

*County of Orange, OC Public Works
Downstream Services, Inc.*

MA-080-21010437

**AMENDMENT NO. 1
FOR
STORM DRAIN, SEWER PIPE INSPECTION AND MAINTENANCE SERVICES**

This AMENDMENT is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California (“County”) and Downstream Services, Inc., with a place of business at 2855 Progress Place, Escondido, CA 92029 (“Contractor”), with County and Contractor sometimes individually referred to as “Party” or collectively referred to as “Parties”.

RECITALS

WHEREAS, County and Contractor entered into Aggregate Contract MA-080-21010437 for Storm Drain, Sewer Pipe Inspection and Maintenance Services, effective January 8, 2021 through January 7, 2024, in the Total Contract Not-to-Exceed Amount of \$3,000,000.00 (“Contract”); and,

WHEREAS, the Parties now desire to include the Orange County Flood Control District as a party to this Contract; and,

WHEREAS, the Parties now desire to amend Article O. “Insurance Requirements”; and,

WHEREAS, the Parties now desire to amend Article Z. “Indemnification”; and,

WHEREAS, the Parties now desire to renew the Contract for one (1) year effective January 8, 2024 through January 7, 2025, with a Total Contract Amount of \$2,000,000.00; and,

NOW THEREFORE, the Parties agree as follows:

AMENDMENT TO CONTRACT ARTICLES

1. The preamble of Contract MA-080-21010437 for Storm Drain, Sewer Pipe Inspection and Maintenance Services shall be amended to include Orange County Flood Control District, a body corporate and politic, (“District”) as a Party and shall read in its entirety as follows:

THIS Contract MA-080-21010437 for Storm Drain, Sewer Pipe Inspection and Maintenance Services (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California (hereinafter referred to as “County”), Orange County Flood Control District, a body corporate and politic (hereinafter referred to as “District”), and Ben’s Asphalt, Inc., with a place of business at 2200 South Yale St., Santa Ana, CA 92704 (hereinafter referred to as “Contractor”) with County, District and Contractor sometimes referred to as “Party” or collectively as “Parties.”

2. The Recitals shall be amended to include the following:

WHEREAS, the District relies on County staff to carry out its duties pursuant to the Orange County Flood Control District Act, Water Code App. §§ 36-1 et seq., and County staff may request Contractor to perform services under this Contract on behalf of District; and,

3. Article O. “Insurance Requirements” of the Contract shall be amended in its entirety as follows:

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O. Insurance Requirements: Prior to the provision of services under this Contract, the Contractor agrees to carry all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage current, provide Certificates of Insurance, and endorsements to the County during the entire term of this Contract.

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

All self-insured retentions (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 Contractor. If Contractor is self-insured, Contractor will indemnify the County for any and all claims resulting or arising from Contractor's services in accordance with the indemnity provision stated in this contract

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

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**).

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit each accident
Workers Compensation	Statutory

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Employers Liability Insurance	\$1,000,000 per accident or disease
Contractor's Pollution Liability including NODS	\$1,000,000 per claims made or occurrence

Increased insurance limits may be satisfied with Excess/Umbrella policies. Excess/Umbrella policies when required must provide Follow Form coverage.

Required Coverage Forms

The Commercial General Liability coverage shall be written on occurrence basis utilizing 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 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

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

1. An Additional Insured endorsement using ISO form CG 20 26 04 13, or a form at least as broad naming the ***County of Orange, the Orange County Flood Control District, and their elected and appointed officials, officers, agents and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT***.
2. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary, and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

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

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

Contractor 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.

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The Commercial General Liability policy shall contain a severability of interests clause also known as a “separation of insureds” clause (standard in the ISO CG 0001 policy).

Insurance certificates should be emailed to OCPWCompliance@ocpw.ocgov.com

If email is not possible, then Insurance certificates should specifically be forwarded to:

OC Public Works
Attn: OCPW Procurement
601 N. Ross Street, 4th Floor
Santa Ana, CA 92701

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

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

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not provide acceptable Certificates of Insurance and endorsements to County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

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

4. Article Z. “Indemnification” of the Contract shall be amended in its entirety as follows:

Z. Indemnification: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, District, and their elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnitees”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County or District by a court of competent jurisdiction because of the concurrent active negligence of County, District or County Indemnitees, Parties agree that liability will be apportioned as determined by the court. No Party shall request a jury apportionment.

5. Article 2 of the Contract shall be amended to include the following:

Contract shall be renewed for one (1) year from January 8, 2024 through and including January 7, 2025, unless otherwise terminated as provided herein.

6. Article 4 of the Contract shall be amended to include the following:

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The first renewal term for the Aggregate Contract with Nor-Cal Pipeline Services and Downstream Services, Inc. shall have a Total Aggregate Contract Amount not to exceed \$2,000,000.00.

7. Attachment B, Section 2, shall be amended to include the following:

N. First Renewal Term Total Aggregate Contract Amount Not to Exceed:.....\$2,000,000.00

8. Starting in renewal term, Attachment B, Section 2, Paragraph L shall be removed and reserved.


9. All other terms and conditions in this Contract shall remain unchanged and with full force and effect.

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IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the first above written.

DOWNSTREAM SERVICES, INC.*

	Loren Roberts	Vice President of Sales and Marketing	9/19/2023
Signature	Name	Title	Date

Signature	Name	Title	Date
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COUNTY OF ORANGE, A political subdivision of the State of California

COUNTY AUTHORIZED SIGNATURE:

Signature	Name	Title	Date
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ORANGE COUNTY FLOOD CONTROL DISTRICT, A body corporate and politic

DISTRICT AUTHORIZED SIGNATURE:

		Deputy Purchasing Agent	
Signature	Name	Title	Date

APPROVED AS TO FORM:

County Counsel

	William Ninh	Deputy County Counsel	9/25/2023
Signature	Name	Title	Date

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



CORPORATE RESOLUTION
OF
DOWNSTREAM SERVICES, INC.

We, the undersigned, being all the Directors and Shareholders of Downstream Services, Inc., organized and existing under the laws of California, and having its principal place of business at 2855 Progress Place, Escondido, California 92029 (the "Corporation"), hereby certify that the following is a true and correct copy of a resolution duly adopted at a meeting of the Directors and Shareholders of the Corporation duly held and convened on January 07, 2022, at which a quorum of the Board of Directors was present and voting throughout, and that such resolution has not been modified, rescinded or revoked, and is at present in full force and effect:

Therefore, it is resolved:

To appoint Wilma Roberts, President and Secretary as authorized signatory to the Corporation.

To appoint Victor Roberts, Vice President as additional signatory to the Corporation.

To authorize Director and Officer Loren Roberts, Vice President of Sales & Marketing as additional signatory to approve bids, contracts, and surety bonds.

To authorize Officer Clark Roberts, Vice President of Operations as additional signatory to approve bids, contracts, and surety bonds.

By affirmative votes noted as signatures below, a majority vote of the Members of Downstream Services, Inc. with authority to bind the Company approves the form and content of this resolution, to be effective immediately.

DIRECTORS

Wilma Roberts, President

1/7/2022

Date

Victor Roberts, Vice President

1/7/2022

Date

SHAREHOLDERS

Wilma Roberts, President

1/7/2022

Date

Victor Roberts, Vice President

1/7/2022

Date



CORPORATE RESOLUTION
OF
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[CORPORATE SEAL]

CERTIFICATE OF SECRETARY

The Secretary of the Corporation hereby certifies that he/she is the duly elected and qualified Secretary of Downstream Services, Inc. and certifies that the above is a true and correct record of the resolution that was duly adopted by the Directors and Shareholders of the Corporation on January 07, 2022.

A handwritten signature in blue ink, appearing to read "WRoberts", written over a horizontal line.

Wilma Roberts, Secretary