may review such supporting data as County may require which includes, but is not limited to, subcontractor contracts, material contracts, supply and services contracts, etc.

9.3. D-BE'S CONSTRUCTION SUBMITTALS

- 9.3.1. General: Include within the Construction Schedule a schedule for construction submittals ("submittal schedule") in accordance with Contract Time and Contract Document requirements. 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 County has received said submittal. In a transmittal letter that accompanies each Submittal, D-BE shall call to County'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 County has reviewed and has taken no exception.

D-BE shall prepare and submit a progress schedule for himself, each subcontractor and supplier, showing anticipated dates for submittals of construction data. Schedule shall allow for lead time required for subcontractors, material and equipment manufacturers, fabricators and suppliers,

- delivery of materials and equipment, in sufficient time for installation without delaying any portion of the work.
- 9.3.2. County Review Responsibility: County has no obligation or responsibility in review of construction data for accuracy. County may verify construction data for compliance with County approved requirements. County'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.
- 9.3.3. Construction Data: D-BE shall provide for County review all construction data and such other data as required for the coordination of the work of the D-BE and each of his subcontractors, whether such submittals are requested.
- 9.3.4. Submittal Requirements: D-BE shall submit to County one (1) hard copy and one (1) electronic copy 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, samples, 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 County. 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.
- 9.3.5. D-BE's A-E Review: D-BE's AE shall review all submittals to check for general conformance with the project design concept and general compliance with the Contract Documents. Responsibility shall be assumed by D-BE for any of the following:
- A. Correctness of dimensions, details, quantities, or procedures indicated on the submittals.
 - B. Any violation indicated on shop drawings, or other construction data, of local, county, state or federal laws, rules, ordinances, or rules and regulations of commissions, boards or other authorities or public utilities having jurisdiction.
 - C. Any deviation made from Contract Documents requirements, even with approval from the County, will not relieve the D-BE from any responsibility for errors or omissions in the construction data.
- 9.3.6. Review of construction data submittals will only be performed as specifically required in the various Specification Sections.
- 9.3.7. Review of a separate item shall not indicate approval of an assembly in which the item functions.
- 9.3.8. Review of shop drawings will be general, for design, arrangement and appearance only, and shall not relieve D-BE of responsibility for accuracy of such shop drawings, dimensions, proper fitting, construction of work, providing materials required by the Contract Documents, even though such materials and their installation are not indicated on shop drawings. Review of shop drawings shall not be construed as approving departure from Contract requirements or as acceptance of any responsibility by County for any errors, omissions, or discrepancies shown thereon.
- 9.3.9. 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.

9.3.10. 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.

9.3.11. Shop Drawing Variations:

- A. If shop drawings show variations from Contract Documents because of standard shop practice, questions, or any other reason, make specific mention of variations in transmittal letter to the County as well as encircle variations or questions on shop drawings to identify and call them to the County's attention.
- B. If the D-BE has not notified the County in writing of variations, deviations or omissions, the D-BE will be required, at its sole expense, to repair, replace, furnish whatever materials are required, perform the work, including adjacent work of other trades affected thereby, necessary to rectify such deviations and variations, all as directed by County. Replacement and repair shall be mandatory in such instances, even though this occurs after shop drawings have been stamped "Review Completed" and the work in question has been completed. All work pertaining to this condition or situation shall be performed at no additional cost to the County.

9.3.12. Samples:

- A. Samples shall be the precise item proposed to be furnished.
 - i. Submit one sample to be retained on project site, one to be retained by County, plus the number required by the D-BE for his and his subcontractor's use.
- B. Identify each sample with the manufacturer's name, model number or type, and its intended location in the work.
- C. Samples of value will be returned to the D-BE for use in the work after review by the County.
- D. Failure of samples to conform to specific requirements may, at County option, constitute a bar against submission of other samples by the same manufacturer, vendor or supplier.
- E. Acceptance of samples will not preclude rejection, prior to final acceptance of completed work, of any material upon discovery of defects in material which said sample failed to represent, even though such material or equipment has been installed or erected in place.
- F. After samples have been reviewed, no change in brand or make will be permitted unless satisfactory written evidence is presented, to the County, that the manufacturer cannot make scheduled delivery of approved material, or that material delivered has been rejected and substitution of an alternate material is an urgent necessity, or that other conditions are apparent which indicate acceptance of such substitute materials to be in the best interest of the County.
- G. All samples of materials requiring laboratory tests shall be tested sufficiently in advance of the time they are required to be delivered to the Project Site for: (1) D-BE's review of test results, (2) re-testing and re-submittal as necessary to obtain D-BE's acceptance, (3) manufacture or fabrication, and (4) delivery to Project Site without delaying the scheduled progress of the work.
- H. Each sample shall have physically attached to it, in a manner not easily removable, a label bearing the following information:
 - i. Project identification.
 - ii. D-BE's and subcontractor's identification.

- iii. Sample identification including full information as to manufacturer, model, catalog number, finish number, and other required information.
 - iv. Space for D-BE's A-E's review stamp.
 - I. When samples are rejected by the D-BE's A-E, submit new samples immediately after notification of rejection, and mark them "Resubmitted Samples," in addition to other information required on label.
 - J. The right to require additional submission of samples of any materials or material lists is reserved, whether or not specifically mentioned in Specifications.
- 9.3.13. Supporting Information: Supporting information is information required by the Contract Documents or requested by County when reviewing a submittal that County determines is necessary to analyze and verify that the submittal conforms to the Contract Documents or will be needed by County 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 Specifications and shall include but not be limited to the following:
- A. List of Subcontractors;
 - B. List of Materials;
 - C. Manufacturer's certifications that materials to be supplied meet the requirements of the Contract Documents, where the Contract Documents allow such certifications or County waives materials testing requirements. County may require materials test data as part of the certification;
 - D. 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.

9.4. SUBSTITUTIONS – BRAND OR TRADE NAMES

- 9.4.1. Unless County 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".
- 9.4.2. If D-BE desires to use any other brand or manufacturer of equal quality, performance, and utility to that specified, it shall apply to County in writing within 15 days after the approval of the related GMP. D-BE shall submit to County 6 copies of each application for an "or equal" determination. D-BE's application shall include all information required for County to evaluate the substitute items, including but not limited to shop drawings, product data, and certified test results.
- 9.4.3. D-BE shall have the item tested as required by County 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 County'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:

- A. 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.
- B. D-BE will provide the same warranty as for the specified item.
- C. 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.
- D. 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.

9.4.4. County 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 County's prior approval. D-BE shall remain solely responsible for the suitability of such proposed material, products, things, or services notwithstanding any determination by County. D-BE shall bear all expenses associated with its application for determination of "or equal" status.

9.4.5. 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. County will determine, in its sole discretion, whether or not to accept the requested change.

10. PAYMENTS

10.1. PAYMENT REQUIREMENTS

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

Each application for payment must include:

- A. An accepted Schedule of Values and monthly Schedule Update with a narrative report (if requested), all approved in writing by County and all developed in accordance with the "Schedules, Submittals, Substitutions, And Inspections" Section of the General Conditions. D-BE's submissions of an Accepted Construction Schedule, monthly Schedule Updates, and Schedule of Values are conditions precedent to County's processing of applications for payments;
- B. Photographic documentation of completed work (as requested);
- C. If requested, D-BE shall provide three copies of certified payrolls from D-BE and all 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 County 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 County's sole discretion, the value of the work completed may include up to 50% of the value, as determined by County, 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 County 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 County, and the materials at each storage location are segregated from any other materials there that are not intended for use on the Project. County will not pay D-BE for any materials at the Project site that are furnished but are not to be incorporated into the work.

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

- 10.1.2. Lump Sum Work and Unit Prices: County shall pay for work shown on the Schedule of Values as "Lump Sum", "L.S.", or "Job" at the lump sum price shown. Any contract work for which a unit price has been agreed upon, will be paid for at the actual quantities constructed in accordance with the Contract Documents. Upon completion of the work, if the actual quantities show either an increase or decrease from the quantities stated in the agreement, the unit price stated will apply unless a change to the unit price is warranted under the "Changes" Section of the General Conditions.
- 10.1.3. Time for Submitting and Reviewing Applications for Payment: D-BE shall submit each application for payment to County for its review on the last business day of the month for which it is seeking payment. County 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 County 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 County 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 County 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 County's property or the work by or property of County'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.
- 10.1.4. Progress Payments: Within 30 days of receiving an undisputed, properly completed application for payment, or as provided by Public Contract Code Section 20104.50, County 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. County 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 County fails to timely

make any progress payment. No progress payment by County shall be considered to be County's acceptance of any part of the work.

10.1.5. 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.

10.1.6. 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:

- A. 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
- B. 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.

10.2. SUBSTITUTED SECURITY

In accordance with Public Contract Code Section 22300 and at the request and expense of D-BE, County will accept securities equivalent to any amount withheld by County 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 County 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 County, D-BE, and escrow agent, which agreement shall be in a form substantially similar to that contained in Public Contract Code Section 22300.

10.3. 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 County in writing all claims for compensation under or arising out of this Contract. D-BE's acceptance of County's payment in response to D-BE's application for Final Payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by D-BE as unsettled at the time of D-BE's application for Final Payment.

11. LABOR AND PUBLIC CONTRACT 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:

11.1. 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 County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, 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.

11.2. 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.

11.3. 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 County \$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.

11.4. REGISTRATION WITH CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS

D-BE and all required 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.

11.5. 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:

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.

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:

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

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.

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.

D-BE shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.

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 County, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. D-BE acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due 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.

11.6. APPRENTICES

- 11.6.1. 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.
- 11.6.2. 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.
- 11.6.3. D-BE shall comply with all requirements of California Public Contract Code Section 22164 (c) regarding the use of a skilled and trained workforce.

11.7. NONDISCRIMINATION

- 11.7.1. 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.

11.8. SUBCONTRACTOR BIDDING AND APPRENTICES

- 11.8.1. D-BE shall comply with Public Contract Code Section 22166 for the award of subcontracts exceeding one-half of one percent of the contract price allocable to construction work.
- 11.8.2. D-BE shall comply with Public Contract Code Section 22164 (c) regarding the use of a skilled and trained workforce.

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, improper operation or maintenance, or normal wear and tear.

12.2. ONE-YEAR CORRECTION PERIOD

For a period of not less than one year from the date County accepts D-BE's work, as evidenced by a Notice of Completion issued by County, D-BE shall take immediate action to correct any Defective Work reported by County 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, County may take whatever corrective action it deems necessary. All costs incurred by County because of D-BE's failure to correct Defective Work during the one-year correction period shall be due and payable immediately by D-BE. The one-year correction period relates only to the specific obligation of D-BE to return to the Project site and correct Defective Work. The one-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 County 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 County, and upon abandonment, termination, or completion of the Agreement shall be deemed, and hereby are, assigned to County. D-BE shall take all actions necessary to preserve the full scope of all manufacturers' and installers' warranties for the benefit of County and shall take no action that would impair County's rights under any such warranties. Before County's acceptance of the work, D-BE shall deliver to County manufacturers' and installers' warranties, guarantees, instruction sheets, and parts lists, which are furnished with certain articles of materials incorporated in the work.

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 County'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. OBLIGATION TO REVIEW DOCUMENTS**

- 13.1.1. D-BE shall carefully study and compare all Contractor Documents and shall at once report to County any error, inconsistency or omission that D-BE may discover.
- 13.1.2 D-BE shall be responsible for the coordination of all trades so that all components are properly integrated into the construction. All significant conflicts in location shall be brought promptly to the attention of the County. In the event of conflicts that cannot be anticipated and resolved by examination of the Contract Documents, the cost of changes ordered by County shall be compensated by Change Order.

13.2. OTHER CONTRACTS

County 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 contractors and County, and carefully fit D-BE's own work to such other work as may be directed by County. 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 County or any other contractors, and shall cooperate in the coordination of its separate activities in a manner that shall not interfere with County's current facility operations and the activities of other contractors working in the area. D-BE shall include in its Bid 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.

13.3. PROTECTION

- 13.3.1. 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. 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 County may have previously accepted.
- 13.3.2. D-BE shall maintain continuously adequate protection of all work from damage and shall protect County'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 County. D-BE's and Subcontractors' employees shall possess means of identification at all times as required by County while on the job site.

Security of the D-BE's material, equipment, work product and work site is the D-BE's responsibility.

Employment of a security guard for any time period (working hours or other than working hours), shall be left to the discretion of the D-BE. The D-BE shall be fully responsible for any theft or damage to any material, equipment or to any portion of the building, work, or site.

- 13.3.3. County 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 County shall not relieve D-BE of responsibility for safety.
- 13.3.4. If D-BE fails or refuses to comply promptly, County 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.

- 13.3.5. In an emergency affecting the safety of persons, the work, or of adjoining property, D-BE without special instruction or authorization from County, 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 County. 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.
- 13.3.6. The D-BE shall comply with County's Safety and Loss Prevention Policy and Procedure #306 ("Contractor Safety Responsibilities") and submit a copy of its Injury and Illness Prevention Program ("IIPP"), Jobsite Safety Inspection Checklist, and Contractor Safety-Activity Checklist to the designated County Procurement staff as part of the solicitation and/or contract process. The D-BE will notify County Project Manager of any revisions to the Safety-Activity Checklist and will provide a new Safety-Activity Checklist upon County request. The IIPP shall comply with California Code of Regulations, Title 8, Section 1509 or 3203 (whichever applies). The D-BE shall submit other safety programs that pertain to the type of job that will be performed on site. County reserves the right to conduct inspections and audits as necessary for the purpose of evaluating any aspect of safety performance under this Contract.
- 13.3.7. The D-BE is required to provide a Safety Data Sheet ("SDS") compliant with California Code of Regulations, Title 8, Section 5194, for each hazardous substance that is provided, used or created as part of the goods or services provided by Contractor to County. The SDS for each substance must be sent to either the County Project Manager, as specified in the "Notices" provision of this Contract, or to the place of shipment or provision of goods/services.

13.4. FENCES AND BARRICADES

- A. Furnish, erect and maintain all fences and barricades required by local ordinances, or public safety and necessity until completion of the project.
- B. Barricades to protect pedestrians from building construction shall be constructed of ½" painted (two coats) plywood and shall be free from projecting nails, boards or other hazards. The D-BE shall maintain barricades free from graffiti. Barricades at John Wayne Airport shall comply with specific criteria provided within airport specific standards documents.
- C. No signs, other than those specified, shall be erected without the written approval of the County.
- D. Remove construction fences, barricades, and other related temporary construction upon completion of work, or sooner if authorized or required to maintain Project progress.

13.5. PROJECT SIGN & NOTICE

- A. No signs or advertisements will be permitted on the Project site, except with the express permission of County's Project Manager.
- B. At every door and barricade separating the project work and staging areas from areas not included in the project work area, the D-BE shall provide, install and continuously maintain a construction warning sign. The 11 inch by 17 inch construction warning sign shall be approved by County's Project Manager and shall be plastic laminated on heavy cardstock and shall be securely affixed at eye level to the door or barricade.
- C. D-BE (if required) shall furnish and install one 4 foot by 8 foot Project sign to be located at the Project site and shall contain the following information:
 - i. County Logo (in color, graphics to be provided)

- ii. Board of Supervisors (list of 5 supervisors and district)
 - iii. Facility & Project Name: John Wayne Airport –Facility Accessibility Improvements Phase 1
 - iv. County of Orange
 - v. Architect-Engineer: PGAL
 - vi. D-BE: Swinerton Builders
- D. D-BE shall submit sign layout and proposal exact location for review and approval by the County's Project Manager.
- E. Mounting: Mount on 2 each 4 inch by 4 inch posts. Posts shall extend a minimum of 36 inches below grade and extend a minimum of 8 feet-0 inches above finish grade. The sign shall be mounted by concealed fasteners with the base of the sign 1 foot-4 inches above finish grade. The posts shall be pressure treated wood, primed and partial whitened.

13.6. QUALITY OF MATERIALS AND WORKMANSHIP

- 13.6.1. D-BE shall perform all work required by the Contract Documents in a skillful, good, and workman like manner and in strict conformance with the Contract Documents. All materials and equipment furnished by D-BE shall be new and of highest quality, unless otherwise required by the Contract Documents. See Section 01400, Quality Requirements for additional requirements.
- 13.6.2. D-BE shall supervise and direct the work using its best skill and attention. All labor shall be performed by individuals specialty 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 County 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 County's written approval, which may be granted or withheld in County's sole discretion.
- 13.6.3. D-BE shall, without charge, replace any material or correct any work found by County not to conform to the requirements of the Contract Documents, unless County 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.
- 13.6.4. If D-BE does not promptly replace rejected material or correct rejected work, or immediately remove persons who are unfit or behaving unacceptably, County 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.

13.7. SURVEYING

- 13.7.1. D-BE shall notify County 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 County, and shall bear the expense of replacing any that may be disturbed without such consent. Replacement shall be done only under the direction of County 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 County. 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.

- 13.7.2. D-BE shall notify County 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 County 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.
- 13.7.3. 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 County. 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.
- 13.7.4. D-BE shall make every effort to aid County and provide all necessary documentation in accordance with SB 865. Surveying by D-BE shall conform to the quality and practice required by County.

13.8. UTILITIES

- 13.8.1. Location: County will provide D-BE with copies of documents which describe the location of known utility substructures or will indicate in the Plans or Special Provisions those substructures (except for service connections) that may affect the work, as maybe known by County. The removal, relocation, abandonment, or installation of utilities shall be in accordance with the applicable provisions of the Contract Documents. Where underground main distribution conduits such as water, gas, sewer, electric power, telephone, or cable television are shown on the Plans, D-BE shall assume that every property parcel or facility adjoining the Project will have a service connection for each type of utility. D-BE shall determine the location and depth of all utilities, including service connections, which may affect or be affected by its operations. 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.
- 13.8.2. Protection: D-BE shall not interrupt the service function or disturb the support of any utility without appropriate coordination. 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, D-BE shall furnish and place the necessary protection at its expense. 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.
- 13.8.3. 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 whether the abandonment is complete, and the costs involved in the removal and disposal shall be included in the related GMP for the items of work necessitating such removals.

13.9. TRAFFIC CONTROL

- 13.9.1. D-BE shall coordinate its traffic at the site with County. D-BE shall submit an acceptable plan Traffic Control Plan (“TCP”) to County within 10 days after the Notice to Proceed is issued (or as agreed upon in the Construction Schedule).

The TCP shall display and address, at a minimum:

- A. Protection of existing improvements;

- B. Methods to eliminate interference with existing nearby facility operations and traffic in and out of the nearby facilities;
- C. Proposed haul routes for delivery of materials;
- D. Compliance with local ordinances

13.9.2. Reckless driving shall not be tolerated, and all vehicles shall be operated at a safe speed at all times. If County determines that D-BE has violated the Traffic Control Plan or otherwise operated in an unsafe manner, County 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 County may terminate D-BE's right to proceed with the work pursuant to the "Termination for Cause" Section of the General Conditions.

13.10. TEMPORARY OFFICE BUILDING AND TELEPHONE

D-BE shall provide a temporary office building and telephone, if required for the Project. D-BE may provide a temporary office for his own convenience at his sole expense. The temporary office, if desired by D-BE, shall be subject to approval of the County. Any temporary building shall be Class B 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 County or D-BE shall submit, a location plan showing the arrangement of field offices, storage sheds, equipment storage, and staging areas for County approval.

13.11. PERMANENT SYSTEMS USED AS TEMPORARY FACILITIES

When any portion of a permanent system is used in operating condition, that part of the system may be used as a temporary facility, provided that the D-BE:

- A. Obtains County's approval in writing.
- B. Assumes full responsibility for the system used.
- C. Pays all costs for operation, maintenance, cleaning and restoration of the system.
- D. Operates the system with the consent and supervision of the subcontractor responsible for the system's installation and ultimate performance.

13.12. TEMPORARY UTILITIES

D-BE shall provide the necessary temporary utilities for construction use and bear the responsibility for their proper operation. If any utilities are in place and in use by the County at the Project site, such utilities -- excluding telephone -- may be utilized by the D-BE at no cost, to the extent the utilities are available without impact to the County's operations. If County supplied utilities are utilized by the D-BE, the D-BE shall exercise conservation of energy and utility resources to the satisfaction of the County, or such provision of utilities by the County will be terminated at County's discretion.

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. Toilet facilities in existing County buildings shall not be used by the D-BE, sub-D-BEs, suppliers, workers, and/or inspectors.

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 PROTECTION

D-BE shall take all necessary measures to protect the building and all areas of the project site against fire. 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.

D-BE shall observe all requirements specified in the various other Sections of the Specifications related to fire safety.

13.16. STORAGE AND WORKING SPACE

If applicable, D-BE may use the working area designated by County for material storage and working space. Any additional space shall be obtained by D-BE at D-BE's own expense. 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:

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

13.18. STORAGE AND PROTECTION OF PRODUCTS

D-BE shall:

- A. Store and protect products in accordance with manufacturer's instructions and applicable regulations, with seals and labels intact and legible;
- B. Store sensitive products in weather-tight, climate-controlled enclosures;
- C. 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;
- D. Store fabricated products on sloped supports above ground if such products are stored outdoors;
- E. Cover products subject to deterioration with impervious sheet covering with ventilation to avoid condensation;
- F. Provide equipment and personnel to store products by methods to prevent damage;
- G. Arrange storage of products to permit access for inspections; and
- H. 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 County 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 County.

13.20. REGULATORY COMPLIANCE REQUIREMENTS

13.20.1. Permits

- A. Project plans are approved for permit from the Orange County Planning & Development Services and other regulatory agencies having jurisdiction. D-BE shall identify any additional 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 County a California Occupational Safety Health Agency (“Cal-OSHA”) Excavation Permit. If required for project. D-BE shall be responsible for ensuring that all 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 County, D-BE, or any other entity, shall be borne solely by the D-BE, except as identified elsewhere in Agreement.
- B. 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. County 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.
- C. D-BE shall maintain, at its job site office, copies of all permits, licenses, and certifications required for or governing the Project, including permits and approvals issued to County 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

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

- A. The Contract Documents may require D-BE to retain an A/P. In such event, the following conditions apply:
 - i. A/P shall be acceptable to County. A County Certified Archaeologist and Paleontologist can be found at [Certified Archaeologists - County of Orange Certified Paleontologists - County of Orange](#). Regardless of whether A/P is selected from County’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.
 - ii. D-BE shall submit the qualifications and references of A/P to County for verification at least ten (10) working days prior to any excavation or grading work. A/P shall be

- approved in writing by County at least five (5) working days prior to the start of any excavation or grading work.
- iii. Unless otherwise agreed to in writing by County, 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.
 - iv. 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 Bid Schedule or, if not listed there, in accordance with the "Changes" Section of the General Conditions.
 - v. A/P shall report exclusively to County. County may terminate the services of A/P at any time and at County'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.
 - vi. All other provisions of this Section apply whether A/P is retained by County 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.
- B. 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 County.
- C. The A/P shall:
- i. Conduct a literature and records search for recorded sites and previous surveys;
 - ii. Conduct a field survey unless the entire work site has been previously surveyed, and the survey documentation is acceptable to County;
 - iii. 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 County. In the event of the discovery of specimens or artifacts, attend construction meetings until otherwise directed by County;
 - iv. 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;
 - v. If determined necessary by the A/P and approved by County, 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;
 - vi. Establish procedures for A/P sampling and resource surveillance and monitoring;
 - vii. In cooperation with County, establish procedures for suspension or redirection of work to permit sampling, identification, and evaluation of possible resources.

- viii. 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:
- a) 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.
 - b) The A/P shall assess the find(s) and determine if they are of value. If the find(s) are of value then:
 - The A/P shall draft a monitoring program and monitor all ground-disturbing activities related to the Project.
 - A/P shall prepare all potential finds in excavated material to the point of identification.
 - Significant finds shall be preserved as determined necessary by the A/P.
 - Excavated finds shall be offered to County or its designee for curation on a first-refusal basis, then offered to a local museum or repository willing to accept the resource.
 - 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.
 - All resulting reports shall be delivered to County and filed with the South Central Coastal Information Center at the California State University, Fullerton, or another institution if directed by County.
 - c) 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 County'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 County.
 - d) Discovery of human remains:
 - 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 County 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.
 - 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").
 - 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 County, the treatment and disposition of the human remains.

- e) 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.
- f) Unless otherwise required by law, any and all finds shall remain the property of County and not become the property of any other person or entity.

13.20.4.Surface Water Protection

- A. Work is subject to the requirements of the National Pollutant Discharge Elimination System (“NPDES”) storm water regulations. NPDES regulations require the implementation of a Stormwater Pollution Prevention Plan (“SWPPP”). The nature and location of the work require compliance with the SWPPP, County has prepared a SWPPP for this project. D-BE is responsible for obtaining copies of the site-specific SWPPP from County. Copies of the SWPPP and related documents may be found at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.shtml.
- B. 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.SWPPP Implementation & Compliance

- A. D-BE is responsible for implementing and complying with the 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 SWPPP. D-BE shall designate an independent Qualified SWPPP Practitioner (“QSP”), who will be responsible for monitoring D-BE’s compliance with SWPPP requirements on the Project at all times.
- B. D-BE shall be responsible for providing all reports required by the SWPPP (monitoring, inspection, REAP, annual reports, etc.) to the County for review. D-BE shall submit all reports digitally with at least three hard copies to the County.
- C. D-BE's designated QSP shall review and make recommendations to the County to amend the appropriate SWPPP as needed during the course of work to reflect actual construction progress and construction practices.
- D. D-BE shall comply with all the requirements identified in the SWPPP. Reference Section III General Performance Specifications for more information regarding SWPPP and BMPs.

13.21. HAZARDOUS OR CONTAMINATED MATERIALS

- 13.21.1. At the start of project work County will provide D-BE with all known documentation of hazardous materials including but not limited to Hazardous Materials Assessments and State Mandated reports

- on asbestos containing building materials. The project requires D-BE to be responsible for work related to hazardous materials;
- 13.21.2.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 County's behalf.
- 13.21.3.As provided by the "Contract Time" Section of the Agreement, D-BE must submit for County's review an Emergency/Contingency Plan for handling spills of hazardous, liquid, or nuisance materials while working on County'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 County and any other notifications as required by law. D-BE shall not commence work at the site until County has approved D-BE's Emergency/Contingency Plan.
- 13.21.4.D-BE must restore any spill-damaged areas to their original condition in a correct and timely manner and to the satisfaction of County.
- 13.21.5.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 County at no additional cost to the County. 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.
- 13.21.6.Prior to shipment, D-BE shall provide copies of all Manifests to the County to verify that D-BE has arranged for the proper disposal of hazardous materials to a licensed, permitted facility. D-BE shall provide to County proof of proper disposal of such materials. If Manifests and proof of proper disposal are not submitted, County 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.
- 13.21.7.County has the right to perform inspections of the D-BE's work area at any time to ensure D-BE is compliant with all applicable regulations.
- 13.21.8.Upon written notice from County, if D-BE does not remove contaminated materials immediately, County may remove, process, transport, and certify the material as stated above and all costs incurred By County for removal and disposal, plus a 5% administrative fee, will be deducted directly from amounts otherwise due D-BE. If County performs such decontamination, D-BE shall sign any Manifests for that material as the generator.
- 13.21.9.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.
- 13.21.10. D-BE shall keep appropriate emergency response equipment and materials available in the working area at all times.
- 13.21.11. Maintenance Facilities and Work Area: D-BE shall maintain its equipment in an area designated by County for such purposes, as applicable. Certain maintenance areas have been designated at the County facility for the purpose of maintaining County equipment. D-BE may utilize a County maintenance area only with the express permission of the County. County 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.

13.21.12. 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.

13.21.13. 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, County may perform that work and D-BE shall reimburse County 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 County and for acceptance by SCAQMD a Fugitive Dust Emission Control Plan, as required for Project work. D-BE shall also notify County of any condition that could lead to noncompliance with the 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 County 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, County may terminate D-BE's right to proceed with the work and County 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 County 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

County 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. County 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 County for County'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 County as a result of regulatory noncompliance arising from any action or inaction of D-BE or its Subcontractor(s).

14. CHANGES

14.1. CHANGE ORDERS

County may, at any time, by written order, and without notice to the sureties, make changes to the Contract Documents if within the general scope of the Project. If such changes cause an increase or decrease in the D-BE's cost, or the time required for performance of the Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly by County and D-BE.

14.1.1. County's Change Order Requests: County 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 County's Change Order Request, D-BE shall present to County 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.

14.1.2. 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 County to issue a Change Order. Timely notice to County is essential to County's identification, prioritization, and response to claimed changes, including any claimed delays, and D-BE's failure to give County timely notice of such claims shall be presumed to be prejudicial to County. D-BE's failure to submit a notice to County 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 Construction 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 County agrees that a change in the Contract Documents is appropriate, County 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 County 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.

14.1.3. 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:

- A. Labor (show hourly rate multiplied by estimated hours);
- B. Payroll taxes on labor;
- C. Materials, supplies, and equipment (include unit costs and estimated quantities);
- D. Machinery and equipment rental (include rental rates and estimated durations);
- E. Sales, use, or similar taxes related to the work;
- F. Other Items: County 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;
- G. Reasonable overhead and profit associated with the change, not to exceed the Construction Fee Percentage indicated in Attachment B "Cost/Compensation" 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. County 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. County 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 County 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.

- H. Premiums for all bonds and insurance (the maximum amount for this shall be 2% of above items and D-BE shall provide documentation demonstrating it will actually incur an increase in insurance costs directly attributable to the change).

County 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.

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

- A. 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. County 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 County.

- B. Tool and equipment rental. County 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 County 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 County 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 County. All equipment shall be acceptable to County, 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, County may establish the rental costs at the lowest price which was current at the time the changed work was performed.
- C. 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.
- D. Sales taxes on materials (percentage of item A, above).
- E. Payroll tax on labor (percentage of item C, above).
- F. Insurance (workers' compensation and liability insurance).
- G. Other Items. County 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.
- H. Overhead and profit. D-BE shall receive a maximum amount not to exceed the Construction Fee Percentage indicated in Attachment B "Cost/Compensation" for overhead and 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 15% 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. County 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. County 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 County 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.

- I. Premiums for all bonds and insurance (the maximum amount for this shall be 2% of above items and D-BE shall provide documentation demonstrating it will actually incur an increase in insurance costs directly attributable to the change).
- J. County may reject D-BE's proposal, may negotiate with D-BE a revision of the requested change and associated proposal, or may approve the D-BE's proposal and incorporate it into a Change Order.

D-BE shall keep and present, in such form as County 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 County may require. Upon being signed and agreed to by County 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 County 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 County, D-BE shall permit County 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, County will then issue a unilateral Change Order adjusting the Contract Price according to the actual costs incurred and, if appropriate, adjusting the Contract Time.

- 14.1.5. Unilateral Change Orders: If County and D-BE cannot reach an agreement on a proposed change, County may issue a Unilateral Change Order directing work on a time-and-materials basis as set forth above.
- 14.1.6. 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 Construction Schedule.
- 14.1.7. 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 County 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 County or any other party for which County is responsible, regardless of any approval by County of the accepted Construction Schedule.
- 14.1.8. 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 County results in the deletion of work and the County and D-BE are unable to agree upon the cost, overhead, and profit thereof, the County'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 County's estimate D-BE presents proof that the County's estimate is in error.

- 14.1.9. Overhead and Profit: D-BE shall receive a maximum amount not to exceed the Construction Fee Percentage indicated in Attachment B "Cost/Compensation" for overhead and 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 15% 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. County 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. County 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 County 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.

- 14.1.10. 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 County is responsible. Under no circumstances shall County 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.
- 14.1.11. 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 Bid 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 Bid 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.
- A. 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 Bid quantity by more than 25%, then payment for the quantity in excess of 125% of the Bid quantity will be made on the basis of an adjustment in the Contract Unit Price mutually agreed to by the D-BE and County or, at the option of County, 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.

- B. 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 Bid 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 County, or at the option of County, 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 Bid quantity at the Contract Unit Price.
- C. 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 County as an adjustment to the Contract Unit Price, as a Lump Sum Change Order, or at County's option as a Time and Materials Change Order, as described above.

14.2. DELAYS DUE TO WEATHER AND FORCE MAJEURE

- 14.2.1. 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:
 - A. 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
 - B. 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 County.
- 14.2.2. A written request for any extension of the Contract Time shall be delivered to County 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 County to consider such request.
- 14.2.3. 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. County shall determine when the structure is "enclosed" for purposes of this provision.
- 14.2.4. 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.

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

14.3. 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.

14.4. COUNTY'S DIRECTOR

The Director is authorized by County'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.

14.5. MINOR CHANGES IN THE WORK

County shall have the 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 effected 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 COUNTY

- 15.1.1. Notwithstanding any other provision of the Contract, County 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 County. County shall pay D-BE for the work completed and accepted by County 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 County's consent; or if in the opinion of the Board of Supervisors D-BE is not complying in good faith with the Contract; then County 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 County of a termination for cause, D-BE shall cease operations as directed by County in the notice and take all actions necessary, or as County directs, for the protection and preservation of the work.
- 15.2.3. After issuing a notice of termination for cause, County may take over the work and prosecute the same to completion by whatever means County deems reasonable, by contract or otherwise, and may take possession of and utilize in completing the work such materials, equipment, supplies, Contract Documents, and other information in whatever form as may be on the site for the work and necessary therefor.
- 15.2.4. If County 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 County 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 County'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 County within thirty days of County's demand therefor.
- 15.2.5. Whether or not County issues a written notice of termination for cause, D-BE and D-BE's sureties shall be liable for any damage to County 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 County, or acts of another D-BE in the performance of a contract with County.
- 15.2.7. The rights and remedies of County provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

15.3. BREACH OF CONTRACT

The failure of the A-E to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event, in addition to any other remedies available at law, in equity, or otherwise specified in this Contract, the County may:

- A. Afford the A-E written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
- B. Discontinue payment to the A-E for and during the period in which the A-E is in breach; and
- C. Offset those monies disallowed pursuant to the above, against any monies billed by the A-E but yet unpaid by the County.

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 County as to performance of the work, a demand for an extension of time, the interpretation of the Contract Documents, or payment or nonpayment for work performed, D-BE and County 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 County. 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 Section 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 County.
- A. 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 County's time to respond in writing and/or request additional documentation shall be as set forth in Public Contract Code Section 20104.2.
 - B. If D-BE disputes County's written response or County 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).
 - C. The foregoing provisions do not apply to tort claims and do not affect the time periods for filing tort claims.
 - D. 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).
- 16.1.3. Attorney's fees arising from a trial de novo shall be awarded as provided by Public Contract Code Section 20104.4(b) (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 County 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 County 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. County 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 County 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 County has installed equipment.
- 17.1.2. County 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 County 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 County 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. County may at any time during the performance of the work enter the work area for the purpose of performing any necessary work by County labor or other D-BEs, and for any other purpose in connection with the installation of facilities. In doing so, County shall endeavor not to interfere with D-BE, and D-BE shall not interfere with other work being done by or on behalf of County.

18. ACCEPTANCE

Unless otherwise provided in the Contract Documents, County's acceptance of D-BE's work shall be accomplished by County recording a Notice of Completion as promptly as practicable after completion, inspection, and testing of all work required by the Contract Documents. County's acceptance of the work shall be the start date of D-BE's obligations under the "One-Year Correction Period" Section of the General Conditions, and of the manufacturers' and installers' warranties required by the Contract Documents. County's acceptance of the work shall not be construed to limit County'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 County. 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 County 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 County 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 COUNTY

No failure on the part of County to exercise any right or remedy under the Contract Documents shall operate as a waiver of any other right or remedy that County may have. A waiver by County 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 County to enforce a requirement of the Contract Documents in one or more instances shall not preclude County 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 County.

County, 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 County 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 County to interview D-BE's employees who might reasonably have information related to D-BE's books and records, provided that County has given D-BE at least one working day's advance notice of County'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 County 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 County and the California State Auditor in this Section.

19.5. PUBLIC RECORDS ACT

Pursuant to the California Public Records Act ("CPRA"), Government Code Sections 7920.000 et seq., all records provided by D-BE to County are subject to public disclosure upon request except as otherwise provided by law. Prior to their submission to County, 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, County will notify D-BE of such request. Unless D-BE obtains a protective order issued by a court restricting disclosure of the requested records, County may disclose the records if County determines that the Public Records Act requires disclosure. D-BE shall indemnify and defend County in any action to compel disclosure of such records.

19.6. PATENT INFRINGEMENT

D-BE shall promptly report to County any notice or claim of patent infringement arising from the performance of the Contract. D-BE shall, upon County's request, furnish to County any and all information in D-BE's possession relevant to such notice or claim. D-BE shall indemnify and defend County 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 County, 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. COUNTY’S PROPERTY ON SITE

All of County’s property removed or displaced pursuant to this Contract shall remain the property of County 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 County. In particular, all excavated clean soil is the property of County and shall remain on site unless otherwise provided in the Contract Documents or otherwise directed by County in writing.

19.9. OWNERSHIP OF DOCUMENTS

All documents, including but not limited to drawings, designs, plans, specifications, models, schedules, estimates, and other D-BE work or materials in all forms and media pertaining to D-BE’s Scope of Services furnished hereunder shall be and remain the property of County, and may be used by County as it may require without limitation, without any additional cost to County. However, D-BE does not accept responsibility for County’s use of D-BE’s work under this Agreement for other projects and A-E shall be held harmless for release of such data as may be prepared or created under this Contract to any third party.

D-BE will provide all such work and materials to County upon request, including copies of all work or materials prepared in electronic or digital format on computer disk or other applicable media. The rights and obligations of this paragraph shall survive the termination or completion of this Agreement.

County shall not be limited in any way to its use thereof at any time, including the release of this data to third parties. If A-E and/or anyone acting under the supervision of A-E should later desire to use any of the data prepared in connection with this Contract, A-E shall first obtain the written approval of County.

19.10. LEVINE ACT REQUIREMENTS

D-BE agrees to comply with Government Code Section 84308. D-BE further agrees to disclose to County any contribution of more than \$250 made to any members of the County Board of Supervisors or County Agency Officers by D-BE, D-BE’s agent or lobbyist, or, if applicable, any subcontractor(s) for the twelve (12) months prior to and twelve (12) months following the approval, renewal, or extension of this Contract.

19.11. WRITTEN NOTICE

Any notice required under the Contract Documents to be given to County by D-BE shall be in writing and delivered to the County via U.S. mail, addressed as follows:

OC Public Works/OC Facilities Operation/A&E Project Management
Attn: Charlene Del Mundo, Project Manager
601 N. Ross St., 4th Floor
Santa Ana, California 92701

Notice via electronic mail is insufficient.

20. FEDERAL AVIATION ADMINISTRATION AIRPORT IMPROVEMENT PROGRAM REQUIREMENTS

This Contract may be funded by various grants from the Federal Aviation Administration, throughout the life of the contract, therefore the requirements of Title 2 of the Code of Federal Regulations (“C.F.R.”), part 200 and §200.317-200.326 of the Federal Aviation Administration (“FAA”) Airport Improvement Plan and 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Programs, will apply. The following are mandatory provisions of the Federal Aviation Administration, and it is the responsibility of the consultant and is subconsultant to comply.

In this Section 20, the following definitions apply:

- A. References to “Sponsor” or “Owner” shall refer to County
- B. References to “Bidder,” “Offeror,” “Contractor,” and “consultant” shall refer to “D-BE”

20.1. ACCESS TO RECORDS AND REPORTS

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

20.2. BUY AMERICAN PREFERENCE

The D-BE agrees to comply with 49 USC § 50101, BABA and other related Made in America Laws,¹ U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for products; products are listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

20.3. DOMESTIC PREFERENCE FOR PROCUREMENT

Contractor provides, to the greatest extent practicable, that it has provided a preference for the purchase, acquisition, or goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

20.4. GENERAL CIVIL RIGHTS PROVISIONS

In all its activities within the scope of its airport program, the D-BE agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual

¹ Per Executive Order 14005 “Made in America Laws” means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to “Buy America” or “Buy American,” that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

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

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

20.5. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- B. 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- C. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- D. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- E. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- F. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- G. The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- H. Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (“LEP”). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];

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

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

20.6. TITLE VI COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

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

- A. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- B. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- C. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- D. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- i. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - ii. Cancelling, terminating, or suspending a contract, in whole or in part.
- F. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or

the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

D-BE is required to insert the above paragraphs in every subcontract at any tier. Upon request by the County, D-BE shall provide a copy of each subcontract to demonstrate that the above language has been inserted.

20.7. CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency ("EPA") and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceed \$150,000.

20.8. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

20.8.1. Overtime Requirements

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

20.8.2. Violation; Liability for Unpaid Wages; Liquidated Damages

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

20.8.3. Withholding for Unpaid Wages and Liquidated Damages

The Federal Aviation Administration ("FAA") or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

20.8.4. Subcontractors

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

20.9. COPELAND “ANTI-KICKBACK” ACT

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

20.10. DAVIS-BACON REQUIREMENTS**1. Minimum Wages.**

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer’s payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (“WH-1321”) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding. The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less

than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR §§ 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR § 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR § 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the

procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC § 1001.

20.11. DEBARMENT AND SUSPENSION

Contractor agrees to satisfy the requirements of 2 CFR part 180 by certifying that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

20.11.1. Certification of Contractor Regarding Debarment

The Contractor certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

20.11.2. Certification of Lower Tier Contractors Regarding Debarment

The Contractor, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must confirm each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally-assisted project. The Contractor will accomplish this by:

- A. Checking the System for Award Management at website: <http://www.sam.gov>.
- B. Collecting a certification statement similar to the Certification of Contractor, above.
- C. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

20.12. DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (49 CFR § 26.13)

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- A. Withholding monthly progress payments;
- B. Assessing sanctions;

C. Liquidated damages; and/or

D. Disqualifying the Contractor from future bidding as non-responsible.

D-BE is required to insert the above language required under §26.13 in each subcontract at any tier. Upon request by the County, D-BE will provide a copy of each subcontract to demonstrate that the above language has been inserted.

Prompt Payment (49 CFR § 26.29)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from County. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE subcontractors.

Reporting Requirements. The D-BE shall provide all information and reports required by the County, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County to be pertinent to ascertain compliance with the regulations or directives. If you include DBEs in this project, monthly reports of DBE contract awards, work performed by DBE firms, and payments to DBE firms shall be submitted to the Project Manager within ten (10) days of the end of each month for the life of the contract. Said reports shall be furnished to the Project Manager in the format specified in Attachment D.

Commercially Useful Function. The D-BE and its subcontractors shall cooperate and comply with any audits, inspections, or requests for information, required by the County to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.

Compliance. All D-BE or subcontractors for this DOT-assisted contract are hereby notified that failure to carry out the DBE obligations, as set forth above, shall constitute a breach of contract which, after notification to the U.S. Department of Transportation, may result in termination of the contract, or such other remedy as deemed appropriate by the County.

20.13. TEXTING WHEN DRIVING (DISTRACTED DRIVING)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving," (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the County encourages the D-BE to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The D-BE must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

20.14. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

20.15. EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

20.16. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
 - d. "Minority" includes:
 - i. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
 - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - iv. American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation, and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or

subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance

Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

20.17. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts must incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act ("FLSA"), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Contractor shall monitor compliance in accordance with 29 CFR part 201, et seq, the Federal Fair Labor Standards Act ("FLSA"). Any claims or disputes that arise from this requirement must be addressed by the Contractor directly with the U.S. Department of Labor – Wage and Hour Division.

20.18. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

The Contractor certifies that to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

20.19. PROHIBITION OF SEGREGATED FACILITIES

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

20.20. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that shall incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

20.21. PROCUREMENT OF RECOVERED MATERIALS

Contractor and subcontractors agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency ("EPA") under 40 CFR Part 247 whenever:

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
- 2) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

20.22. SEISMIC SAFETY

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program ("NEHRP"). Local building codes that model their building code after the current version of the International Building Code ("IBC") meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program ("NEHRP"). Local building codes that model their code after the current version of the International Building Code ("IBC") meet the NEHRP equivalency level for seismic safety.

20.23. TAX DELINQUENCY AND FELONY CONVICTIONS

D-BE represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability nor is it a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

20.24. FOREIGN TRADE RESTRICTION

The Contractor certifies that with respect to this contract, the Contractor –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative ("USTR");
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC § 1001.

The Contractor must provide immediate written notice to the Owner if the Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR § 30.17, no contract shall be awarded to a Contractor or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Contractor must incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration ("FAA") may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

20.25. VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the D-BE and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

21. AIRPORT REQUIREMENTS: AIRPORT SECURITY AND ID BADGE REQUIREMENTS

D-BE, D-BE's employees and D-BE's subcontractors must complete the following in order to obtain an Airport-Issued Security Identification Badge ("ID Badge").

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

1. Company designates at least two representatives as Authorized Signatories by submitting

a letter on company letterhead using the airport's template.

2. Subcontractors and tenant contractors must also have two Authorized Signatories at a minimum.
3. All company employees requiring unescorted access to restricted airport areas are scheduled for fingerprint appointments.
4. Background check fees are provided at the first appointment
5. Employees must provide two government-issued IDs at the first appointment.
6. STA and/or CHRC results are received.
7. All ID Badge applicants successfully passing the STA and/or CHRC are scheduled for required training.
8. ID Badge related fees are provided, and any additional information requested is provided at the training appointment.
9. Upon successful completion of the required training, employees will receive their ID Badge.
10. Authorized Signatories are required to maintain the ID Badge process for the onboarding of future employees, employee ID Badge renewals, scheduling, and other actions detailed below.
11. D-BE's designated personnel must, at a minimum, complete the following required training based on contractors work to be provided and access areas:
 - i. Authorized Signatory Training: All organizations must designate at least two Authorized Signatories by providing a letter on company letterhead using the ID/Access Control Office template. The designated Authorized Signatories will be responsible for the entire ID Badge process for their organization including, but not limited to, the onboarding of new employees, renewing employees, scheduling employees for appointments, payment coordination, ID Badge audits, resolution to safety/security violations caused by the organization's employees, subtenants, or subcontractors. Authorized Signatories must attend this approximate one (1) hour course initially and annually
 - ii. Security Identification Display Area ("SIDA") Training: All employees with an operational need to have unescorted access to the Airport SIDA must complete this approximate one and one half (1.5) hour course and pass a written test.
 - iii. Sterile Area (Elevator) Training: All Non-SIDA employees with an operational need to have unescorted access to the Sterile Area of the terminal must complete an approximate 30-minute training session and pass a written test.
 - iv. Non-Movement Area or Movement Area Driver Training: All employees with an operational need to drive on airfield service roads and/or ramps must attend the approximate one (1) hour Non- Movement Area Driver course and pass a written test. Employees with an operational need to drive on active taxiways and/or active runways must coordinate this training with the Airport Operations Division.
 - v. D-BE's designated personnel must successfully complete the badge acquisition within six weeks of Contract execution, unless other arrangements have been coordinated by County Project Manager or designee in writing.

- vi. All personnel assigned to this contract must be in possession of a current, valid Airport-Issued ID Badge prior to fulfilling an independent shift assignment.
- vii. D-BE is responsible for terminating and retrieving Airport-Issued ID Badges as soon as an employee no longer needs unescorted access to airport restricted areas. Terminated ID Badges must be returned to the ID/Access Control office within three business days. Failure to do so will result in a \$250.00 fee.
- viii. D-BE shall be responsible for all cost associated with the Airport-Issued ID Badge process. The ID/Access Control Office maintains the current list of fees. Below is a list of estimated costs for new ID Badge applications and ID Badge renewals:
 - a. STA Fee: Approximately \$11.00
 - b. Fingerprint/CHRC Fee: Approximately \$31.00
 - c. ID Badge Fee: Approximately \$10.00
 - d. Terminated, Unreturned ID Badge Fee: Approximately \$250.00
- ix. D-BE shall abide by all the security requirements set forth by the Transportation Security Agency (“TSA”) and JWA.

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

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

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

- i. All persons within the restricted air operation areas of JWA are required to display, on their person, a JWA security badge; unless they are specifically exempted for safety reasons, or they are under escort by a properly badged individual. Each JWA employee, JWA Contractor, subcontractor or tenant employee who has been issued a JWA security badge is responsible for challenging any individual who is not properly displaying a JWA issued or approved and valid identification badge. Any person who is not properly displaying or who cannot produce a valid JWA security badge must immediately be referred to the Sheriff’s Department - Airport Police Services Office for proper handling.
- ii. JWA security badge is the property of County and must be returned upon termination of D-BE personnel employment and/or termination, expiration or completion of Contract. The loss of a badge shall be reported within 24 hours to the Sheriff’s Department - Airport Police Services by calling (949) 252-5000. Individuals that lose their badge shall be required to pay a fee before receiving a replacement badge. The charge for lost badge

replacement shall be at the current posted rate located in the JWA Administration Office. A report shall be made before a replacement badge shall be issued.

- iii. JWA security badge is nontransferable.
- iv. In the event that a contractor's badge is not returned to JWA upon termination of D-BE personnel employment and/or termination or expiration of Contract, a fine of \$250.00 per badge shall be charged to D-BE. D-BE's final payment may be held by County or a deduction from contractor's payment(s) may be made to ensure that funding is available to cover the fine in the event that badges are not returned.
- v. D-BE shall submit the names, addresses, and driver's license numbers for all D-BE personnel who shall be engaged in work under this Contract to County Project Manager within seven days after award of the Contract or within seven days after the start of any new D-BE personnel and/or prior to the start of any work.
- vi. No worker shall be used in performance of this work that has not passed the background check.

END OF GENERAL CONDITIONS

DIVISION 01-GENERAL REQUIREMENTS

**SECTION 01001
DRAWING SHEET INDEX**

SEE ATTACHMENT A

SECTION 01002
DESCRIPTION OF PROJECT

In accordance with the Criteria Documents for JWA Facility Accessibility Improvements Phase 1, the project will demolish and renovate twelve (12) existing public restrooms in Terminals A and B, provide and install lactation pods, and provide accessibility improvements to exterior landside paths of travel adjacent to the terminals, including sidewalks, curbs, pedestrian crosswalks, ramps, up to the pedestrian on MacArthur Boulevard and Campus Drive.

The proposed JWA Facility Accessibility Improvement Phase 1 (Project) includes restroom renovations and path of travel improvements. The Restroom Renovations will demolish and renovate twelve (12) aging public restrooms in Terminals A and B to current functional, aesthetic and Americans with Disabilities Act (ADA) standards. The renovations include, but are not limited to, replacement of aging infrastructure such as plumbing fixtures, electrical fixtures, toilet partitions, heating/ventilation/air conditioning components, lighting, visual and audible alarms, drinking fountains and will provide changing tables and automatic door openers.

The path of travel improvements will demolish approximately 12,000 square feet of concrete curbs, storm outlets, cleanout covers, cleanout rims; provide minor excavation of soils, as necessary, to correct general curb conditions; relocate existing curb cuts and/or install new curb cuts; correct slopes and cross slopes along the path of travel as needed; correct slopes and/or configurations of ADA ramps as required; new and reconfigured pavement striping to establish the path of travel across vehicular pathways; provide all necessary ADA signage; provide new or replace existing truncated domes; remove existing bollards and patch back concrete to provide ADA curb cut access; repaint existing curbs; extend existing guard rails and provide new guard rails where necessary and provide new 24-inch-wide concrete barriers for pedestrian protection at the MacArthur Boulevard entrance.

SECTION 01010
SUMMARY OF WORK**1. WORK COVERED BY CONTRACT DOCUMENTS**

- A. Work covers design and construction of a County of Orange project as precisely defined in the contract documents.

.....
Note: D-BE shall maintain all existing services with minimum disruption. Any service disruption shall first be approved by the Director and/or County's Project Manager.

- B. Related Requirements Specified Elsewhere:

- (1) Description of Project.
- (2) Project Meetings.
- (3) Submittals.
- (4) Shop Drawings, Product Data, and Samples.
- (5) Testing and Inspection.
- (6) Construction Facilities & Temporary Controls.
- (7) Substitutions & Product Options.
- (8) Contract Closeout.

- C. D-BE's Construction Duties:

- (1) Except as specifically noted, provide and pay for:
 - (a) Labor, materials, and equipment.
 - (b) Tools, construction equipment, and machinery.
 - (c) Water, heat, and utilities required for construction including any metering and connection fees or charges except County will pay for water acreage assessment charges, if appropriate for the project.
If any utilities are in place and in use by the County at the site, the D-BE, to the extent available, at no cost may utilize such utilities (excluding telephone).
 - (d) Other facilities and services necessary for proper execution and completion of work to provide a facility capable of operation.
- (2) Pay legally required sales, consumer, and use taxes.
- (3) Secure and pay for as necessary for proper execution and completion of work and as applicable at time of receipt of bids: Permits, government fees, and licenses, except County will pay for sewer connection charges. **Note: For this project, D-BE must obtain permits and fulfill the conditions of the permits from the Orange County Planning & Development Services Department as well as any other authority of jurisdiction permits.**
- (4) Give required notices.
- (5) Comply with latest adopted edition of California Building Code and other codes, ordinances, rules, regulations, orders, and legal requirements of public authorities which bear on performance of work.
- (6) Promptly submit written notice to the County Project Manager of observed variance of contract documents from legal requirements.
 - (a) Appropriate modifications to contract documents will adjust necessary changes.

- (b) Assume responsibility for work known to be contrary to such requirements, without notice.
- (7) Enforce strict discipline and good order among employees. Do not employ on work:
 - (a) Unfit persons.
 - (b) Persons not skilled in assigned task.

2. CONTRACTS

Construct work under single Contract Price.

3. D-BE USE OF EXISTING PREMISES

- A. Limit use of existing premises for work and construction operations related only to this contract.
- B. Coordinate use of premises and access through the Project Manager.
- C. Confine operations at the project site to areas permitted by law, ordinances, permits, and Contract Documents.
- D. Do not unreasonably encumber project site with materials or equipment.
- E. Do not load any structure with weight that may endanger structure.
- F. Assume full responsibility for protection and safekeeping of material and equipment stored on premises and also in-progress work until completion and acceptance of the entire construction.
- G. Move stored material and equipment, which interfere with operations of the facility or operations of other contractors.
- H. Obtain and pay for use of additional off-site storage or work areas.

**SECTION 01045
CUTTING AND PATCHING****1. REQUIREMENTS INCLUDED**

The D-BE shall be responsible for cutting, fitting and patching, including attendant excavation and backfill, required to complete work and to:

- A. Make its parts fit together properly;
- B. Uncover work to provide for installation of ill-timed work;
- C. Remove and replace defective work;
- D. Remove and replace work not conforming to the Contract;
- E. Remove samples of installed work as required for testing;
- F. Provide routine penetrations of non-structural surfaces for installation of piping and electrical conduit.

2. RELATED REQUIREMENTS

See General Conditions

3. SUBMITTALS

- A. Submit the following in accordance with General Conditions.
- B. Submit a written request to the County well in advance of executing cutting or alteration which affects:
 - (1) Work of the County or a separate contractor;
 - (2) Structural value or integrity of any element of the Project;
 - (3) Integrity of weather-exposed or moisture-resistant elements;
 - (4) Efficiency, operational life, maintenance or safety of operational elements; or
 - (5) Visual qualities of sight-exposed elements.
- C. The Request shall include:
 - (1) Identification of the Project and a description of affected work;
 - (2) Necessity for cutting, alteration or excavation;
 - (3) Effect on work of the County or a separate contractor, or on structural weatherproof integrity of the Project;
 - (4) Alternatives to cutting and patching;
 - (5) Cost proposal, when applicable;
 - (6) Written permission of separate contractor(s) whose work will be affected; and
 - (7) Description of the proposed work including:
 - (a) Scope of cutting, patching, alteration, or excavation;
 - (b) Products proposed to be used; and
 - (c) Extent of refinishing to be included.
- D. Should conditions of the work or schedule indicate a change of products from the original installation, the D-BE shall submit a request for substitution as specified in—General Conditions - Substitutions and Product Options.
- E. Submit a written notice to the County designating the date and time the work will be uncovered.

4. MATERIALS

- A. Comply with specifications and standards for each specific product involved.

- B. Where specifications and standards have not been provided, provide materials and fabrication consistent with the quality of the project intended for commercial construction.
- C. Provide new materials for cutting and patching unless otherwise indicated.

5. INSPECTION

- A. Inspect existing conditions of the Project, including elements subject to damage or to movement during cutting and patching.
- B. After uncovering work, inspect conditions affecting installation of products, or performance of work.
- C. Report unsatisfactory or questionable conditions to the County in writing; do not proceed with work until the County provides further instructions.

6. PREPARATION

- A. Provide adequate temporary support as necessary to assure structural value or integrity of the affected portion of work.
- B. Protect other portions of the Project from damage.

7. PERFORMANCE

- A. Execute cutting by methods which will provide proper surfaces to receive installation of repairs.
- B. Execute excavating and backfilling by methods which will prevent settlement or damage to other work.
- C. Employ the same installer or fabricator to perform cutting and patching work as employed for new construction for:
 - (1) Weather-exposed or moisture resistant elements.
 - (2) Sight-exposed finished surfaces.
- D. Execute fitting and adjustment of products to provide a finished installation to comply with specified products, functions, tolerances and finishes.
- E. Restore work which has been cut or removed; install new products to provide completed work in accordance with requirements of the Contract Documents.
- F. Fit work tight to pipes, sleeves, ducts, conduit and penetrations through surfaces.
- G. Refinish entire surfaces as necessary to provide an even finish to match adjacent finishes:
 - (1) For continuous surfaces, refinish to nearest intersection.
 - (2) For an assembly, refinish entire unit.

REFERENCE
SECTION 01090 STANDARDS**A. DRAWING SYMBOLS**

General: Except as otherwise indicated on the drawings, graphic symbols used on drawings are those symbols recognized in the construction industry for purposes indicated. Where not otherwise noted, symbols are defined by "Architectural Graphic Standards", published by John Wiley & Sons, Inc., seventh edition.

Mechanical/Electrical Drawings: Graphic symbols used on mechanical/electrical drawings are generally aligned with symbols recommended by ASHRAE. Where appropriate, these symbols are supplemented by more specific symbols as recommended by other recognized technical associations including ASME, ASPE, IEEE and similar organizations. Refer instances of uncertainty to the Architect/Engineer for clarification before proceeding.

Equal: Words such as "equal," "approved equal," "equivalent," and terms of similar import shall be understood to be followed by the phrase "in the opinion of the Architect/Engineer" unless stated otherwise.

B. FORMAT AND SPECIFICATION CONTENT EXPLANATIONS

Format Explanation: Although some portions of these Specifications may not be in complete compliance with this format, no particular significance shall be attached to such compliance or non-compliance.

Subordination of Text: Portions of specification text are subordinated to other portions in the following manner (lowest level to highest):

Indented (from left margin): paragraphs and lines of text are subordinate to preceding text, which is not indented, or which is indented by a lesser amount.

Subarticle titles: which are printed in upper/lower-case lettering.

Article titles: which are printed in upper-case lettering.

Underscoring: is used to assist the reader of specification text in scanning the text for key words.

Imperative language: is used generally in specifications. Except as otherwise indicated, requirements expressed imperatively are to be performed by the D-BE. For clarity of reading at certain locations, contrasting subjective language is used to describe responsibilities which must be fulfilled indirectly by the D-BE, or when so noted, by others.

Overlapping and Conflicting Requirements: Where compliance with two or more industry standards or sets or requirements is specified and overlapping of those different standards or requirements establishes different or conflicting minimums or levels of quality, the most stringent requirement is intended and will be enforced, unless specifically detailed language written into the Contract clearly indicates that a less stringent requirement is to be fulfilled. Refer apparently-equal-but-different requirements, and uncertainties as to which level of quality is more stringent, to the Architect for a decision before proceeding.

Furnish: Except as otherwise defined in greater detail, the term "furnish" is used to mean supply and deliver to the Project site, ready for unloading, unpacking, assembly, installation, as applicable in each instance.

Indicated: The term "indicated" is a cross-reference to graphic representations, notes, or schedules on Drawings, to other paragraphs or schedules in the Specifications, and to similar means of recording requirements in the Contract. Where terms such as "shown," "noted," "scheduled" and "specified" are used in lieu of "indicated," it is for the purpose of helping the reader locate cross-reference and no limitation of location is intended except as specifically noted.

C. INDUSTRY STANDARDS

General Applicability of Standards: Except to the extent that more explicit or more stringent requirements are written directly into the Contract, applicable standards of the construction industry have the same force and effect (and are made a part of the Contract by reference) as if copied directly into the Contract, or as if published copies were bound herewith. Refer to individual specification sections for specialized codes and standards that the D-BE must keep on the Project site and available for reference.

Referenced Standards: Referenced directly in the Contract or by governing regulations have precedence over non-referenced standards which are recognized in industry for applicability to work.

Publication Dates: Except as otherwise indicated, where compliance with an industry standard is required, comply with the standard in effect as of the date of the Contract.

Updated Standards: At the request of the Architect/Engineer the D-BE or governing authority shall submit a Request for Change where an applicable industry code or standard has been revised and reissued after the date of the Contract and before the performance of the affected work.

Install: Except as otherwise defined in greater detail, term "install" is used to describe operations at the Project site including unloading, unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing protecting, cleaning and similar operations, as applicable in each instance.

Installer: The term "installer" is defined as the entity (person or firm) engaged by the D-BE, D-BE's subcontractor or sub-subcontractor for performance of a particular unit of work at the Project site, including installation, erection, application and similar required operations. It is a general requirement that such entities (installers) be expert in the operations they are engaged to perform.

Manufacturer: An individual, company, or corporation who manufactures, fabricates, or assembles a standard product. A standard product is one that is not made to special design, and is furnished by either direct sale or by contract to the D-BE, Subcontractor or Vendor.

Material Supplier or Vendors: A person or organization who supplies, but who is not responsible for the installation of, materials, products and equipment of a standard nature that are not specifically fabricated for this particular contract.

Minimum Quality/Quantity: In every instance, the quality level or quantity shown or specified is intended to be the minimum for the work to be performed or provided. Except as otherwise specifically indicated, the actual work may either comply exactly with that minimum (within specified tolerances), or may exceed that minimum within reasonable limits. In complying with these requirements, indicated numeric values are either minimums or maximums as noted, or as appropriate for context of the requirements. Refer instances of uncertainty to the Architect/Engineer for a decision before proceeding.

Perform: The word "perform" shall mean that the D-BE, at the D-BE's expense, shall perform all the operations necessary to complete the work or the mentioned portions of the work, including furnishing and installing materials as are indicated, specified, or required to complete such performance.

Product: The term "product" includes materials, systems and equipment.

Project Site: The term "Project site" is defined as the space available to the D-BE for performance of the work, either exclusively or in conjunction with others performing other work as part of the Project. The extent of the Project site is shown on the drawings, and may or may not be identical with the description of the land upon which Project is to be built.

Provide: Except as otherwise defined in greater detail, term "provide" means furnish and install, complete and ready for intended use.

Specialists Assignments: In certain instances, specification text requires (or implies) that specific work is to be assigned to specialists or expert entities, who must be engaged for the performance of that work. Such assignments shall be recognized as special requirements over which the D-BE has no choice or option. These requirements should not be interpreted so as to conflict with the enforcement of building codes and similar regulations governing the work; they are also not intended to interfere with local union jurisdiction settlements and similar conventions. Such assignments are intended to establish which party or entity involved in a specific unit of work is recognized as an "expert" for the indicated construction processes or operations. Nevertheless, the final responsibility for fulfillment of the entire set of contract requirements remains with the D-BE.

Testing Laboratories: The term "testing laboratory" is defined as an independent entity engaged to perform specific inspections or tests of the work, either at the Project site or elsewhere; and to report, and (if required) interpret results of those inspections or tests.

Trades: Except as otherwise indicated, the use of titles such as "carpentry" in specification text, implies neither that the work must be performed by an accredited or unionized trades-person of corresponding generic name (such as "carpenter"), nor that specified requirements apply exclusively to work by trades-persons of that corresponding generic name.

D. COPIES OF STANDARDS

Abbreviations and Names: Where acronyms or abbreviations are used in the specifications or other Contract documents they are defined to mean the industry recognized name of the trade association, standards generating organization, governing authority or other entity applicable to the context of the text provision. Refer to the "Encyclopedia of Associations", published by Gale Research Co., and the following partial list:

AA	Aluminum Association
AAMA	American Architectural Manufacturer's Association
AASHTO	American Association of State Highway and Transportation Officials
A-E	Architect-Engineer (hired by County to design the project)
ACI	American Concrete Institute
ACIL	American Council of Independent Laboratories
AGA	American Gas Association
AI	Asphalt Institute
AIA	American Institute of Architects
A.I.A.	American Insurance Association
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute

AITC	American Institute of Timber Construction
ALSC	American Lumber Standards Committee
AMCA	Air Movement and Control Association
ANSI	American National Standards Institute
APA	American Plywood Association
ASHRAE	American Society of Heating, Refrigerating, Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASPE	American Society of Plumbing Engineer
ASSE	American Society of Sanitary Engineering
ASTM	American Society for Testing and Materials
AWI	Architectural Woodwork Institute
AWPA	American Wood Preservers Association
AWPB	American Wood Preservers Bureau
AWS	American Welding Society
AWWA	American Water Works Association
BHMA	Builder's Hardware Manufacturers Association
CAL/OSHA	California Occupational Safety and Health Regulations
CFR	Code of Federal Regulations
CPSC	Consumer Product Safety Commission
CRSI	Concrete Reinforcing Steel Institute
CS	Commercial Standard of NBS (U.S. Dept. of Commerce)
CTI	Ceramic Tile Institute
DHI	Door and Hardware Institute
DOC	Department of Commerce
DOT	Department of Transportation
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration (U.S. Dept. of Transportation)
FCC	Federal Communications Commission
FGMA	Flat Glass Marketing Association
FM	Factory Mutual System
FS	Federal Specification (General Services Administration)
GA	Gypsum Association
ICBO	International Conference of Building Officials
IEEE	Institute of Electrical and Electronic Engineers, Inc.
IESNA	Illuminating Engineering Society of North America
IGCC	Insulating Glass Certification Council
MBMA	Metal Building Manufacturer's Association
MIL	Military Standardization Documents (U.S. Dept. of Defense)
ML/SFA	Metal Lath/Steel Framing Association
NAAMM	National Association of Architectural Metal Manufacturers
NBHA	National Builders Hardware Association (Now Part of DHI)
NBS	National Bureau of Standards (U.S. Dept. of Commerce)
NEC	National Electrical Code (by NFPA)
NEII	National Elevator Industry, Inc.
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
N.F.P.A.	National Forest Products Association
NRCA	National Roofing D-BEs Association
NSF	National Sanitation Foundation
NWMA	National Woodwork Manufacturers Association

OCPDS	Orange County Planning and Development Services Department (now called OC Public Works/Planning)
OCPW	OC Public Works
OSHA	Occupational Safety Health Administration (U.S. Dept. of Labor)
PCI	Prestressed Concrete Institute
PS	Product Standard of NBS (U.S. Dept. of Commerce)
SDI	Steel Deck Institute
S.D.I.	Steel Door Institute
SGCC	Safety Glazing Certification Council
SIGMA	Sealed Insulating Glass Manufacturers Association
SMACNA	Sheet Metal and Air Conditioning D-BEs' National Association
SSPC	Steel Structures Painting Council
SSPWC	Standard Specifications for Public Works Construction
TCA	Tile Council of America
UBC	Uniform Building Code
UL	Underwriters Laboratories
UMC	Uniform Mechanical Code
UPC	Uniform Plumbing Code
USDA	United States Department of Agriculture
WCLIB	West Coast Lumber Inspection Bureau (Grading Rules)
WIC	Woodwork Institute of California
WWPA	Western Wood Products Association (Grading Rules)
W.W.P.A.	Woven Wire Products Association

E. GOVERNING REGULATIONS/AUTHORITIES

General: Contact governing authorities directly for necessary information and decisions having a bearing on the performance of work.

Copies of Regulations: Obtain copies of regulations needed for reference, and retain at the Project Site during the work of the Project.

"Regulations" is defined to include laws, statutes, ordinances, and lawful orders issued by governing authorities, as well as those rules, conventions and agreements within the construction industry which effectively control the performance of the work regardless of whether they are lawfully imposed by governing authority or not.

Trade Union Jurisdictions: The manner in which the Contract has been organized and subdivided is not intended to be an indication of jurisdictional or trade union agreements. Assign and subcontract the work, and employ trades-men and laborers, in a manner which will not unduly risk jurisdictional disputes of a kind which could result in conflicts, delays, claims and losses in the performance of the work.

Permits, Licenses, and Certificates: For the County's records, submit copies of permits, licenses, certificates, inspection reports, releases, jurisdictional settlements, notices, receipts for fee payments, judgments, and similar documents, correspondence and records established in conjunction with compliance with standards and regulations bearing upon performance of the work.

SECTION 01400
QUALITY REQUIREMENTS

1. SECTION INCLUDES

- A. Quality Control and Control of Installation.
- B. Tolerances.
- C. References.
- D. Mock-up Requirements.
- E. Testing and Inspection Services.
- F. Manufacturers' Field Services.
- G. Examination.
- H. Preparation.

2. QUALITY CONTROL AND CONTROL OF INSTALLATION

- A. Monitor quality control over suppliers, manufacturers, products, services, site conditions, and workmanship, to produce Work of specified quality.
- B. Comply with manufacturers' instructions, including each step in sequence.
- C. When manufacturers' instructions conflict with Contract Documents, request clarification before proceeding.
- D. Comply with specified standards as minimum quality for the Work except where more stringent tolerances, codes, or specified requirements indicate higher standards or more precise workmanship.
- E. Perform Work by persons qualified to produce required and specified quality.
- F. Verify field measurements are as indicated on Shop Drawings or as instructed by manufacturer.
- G. Secure products in place with positive anchorage devices designed and sized to withstand stresses, vibration, physical distortion, or disfigurement.

3. TOLERANCES

- A. Monitor fabrication and installation tolerance control of products to produce acceptable Work. Do not permit tolerances to accumulate.
- B. Comply with manufacturers' tolerances. When manufacturers' tolerances conflict with Contract Documents, request clarification, as required, before proceeding.
- C. Adjust products to appropriate dimensions; position before securing products in place.

4. REFERENCES

- A. For products or workmanship specified by association, trade, or other consensus standards, comply with requirements of standard, except when more rigid requirements are specified or are required by applicable codes.
- B. Conform to reference standard by date of issue current on date of Contract Documents, except where specific date is established by code.
- C. Obtain copies of standards where required by product specification sections.
- D. When specified reference standards conflict with Contract Documents, request clarification, as required, before proceeding.
- E. Neither contractual relationships, duties, nor responsibilities of parties in shall be altered from Contract Documents by mention or inference otherwise in reference documents. Reference documents and standards are available at:
<https://ocgov.box.com/s/o9efe2q6vw66cq0tbcgpd82fcpwg7gzw>

5. MOCK-UP REQUIREMENTS

- A. Tests will be performed under provisions identified in this section and identified in respective product specification sections.
- B. Assemble and erect specified items with specified attachment and anchorage devices, flashings, seals, and finishes.
- C. Accepted mock-ups shall be comparison standard for remaining Work.
- D. Where mock-up has been accepted by County and is specified in product specification sections to be removed; remove mock-up and clear area when directed to do so by County.

6. TESTING AND INSPECTION SERVICES

- A. The County or responsible party acting as the County's agent shall employ and pay for specified services of an independent firm (agency) to perform testing and inspection.
- B. The independent firm will perform tests, inspections and other services specified in individual specification sections and as required by Contract documents.
 - (1) Laboratory: Authorized to operate in State of California.
 - (2) Laboratory Staff: Maintain full time registered Engineer on staff to review services.
 - (3) Testing Equipment: Calibrated at reasonable intervals with devices of an accuracy traceable to National Bureau of Standards or accepted values of natural physical constants.
- C. Testing, inspections and source quality control may occur on or off project site. Perform off-site testing as required by County/Architect/Engineer.
- D. Reports will be submitted by independent firm to County/Architect/Engineer, in duplicate, indicating observations and results of tests and indicating compliance or non-compliance with Contract Documents.
- E. D-BE shall, cooperate with independent firm; furnish samples of materials, design mix, equipment, tools, storage, safe access, and assistance by incidental labor as requested.
 - (1) Notify County and independent firm prior to expected time for operations requiring services. 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.
 - (2) Make arrangements with independent firm and pay for additional samples and tests required for D-BE's use.
- F. Testing and employment of testing agency or laboratory shall not relieve D-BE of obligation to perform Work in accordance with requirements of Contract Documents.
- G. Re-testing or re-inspection required because of non-conformance to specified requirements shall be performed by same independent firm on instructions by County/Architect/Engineer. Payment for re-testing or re-inspection will be charged to D-BE by deducting testing charges from Contract Sum/Price.
- H. Agency Responsibilities:
 - (1) Test samples of mixes submitted by D-BE.
 - (2) Provide qualified personnel at site. Cooperate with County/Architect/Engineer and D-BE in performance of services.
 - (3) Perform specified sampling and testing of products in accordance with specified standards.
 - (4) Ascertain compliance of materials and mixes with requirements of Contract Documents.
 - (5) Promptly notify County/Architect/Engineer and D-BE of observed irregularities or non-conformance of Work or products.

- (6) Perform additional tests required by County/Architect/Engineer.
- (7) Attend preconstruction meetings and progress meetings.
- I. Agency Reports: After each test, promptly submit three copies of report to County/Architect/Engineer and one to D-BE. When requested by County/Architect/Engineer, provide interpretation of test results. Include the following:
 - (1) Date issued.
 - (2) Project title and number.
 - (3) Name of inspector.
 - (4) Date and time of sampling or inspection.
 - (5) Identification of product and specifications section.
 - (6) Location in Project.
 - (7) Type of inspection or test.
 - (8) Date of test.
 - (9) Results of tests.
 - (10) Conformance with Contract Documents.
- Limits On Testing Authority:
 - (1) Agency or laboratory may not release, revoke, alter, or enlarge on requirements of Contract Documents.
 - (2) Agency or laboratory may not approve or accept any portion of the Work.
 - (3) Agency or laboratory may not assume duties of D-BE.
 - (4) Agency or laboratory has no authority to stop the Work.

7. MANUFACTURERS' FIELD SERVICES

- A. When specified in individual specification sections, require material or product suppliers or manufacturers to provide qualified staff personnel to observe site conditions, conditions of surfaces and installation, quality of workmanship, start-up of equipment, test, adjust and balance of equipment as applicable, and to initiate instructions when necessary.
- B. D-BE to submit qualifications of observer to County 30 days in advance of required observations. Observer subject to approval of County.
- C. Report observations and site decisions or instructions given to applicators or installers that are supplemental or contrary to manufacturers' written instructions.

8. EXAMINATION

- A. Verify existing site conditions and substrate surfaces are acceptable for subsequent Work. Beginning new Work means acceptance of existing conditions.
- B. Verify existing substrate is capable of structural support or attachment of new work being applied or attached.
- C. Examine and verify specific conditions described in individual specification sections.
- D. Verify utility services are available, of correct characteristics, and in correct locations.

9. PREPARATION

- A. Clean substrate surfaces prior to applying next material or substance.
- B. Seal cracks or openings of substrate prior to applying next material or substance.
- C. Apply manufacturer required or recommended substrate primer, sealer, or conditioner prior to applying new material or substance in contact or bond.

SECTION 01700
CONTRACT CLOSEOUT

1. CLEANING

- A. D-BE shall remove, as fast as it accumulates, all dirt, debris, waste, rubbish, unused construction materials and implements of service from the buildings, the work area, and the entire site. Such materials shall not be used in backfilling or buried anywhere on the site.
- B. At the completion of the work, thoroughly clean the interior and exterior of the buildings, including fixtures, equipment, floors and hardware, removing all misplaced plaster, paint and other finishes, and removing stains, dust, and dirt. Thoroughly clean all roofs, decks, sills, ledges, horizontal projections, steps, rails or other surfaces where dust and debris have accumulated. All glass and metal shall be cleaned and polished; ceramic tile surfaces and plumbing fixtures shall be cleaned properly.
- C. Prior to final inspection, the D-BE shall remove all his plant, tools, materials, sheds, temporary power poles and other articles from the property of the County. Should he fail to take prompt action, the County (at its option and without waiver of such other rights as it may have) may, on 30 days-notice, treat them as abandoned property.

2. PROJECT RECORD DOCUMENTS

- A. The D-BE shall maintain on the job site a complete "as-built" set of electronic (e.g. a set in Autodesk Construction Cloud) and/or printed (e.g. field permit and inspection set) plans, models, and specifications. This set shall be corrected daily in red to show every change from the approved (permit) contract documents, including but not limited to RFIs, submittals, change orders, and A-E issued revisions, and shall be marked to show the precise horizontal and vertical location of concealed work. Deviations from the approved contract documents must be submitted by the D-BE to County plan check for review. County plan check may elect to waive requirement to review and approve deviations or will require a review and approval that will result in a permit revision, stamped drawings, and applicable fees. Failure to comply with this requirement will result in failed inspections, which may result in reinspection fees and delays for which the D-BE will be held liable. This shall not be construed as authorization for the D-BE to make changes in the layout work without definite instructions in each case. The D-BE will be subject to regular audits of the as-built set of documents and models and infractions of this requirement may result in withholding of 2% of monthly pay requests.
- B. It is the responsibility of the D-BE to see that all subcontractors comply with these requirements.
- C. The "record" drawings, plans, models, and specifications, which have been revised to reflect the actual constructed conditions including all deviations from the approved contract documents and as-built documents, shall be clearly marked and turned over to the County at the completion of the project. D-BE shall provide both the record and as-built plans, models, and specifications and per requirements of the AE Guide and other applicable standards.

3. OPERATIONS AND MAINTENANCE DATA

- A. At 90 percent of construction completion, the D-BE shall submit to County, complete operating instructions, wiring and control diagrams, and maintenance manuals for all mechanical, electrical, conveying and specialty equipment installed in the facility. The data shall be complete at the time of submittal.

Partial submittals will be rejected. Initially, one copy of the submittal shall be submitted to the County for approval. Following approval, one electronic copy and three complete sets, shall be printed and submitted in binders with suitable index tabs for each section. This submittal shall include all data deemed necessary by County to operate and/or maintain the equipment, such as:

- (1) Complete operating manuals.
- (2) Maintenance manuals shall include:
 - (a) Maintenance instructions.
 - (b) Troubleshooting instructions.
 - (c) Wiring diagrams showing component values.
 - (d) Control diagrams.
 - (e) Parts lists, including ordering number.
 - (f) Component shop assembly drawings, including exploded views.
 - (g) Field assembly drawings.
 - (h) Recommended spare parts inventory for two years maintenance with itemized cost of each type of part.
 - (i) List of special tools, with cost of each tool, required in normal maintenance
- B. Prior to acceptance of the work, mechanical equipment must be put into operation in the presence of the County's maintenance personnel and maintenance personnel must be instructed in the operation and maintenance of equipment.

4. GUARANTEES AND WARRANTIES

- A. Except as otherwise expressly provided in this contract, and in addition to all other warranties expressed, implied, or customary in the trade, the D-BE warrants all work to be free from defects of design, material, and workmanship, for a period of one year from date of Notice of Completion. The D-BE, promptly after receipt of notice, shall make good at its expense all defects developing during this period, including labor and material. If, in the opinion of County's Project Manager, defective materials or workmanship require immediate correction or attention to prevent loss to the County, or to prevent interruption of operations of the County of Orange, the County will attempt to give the notice required by this article, but the County may, notwithstanding the provisions of this article, proceed to make such correction or provide such attention and the costs of such correction or attention shall be charged against the D-BE. Such action by the County will not relieve the D-BE of the guarantees provided in this article or elsewhere in this contract.
- B. All subcontractors', manufacturers', or suppliers' warranties and guarantees, expressed or implied, respecting any material or equipment used in or a part of the work (whether on equipment of the nature above specified or otherwise) shall be deemed obtained by the D-BE as the agent of the County and all such warranties and guarantees shall inure to the benefit of the County without the necessity of separate transfer or assignment thereof; provided that, if directed by the County's Project Manager, the D-BE shall require such subcontractors, manufacturers, or suppliers to execute such warranties and guarantees in writing to the County of Orange.
- C. The remedies provided for in this clause shall not be restrictive of but shall be cumulative and in addition to all other remedies of the County in respect of latent defects or fraud, and any and all warranties expressed or implied.

- D. Failure by the D-BE to take corrective action on warranty performance problems and/or construction deficiencies within 24 hours after personal or telephonic notice by the County on items affecting use of facility, safety, or the preservation of property, and within ten days following written notice on other deficiencies, will result in the County taking whatever corrective action it deems necessary. All costs resulting from such action by the County will be claimed against D-BE or, if necessary, the Performance Bond.

5. COMPLETION

In addition to those items previously mentioned in this section, the D-BE must submit to the County's Project Manager the following items before Completion of the project can be considered:

- (1) Revised up-to-date subcontractor list with names, addresses, and phone numbers.
- (2) Building permit card signed as final by all inspectors.
- (3) Roof bond and other certificates as specified.
- (4) Copies of all test and inspection reports.
- (5) Provide Certificate of Use and Occupancy, if required.

**SECTION 01730
OPERATIONS AND MAINTENANCE DATA****1. MANUALS****General:**

Where manuals are required to be submitted covering items included in this work, prepare all such manuals in durable plastic binders approximately 8 1/2 by 11 inches in size as well as in electronic format with at least the following:

- A. Identification on or readable through, the front cover, stating general nature of the manual.
- B. Neatly typewritten indexes near the front of the manual, furnishing immediate information as to the location, in the manual, of all data.
- C. Copy of all guarantees and warranties issued.
- D. Maintenance and operation instructions:
 - (1) Procure or prepare and include in manuals, operating and/or maintenance instruction for all equipment and/or materials that will require any adjustments, servicing, or attention for its proper operation or use.
 - (2) These instructions shall set forth all the information necessary for the County to operate, make full and efficient use of, and perform such maintenance and servicing as would ordinarily be done by County personnel.
 - (3) Write instructions in simple, non-technical language, when possible, with sufficient diagrams and explanation, where necessary, to be readily understandable to the average layman. Possible hazards shall be particularly pointed out with instructions cautioning against mistakes that might result in damage or danger to equipment, building, or personnel.

Extraneous data:

Where contents of manuals include manufacturer's catalog pages, clearly indicate the precise items included in this installation and delete or otherwise clearly indicate all manufacturers' data with which this installation is not concerned.

2. MANUAL CONTENT

Neatly typewritten table of contents for each volume; arrange in systematic order.

List:

- A. Contractor, name of responsible principal, address, and telephone number.
- B. Each product including name, address, and telephone number of:
 - (1) Subcontractor or installer.
 - (2) Recommended maintenance contractor.
 - (3) Local source for replacement parts.
- C. Product name and other identifying symbols as set forth in the Contract Documents.
- D. Product Data:
 - (1) Include only those sheets which are pertinent to specific product.
 - (2) Annotate each sheet to:
 - (a) Clearly identify the specific product or part installed.
 - (b) Clearly identify data applicable to the installation.

- (c) Delete references to inapplicable data.
- E. Drawings:
 - (1) Supplement product data with drawings where necessary to clearly illustrate:
 - (a) Relations of component parts.
 - (b) Control and flow diagrams.
 - (2) Do not use "Project Record Documents" as maintenance drawings.
- F. Written Test:
 - (1) Provide where necessary to supplement Product Data and drawings.
Organize in consistent format under separate headings for different procedures.
 - (2) Provide a logical sequence of instructions for each procedure.
- G. Warranties and Maintenance Contracts
Provide copies of each of the following:
 - (1) Proper procedures in the event of failure.
 - (2) Instances which might affect validity of warranties or contracts.

3. MANUAL FOR ARCHITECTURAL MATERIALS AND FINISHES

Include the following manufacturer's data:

- A. Catalog number, size, and composition.
- B. Color and texture designations.
- C. Required reordering information.
- D. Recommended cleaning materials and methods.
- E. Cautions against detrimental cleaning materials and methods.
- F. Recommended cleaning and maintenance schedule.

Submit specified information for the following, if applicable:

- A. Finish Hardware.
- B. Resilient Flooring.
- C. Fire Extinguishers.

4. MANUAL FOR MECHANICAL EQUIPMENT AND SYSTEMS

Include the following manufacturer's data:

- A. Description of unit and component parts including:
 - (1) Function, normal operating characteristics, and limiting conditions.
 - (2) Performance curves, engineering data, and tests.
 - (3) Complete nomenclature and commercial number of replaceable parts.
- B. Operating procedures including:
 - (1) Start-up, break-in routine, and normal operating instructions.
 - (2) Regulations, control, stopping, shut-down, and emergency instructions.
 - (3) Summer and winter operating instructions.
 - (4) Special operating instructions.
- C. Maintenance procedures including:
 - (1) Routine operations.
 - (2) Trouble-shooting guide.
 - (3) Disassembly, repair and reassembly.
 - (4) Alignment, adjusting, and checking.
 - (5) Servicing and lubricating schedule, including recommended lubrications.

- D. Manufacturer's printed operating and maintenance instructions.
- E. Control systems operation sequences.
- F. Parts list, illustrations, assembly drawings, and diagrams necessary for maintenance, including:
 - (1) Life expectancy of parts subject to wear.
 - (2) Items recommended to be stocked as spare parts.
- G. As-installed control systems diagrams.
- H. Color code legend, if any.
- I. Valve tag number chart, with location and function of each valve.

5. MANUAL OF UNIT AND COMPONENT PARTS INCLUDING

- A. Description of unit and component parts including:
 - (1) Function, normal operating characteristics and limiting conditions.
 - (2) Performance curve, engineering data and tests.
 - (3) Complete nomenclature and commercial number of replaceable parts.
- B. Panel board circuit directories indicating:
 - (1) Electrical service.
 - (2) Controls.
 - (3) Communications, if any.
- C. As-installed wiring color-code legend, if any.
- D. Operating procedure including:
 - (1) Routine and normal operating instructions.
 - (2) Sequences required.
 - (3) Special operating instructions.
- E. Maintenance procedures, including:
 - (1) Routine operations.
 - (2) Trouble-shooting guide.
 - (3) Disassembly, repair, and reassembly.
 - (4) Adjustment and checking.
- F. Manufacturer's printed operating and maintenance instructions.
- G. Parts list, including current prices, and recommended spare parts to be maintained in storage.

Submit specified information for the following:

Electrical equipment as specified in Sections 16000 through 16721 of these specifications.

6. ADDITIONAL DATA

Prepare and include the following:

- A. Additional data when need becomes apparent during instruction to County's personnel.
- B. Additional data specified in other sections of Specifications to be included.

7. SUBMITTAL SCHEDULE

- A. Preliminary Draft:
 - (1) Submit two copies of the proposed format, approximately thirty (30) days before Substantial Completion.
 - (2) The County will review and return one copy with comments.
- B. Final Submittal:
 - (1) Submit, in final form, one copy of complete data fifteen (15) days prior to final inspection. Copy will be returned with comments.

(2) Submit four (4) copies, in approved final form, prior to final inspection and acceptance.

8. INSTRUCTION OF THE COUNTY'S PERSONNEL

Prior to final acceptance and payment, instruct the County's personnel in necessary operation, adjustment, and maintenance of the products, equipment, and systems.

Operating and maintenance manual shall constitute basis of instruction.

Review manual contents with the County's personnel, in detail, to explain all aspects of operations and maintenance.

A listing of all personnel receiving instructions, complete with signature verifying same, dates of instruction and other pertinent data shall be delivered to the County upon completion of instruction session(s).

**SECTION 01740
WARRANTIES AND GUARANTEES**

1. SUBMITTAL REQUIREMENTS

Assemble Warranties, and Service and Maintenance Contracts, executed by each of the respective manufacturers, suppliers and Subcontractors.

Number of original signed copies required: Four (4) each.

Table of Contents: Neatly typed in orderly sequence.

Provide complete information for each one of the following items:

- A. Product or Work Item.
- B. Firm, with name of principal, address, and telephone number.
- C. Beginning date of Warranty, or Service and Maintenance Contract.
- D. Duration of Warranty, or Service and Maintenance Contract.
- E. Provide the following information for the County's Personnel:
 - (1) Procedures in case of failure or malfunction.
 - (2) Instances which affect Warranty or validity.
- F. D-BE, name of responsible principal, address, and telephone number.

2. SUBMITTAL FORM

Punch sheets for standard 3-ring binder as well as an electronic copy.

Size: 8 1/2 x 11 inches.

Fold larger sheets to fit into binder.

Cover:

Identify each packet with typed or printed title "Warranties and Guarantees." List:

- A. Title of Project.
- B. Name of Contractor.

County of Orange, OC Public Works
Swinerton Builders

Attachment A
MA-280-23010579

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

SWINERTON BUILDERS, a CALIFORNIA CORPORATION,

Date: 5/30/2023

By: Pedro Ruiz, Vice President
Signature

Pedro Ruiz, Vice President

Print Name & Title

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

Date: 5/30/2023

By: Pedro Ruiz, Vice President
Signature

Pedro Ruiz, Vice President

Print Name & Title

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

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

Date: _____

By: _____

Print
Name: _____

Title: Deputy Purchasing Agent

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

By: Christine Nguyen, Deputy County Counsel

Christine Nguyen, Deputy County Counsel
Print Name: _____

Date: 5/30/2023

ATTACHMENT A STATEMENT OF WORK

In accordance with the Criteria Documents for JWA Facility Accessibility Improvements Phase 1, the project will demolish and renovate twelve (12) existing public restrooms in Terminals A and B, provide and install lactation pods, and provide accessibility improvements to exterior landside paths of travel adjacent to the terminals, including sidewalks, curbs, pedestrian crosswalks, ramps, up to the pedestrian on MacArthur Boulevard and Campus Drive.

Scope of work includes, but is not limited to:

1. **Restroom Renovations:**

Entirely demolish and renovate twelve (12) aging public restrooms in Terminals A and B to current functional, aesthetic and Americans with Disabilities Act (ADA) standards. The renovations include, but not limited to, replacement of aging infrastructure such as plumbing fixtures (e.g. faucets, sinks, toilets, urinals, soap dispensers), electrical fixtures (e.g. lights, sensors, paper towel dispensers and waste receptacles, utility infrastructure), and finishes (e.g. ceilings, gypsum and porcelain tile walls, porcelain tile floors, phenolic stall partitions, Corian counters, metal wall studs), and HVAC (e.g. ducts, diffusers), and any protruding objects that interfere with ADA path of travel.

- a. Replace aging plumbing fixtures to current functional, aesthetic and ADA standards (e.g. sinks, toilets, urinals, soap dispensers).
- b. Replace aging electrical fixtures to current functional, aesthetic and ADA standards (e.g. paper towel dispensers, waste receptacles).
- c. Replace aging toilet partitions to current functional, aesthetic and ADA standards.
- d. Replace all necessary ADA components (e.g. grab bars, coat hooks, drain covers, pull handles).
- e. Replace HVAC components to accommodate new restroom design and reuse existing VAV's.
- f. GMP includes new ductwork in the restrooms and do not include new or replacement VAV boxes and additional zones.
- g. Replace restroom lighting with energy efficient LED lighting.
- h. Replace and/or relocate plumbing and electrical utilities as required.
- i. Replace restroom alarms (visual and audible) and warnings for ADA compliance.
- j. Replace signage for braille and visual character sizes.
- k. Replace switches and outlets.
- l. Replace and/or relocate utilities serving restrooms as necessary.
- m. Replace lighting with energy efficient LED lighting.
- n. Replace drinking fountains.
- o. Replace all ceiling, wall, and floor finishes.
- p. Provide adult changing tables.
- q. Provide automatic door openers.
- r. Provide and install lactation pods.
- s. Design and construct common area entrances and exits to ensure door width, hardware, closing speeds, landings, and elevation differences are in compliance with accessibility requirements.
- t. D-BE should anticipate providing a dedicated 20A circuit at the nearest panel board on normal power for lactation pods.
- u. New fire alarm components for the affected work areas only that tie into the existing fire alarm system.
- v. GMP includes a monitor for future digital imaging map at each restroom cluster entrance (total of 4) with an empty conduit stubbed to the ceiling space. Wiring and systems are to be provided by others.

2. Path of Travel Improvements:

- a. Provide accessibility improvements to exterior landside paths of travel adjacent to the terminals, including sidewalks, curbs, pedestrian crosswalks, ramps, from both Campus Drive and MacArthur Boulevard entrances to the terminal building.
- b. Demolish concrete curbs, storm outlets, cleanout covers, cleanout rims as required.
- c. Relocate existing curb cuts and/or install new curb cuts.
- d. Repaint existing curbs.
- e. Provide minor excavation of soils as necessary to enhance general curb conditions.
- f. Includes fine grading for slope and elevations.
- g. Rework and/or re-compaction of existing subgrade is not anticipated to be required. If necessary, D-BE shall work with OCPW to modify overall scope to ensure that re-compaction of existing subgrade is worked into the GMP. This may require modifications/reduction to other scopes of work that may not be code required.
- h. Enhance slopes and cross slopes along the path of travel as needed.
- i. Enhance slopes and/or configurations of ADA ramps as required.
- j. New and reconfigured pavement striping to establish the path of travel across vehicular pathways.
- k. Provide all necessary ADA signage.
- l. Provide new or replace existing truncated domes with durable truncated dome systems that are appropriate based on the type and frequency of traffic, use, etc. in an airport setting.
- m. Truncated domes may be surface mounted or recessed depending on the required performance and practicality of implementation by the airport and DBE.
- n. Remove existing bollards and patch back concrete to provide ADA curb cut access.
- o. Extend existing guard rails and provide new guard rails where necessary.
- p. No modifications to guardrails located in lower roadway adjacent to Parking Structure C.
- q. Provide new 24" wide concrete barriers for pedestrian protection at the MacArthur Boulevard entrance.

3. General Scope:

- a. Provide cost estimates per County of Orange requirements, review and confirm the initial budget, and provide continuous cost management to assure the design and construction costs remain within the budgeted cost estimate.
- b. Commit to a Guaranteed Maximum Price ("GMP").
- c. Validate, verify and refine detailed Project Program.
- d. Verify the schedule is appropriate for the Project.
- e. Confirm Project criteria are appropriate.
- f. Develop the schematic design deliverables per County of Orange requirements.
- g. Develop the design development deliverables per County of Orange requirements.
- h. Develop the construction documents deliverables per County of Orange requirements.
- i. Develop Building Information Models using Autodesk Revit from project inception through design to Level of Detail ("LOD") 300, through completion of construction LOD 400-500, and through project closeout with completion of record models to LOD 500 in conformance with County of Orange requirements.
- j. Develop asset index database for incorporation into AssetWorks in conformance with County of Orange requirements.
- k. Provide design phase services per County of Orange guidelines and as necessary to construct the Project. Procure all agency review, peer review and local agency approvals, and obtain permits as required. At each phase comply with design review and approval process per County of Orange requirements.

- l. Provide construction planning, phasing, and scheduling, and execution during design and through construction completion and closeout service.
- m. Develop and maintain a Project schedule that incorporates all tasks and approvals of all involved parties necessary to complete the Project within the contract durations.
- n. Provide quality control and quality assurance.
- o. Publicly advertise scope of work that will not be self performed for trade subcontractors and prequalify trade contractors to comply with County of Orange requirements.
- p. Develop Trade Contractor Bid Packages and receive bids in the most logical, competitive, and seamless manner.
- q. Pay prevailing wages and comply with prevailing wage laws.
- r. Manage and administer the Project construction phase to achieve construction completion within the contract time and budget and with high-quality workmanship.
- s. D-BE shall obtain all permits. County will pay the fees for County plan check and permitting.
- t. Code upgrades for elements and systems not within the defined limits of scope of work are not included, unless upgrades to those elements and/or systems are required by code due to the improvements from this project, which is required to obtain code compliance approval from the County Building Official.
- u. Assumes that the existing fire alarm panel has capacity for all of the devices needed for this Scope.
- v. Fire alarm testing for this Project scope only, D-BE is not responsible for clearing trouble of other zones and/or existing panels.
- w. If scope that is excluded or not originally included determined to be needed during investigation D-BE shall work with the OCPW to modify scope as necessary to address conditions identified during investigation.

4. Requirements (but not limited to)

- a. D-BE shall complete all work in accordance with the requirements set forth in the Contract.
- b. Maintain site operations during the performance of this project.
- c. General Contractor License Requirement for this Project: General Contractor License B.
- d. D-BE shall include the furnishing of all labor, materials, tools, equipment, necessary services, and incidental to complete the Project.
- e. Obtain all necessary permits for this Project.
- f. Design and construct the project in a manner to achieve the aforementioned objectives, and in conformance with the findings and recommendations presented in the above-referenced Bridging Documents.
- g. Locate and identify all existing utilities within the project work area, coordinate as necessary with the utility agencies and resolve any conflicts.
- h. Comply with all applicable local, state and federal laws, ordinances, standards and regulatory requirements.
- i. Procure all temporary right-of-way and utility easements needed to accomplish the work.
- j. D-BE shall provide detailed calculations and design documentation for all systems prior to construction and submit for review by the applicable local and State Authorities Having Jurisdiction ("AHJ"). Performance criteria identify minimum levels of quality, materials, and workmanship.

5. Known Constraints

- a. Prior to issuance of airport security ID Badge(s), designated Contractor personnel who shall be working on site in JWA restricted areas and engaged in the performance of work under this Contract must pass JWA's security screening requirements, which include fingerprinting to

- complete an F.B.I. Criminal History Records Check (“CHRC”) and a Security Threat Assessment (“STA”).
- b. Any work involving odors, excessive noise, or other irritating environmental agents may require work between the hours of 11:00pm to 5:00am.
 - c. Priority will be given to the comfort and safety of the JWA patrons during the implementation of this project. The Design-Build Contractor will be expected to plan for and ensure the continued positive overall airline passenger experience; visual and sensory division between passenger traffic and construction areas; including safety, noise and dust protection. These criteria will apply not only to the airline patrons, but to all of the airport businesses, tenants and employees.
 - d. The project may be partially or fully funded through Federal Grant. The D-BE will be required to comply with all Federal Grant requirements.
6. Tentative Submittals / Deliverables
- a. Project Work Plan
 - b. Project Schedule
 - c. Project Cost Estimate
 - d. Preparation of Design Package, Drawings, and Building Information Model (“BIM”) with level of detail 300 at completion of design
 - e. Technical Specifications
 - f. Permitting
 - g. Equipment Procurement
 - h. Construction
 - i. Waste and Recycling Plan
 - j. Site Specific Safety Plan
 - k. Quality Assurance/ Quality Control Plan
 - l. Construction Management Plan
 - m. Commissioning/Acceptance Plan
 - n. Commissioning/Training
 - o. Operation & Maintenance Manuals
 - p. Operation & Maintenance Training
 - q. Final Field Redlined As-Builts
 - r. Final Record Drawings
 - s. Final BIM with level of detail 500 at completion of construction
 - t. Final asset index database with required asset attributes for facilities management through AssetWorks
 - u. Participation with development of new Standard Operating Procedure (“SOP”)
 - v. Parts inventory/list which may also include critical spare parts needed to be kept onsite
 - w. Closeout

**ATTACHMENT B
COST/COMPENSATION**

- I. COMPENSATION:** This is a Guaranteed Maximum Price (“GMP”) Contract between County and D-BE for design and construction services for JWA Facility Accessibility Improvements Phase 1, as set forth in Attachment A, “Statement of Work”.

D-BE agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by D-BE of all its duties and obligations hereunder. D-BE shall only be compensated as set forth herein below for work performed in accordance with the Statement of Work.

II. PRICE:

1.	<u>Phase I - Design Services and Pre-Construction Phase</u> A fixed fee price	\$3,523,113
2.	<u>Phase II – Construction Services Phase (Allowance)</u>	\$24,620,333*
3.	<u>Guaranteed Maximum Price</u> Sum of Components 1 and 2	\$28,143,446
4.	<u>Total Contract Price</u>	\$28,143,446

* Construction Fee shall be no more than 6%.

- III. D-BE EXPENSE:** D-BE will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.

- IV. PAYMENT TERMS:** Invoices are to be submitted in monthly arrears, after services have been completed, to the address specified below. Payment will be net thirty (30) days after receipt of an invoice in a format acceptable to the County, as applicable. Invoices shall be verified and approved by County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to County for payment rests with D-BE. Incomplete or incorrect invoices are not acceptable and will be returned to the D-BE for correction.

Billing shall cover services and/or goods not previously invoiced. The D-BE shall reimburse the County for any monies paid to the D-BE for goods or services not provided or when goods or services do not meet the Contractor requirements.

Payments made by County shall not preclude the right of County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

- V. INVOICING INSTRUCTIONS:** The D-BE will provide an invoice on the D-BE’s letterhead. Each invoice will have a unique number and will include the following information:

- A. Name and address
- B. Remittance address, if different from (A), above
- C. Name of County agency/department
- D. Delivery/service address

County of Orange, OC Public Works
Swinerton Builders

Attachment A
MA-280-23010579

- E. Contract number
- F. Service Date
- G. Description of Services
- H. Total
- I. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

County of Orange, Public Works
601 N. Ross Street, 4th Floor
Santa Ana, CA 92701
Re: JWA Facility Accessibility Improvements Phase 1
Attn: Charlene Del Mundo, Project Manager

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

**ATTACHMENT C
STAFFING PLAN**

1. KEY PERSONNEL

Name	Classification/ Designation	Years of Experience	Licenses/Certifications (include license number)
Jose Acosta (Swinerton Builders)	Operations Manager	18	OSHA 10 Certified OSHA 30 Certified CPR and First Aid Certified
Bill Montgomery (Swinerton Builders)	Field Operations Manager	45	LEED AP Associate DBIA ® OSHA 10 Certified First Aid Certified
Carlos Villacorta (Swinerton Builders)	Project Executive	16	LEED Green Associate OSHA 10 Certified
Mark Heit (Swinerton Builders)	Sr. Preconstruction Manager	30	DBIA ®
Mina Morcos (Swinerton Builders)	Project Manager	12	OSHA 10 Certified
David Cahill (Swinerton Builders)	Superintendent	10	OSHA 10 Certified OSHA 30 Certified CPR and First Aid Certified STS-C QSP
Matthew Ellis (PGAL)	Principal-in-Charge	36	Registered Architect, CA C30619 NCARB No. 67863 American Institute of Architects No. 30209949
Jim Darroch (PGAL)	Project Manager	26	
Kathleen Truong (PGAL)	Project Architect	15	Registered Architect, TX 22801 NCIDQ No. 28470 NCARB No. 72751 LEED Accredited Professional American Institute of Architects No. 38123150
Sean Scaramella (Latitude 33)	Civil Project Manager	15	Engineer in Training (EIT), CA 135087
Deepansh Kathuria (Miyamoto)	Structural Engineer	20	Professional Engineer, CA S5572

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Swinerton Builders**

**Attachment A
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Name	Classification/ Designation	Years of Experience	Licenses/Certifications (include license number)
			Professional Engineer, CA C70993 Safety Assessment Program Evaluator No. 62422
Tariq Hassan (PBS Engineering)	Mechanical Engineer	26	Professional Engineer, CA M33827
Kunal Shah (PBS Engineering)	Electrical Engineer	23	Professional Engineer, CA E17249
Ramon Camacho (PBS Engineering)	Plumbing Engineer	23	
Corina Wilkes (US Access Consultants)	ADA Accessibility Inspector	23	Certified Access Specialist (CAsp)

D-BE understands that the personnel represented as assigned to the Contract must remain working on the Contract throughout the duration of the Contract unless otherwise requested or approved by the County. Substitution or addition of Design-Builder's key personnel in any given category or classification shall be allowed only with prior written approval of the County's Project Manager. **Note: The written approval of substituted D-BE Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works.**

D-BE may reserve the right to involve other D-BE personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/classification required. Assignment of additional key personnel shall be subject to County Project Manager written approval. **Note: The written approval of additional D-BE Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works.** County reserves the right to have any D-BE personnel removed from providing services to County under this Contract. County is not required to provide any reason for the request for removal of any D-BE personnel.

County of Orange, OC Public Works
Swinerton Builders

Attachment A
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2. SUBCONSULTANT(S) (IF APPLICABLE)

Listed below are subconsultant(s) anticipated by D-BE to perform services specified in Attachment A. Deletion, substitution, or addition of D-BE's subconsultant(s) in any given project function shall be allowed only with prior written approval of the County Project Manager. The D-BE shall list below all subcontractor(s) who will perform any portion of the work in excess of 0.5% of the total bid. The D-BE shall state each subcontractor's name, particular trade or subdivision of the work, license number, and principal location. If the D-BE specifies more than one subcontractor for the same portion of work to be performed, or fails to list a subcontractor for any portion of the work in excess of 0.5% of the total bid, the D-BE represents that he or she is fully qualified to perform that portion himself or herself, and, if awarded the Contract, shall perform that portion himself or herself.

CORPORATE NAME & CORPORATE ADDRESS	LOCAL OFFICE ADDRESSES*	CONTACT NAME & TELEPHONE NUMBER	CONTRACT OR LICENSE NUMBER	DIR REGISTRATION NUMBER	D-BE IF YES, ENTER D-BE CERTIFICATION NUMBER	GROSS RECEIPTS CATEGORY (TABLE 1 BELOW)	AGE OF FIRM (YEARS)	DVBE IF YES, ENTER DVBE CERTIFICATION NUMBER	SBA IF YES, ENTER DUNNS CERTIFICATION NUMBER	WORK, TRADE, SERVICE, OR PORTION OF WORK TO BE PROVIDED	BID ITEM NO(S).	% OF TOTAL BID FOR THIS SUB	PRICE OF WORK PERFORMED BY THIS SUB
PGAL	2731 B St., San Diego, CA 92102	Matthew Ellis (619) 269-5288	Arch Lic# C30619	N/A	No	N/A	77 Years	No	No	Lead Design Firm	RFQ- 080-23568 03-DC	2.25%	\$632,740
US Access Consultants	7317 El Cajon Blvd., Suite 257, La Mesa, CA 91942	Corina Wilkes Principal (619) 933-4755	CASp 019	N/A	2005129010	N/A	22 Years	No	No	ADA/ Accessibility/ CASp	RFQ- 080-23568 03-DC	.08%	\$22,260
Miyamoto	1201 Dove Street, Suite 230 Newport Beach, CA 9266	Deepansh Kathuria (213)572-0671	Structural Engineer, CA S5572	1000064389	No	N/A	77 Years	No	No	Structural Engineer	RFQ- 080-23568 03-DC	.30%	\$85,000
PBS Engineering	3187 Airway Avenue, Building C Costa Mesa, CA 92626	Kunal Shah, PE, RCDD, LEED AP (626) 650-0350	E17249	1000041445	36091	N/A	19 Years	-	YES 1122840	MEP	RFQ- 080-23568 03-DC	1.12%	\$315,000

ATTACHMENT D
LIST OF DBE

This contract will be funded in part by a grant from the Federal Aviation Administration, therefore the requirements of Title 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Programs, apply to this contract. John Wayne Airport, Orange County has set an overall DBE participation goal for federally funded contracts as indicated above. If Bidder has listed a DBE in the bid, they are required to report DBE participants in this contract to assist the County in tracking DBE participation to be counted towards achievement of its overall goal. Please list any DBE firms that will participate as contractors, subcontractors, or suppliers for this project (you may use additional pages if necessary). Please note that these firms must be certified with the California Unified Certification Program to be listed.

Name/ Address/ Phone of DBE Firm	Product or Division of Work	Gross Receipts Category (Table 1 below)	Age of Firm (Years)	Total \$ Value	* Applied \$ Value	% of Total Project
PBS Engineers, 3187 Airway Ave, C, Costa Mesa, CA 92626, 949-368- 3001	MEP Engineers	6	19	\$315,000	100%	1.85%

*Value based on the RFP budget

	*Applied Dollar Value	Percent of Total Project
Total Subcontractors	\$315,000*	1.85%*
Total Vendors of Materials and Supplies		
Total Manufacturers		
Total DBE Participation	\$315,000*	1.85*

* Applied \$ Value is:

- (a) 100% for Subcontractors
(b) 60% for Vendors of Materials and Supplies
(c) 100% for Manufacturers

TABLE 1 - ANNUAL GROSS RECEIPTS CATEGORIES

Annual Gross Receipt (Most recent fiscal year)	Gross Receipts Category
Less than \$500,000	1
\$500,000 - \$1,000,000	2
\$1,000,000 - \$2,000,000	3
\$2,000,000 - \$5,000,000	4
\$5,000,000 - \$10,000,000	5
\$10,000,000 - \$15,000,000	6
Over \$15,000,000	7

Attachment E

[Criteria Documents](#)

<https://ocgov.box.com/shared/static/x8dwr0wyo2ufuug7iuq9or84t99f8lhu.pdf>

*** Due to the file size, select embedded hyperlink or link and follow process for download or viewing on your own computer. ***