

*County of Orange, OC Public Works
Ohno Construction Company*

MA-012-24010446

CONTRACT
FOR
MILE SQUARE PARK GOLF COURSE CONVERSION- PHASE 2
MA-012-24010446

This Contract is made and entered into the ____ day of _____, 20____, by and between the **County of Orange** (“County”) and **Ohno Construction Company**, (“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; Addenda and Bulletins; Attachments; Appendices; 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 a Faithful Performance Bond and the Labor and Material Payment Bond corresponding with each GMP. 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 (the “Project”), which consists in general of the Mile Square Park Golf Course- Conversion Phase.

3. CONTRACT PRICE, CONTINGENCY AND CONTRACT TIME

3.1 CONTRACT PRICE

County shall pay D-BE for all work required by the Contract Documents the total Contract Price of **twenty-nine million one hundred thirty-three thousand five hundred (\$29,133,500)**, which includes **one million, seven hundred thousand dollars (\$1,700,000)** for GMP 1: Design Permitting and Pre-Construction Phase and **twenty-four million, seven hundred five thousand, five hundred dollars (\$24,705,500)** for GMP 2: Construction Phase Services, as it may be adjusted pursuant to the “Changes” Section of the General Conditions, and in accordance with the “Payments” Section of the General Conditions. The sum of all GMP Submittals (as defined below) shall not exceed the total Contract Price.

3.2 CONTINGENCY

“D-BE’s Contingency” means a fund to cover cost growth during the Project used at the discretion of the D-BE usually for costs that result from Project circumstances. The amount of the D-BE’s Contingency will be a separate line item in the GMP package. Use and management of the D-BE’s Contingency during the construction phase as described here-in. Any D-BE Contingency not utilized shall be shared equally between the County and D-BE after Project completion.

“County’s Contingency” means a fund to cover cost growth during the Project used at the discretion of the County usually for costs that result from County directed changes or unforeseen site conditions. The amount of the County’s Contingency will be set by the County and will be in addition to the project costs included in the D-BE’s GMP package.

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

- (1) At its discretion for increases in the Contract Price which are not the County's responsibility, or
- (2) With written approval of the County for increases in General Condition Costs. D-BE's Contingency is assumed to be a direct project cost so will receive all markups at the time of GMP submission.

County's Contingency are funds to be used at the discretion of the County to cover any increases in Project costs that result from County directed changes or unforeseen site conditions. County's Contingency will be added to the GMP amount provided by the D-BE, the sum of which will be the full contract price for construction. Markups for Construction Fee and taxes will be applied by the D-BE at the time that County's Contingency is used. Any County Contingency not utilized shall revert to the County after Project completion.

3.3 CONTRACT TIME

Within 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.

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 GMP 1 – Design Services and Preconstruction Phase. 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 within **820** calendar days of the effective date of the first Notice to Proceed ("Contract Time"). The Contract Time includes **14** calendar days of anticipated weather calendar days necessitating stoppage of work, and a time extension due to rain or other adverse weather conditions will only be granted in accordance with the "Delays Due to Weather and Force Majeure" Section of the General Conditions.

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 GMP 1 the D-BE shall initiate design, comply with all design submission requirements as covered under General Requirements, and obtain County review of each submission. The Design and Construction Critical Path schedule shall contain separate GMPs. GMP 1 for shall include Design and Pre-Construction Services. GMP 2 shall include Construction Phase Services and construction work. D-BE may propose additional GMPs to County if determined necessary. The D-BE may begin construction on portions of the work for which the County has reviewed the GMP submission and issued the related NTP.

Design and Construction Critical Path schedule shall include submission dates for all GMPs. The GMP submission dates cannot be changed without County concurrence. County agrees to review

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all GMP submittals within 14 calendar days of receipt. If County rejects any submitted GMP, D-BE will have 7 additional calendar days to resubmit to County then County will have 7 additional calendar days to review.

4. BONDS

Within 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 Documents and must be approved by County's Risk Manager and County Counsel. The successful D-BE shall submit the bonds in duplicate, 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 **twelve thousand nine hundred fifty dollars (\$12,950)** 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 Contractor:

Ohno Construction Company
8884 Jurupa Road
Jurupa Valley, CA 92509
Attn: Michio "Marcus" Ohno
Phone: (619) 278-8824
E-mail: mail@ohnoconstruction.com

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For County:

Orange County Public Works
601 N. Ross Street
Santa Ana, CA 92701
Attn: Rick De Jong, Senior Project Manager
Phone: Phone Number (714) 667-4966
E-mail: Email address Richard.Dejong@ocpw.ocgov.com

cc:

OC Public Works Procurement Services
601 North Ross Street
Santa Ana, CA 92703
Attn: Jennifer Mason
Phone: (714) 667-9691
E-mail: jennifer.mason@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 Project Manager, unless OC Public Works designates in writing an alternate person who will act as County's representative during 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 Architect-Engineer ("A-E") 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 and A-E 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.

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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 the project manager, as proposed during original Request for Proposal selection process. D-BE's project manager, if different than designated representative, shall represent D-BE in the absence of D-BE's designated representative or alternate, and all directions given to the project manager shall be binding as if given to D-BE. County may require D-BE to replace the 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 leaves 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 leaves 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.

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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 express 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:

- 1) 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.
- 2) 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.

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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.
Allowance	"Allowance" is a portion of the Contract Sum to be used for items to be chosen directly by the County installed as part of the Work within the specified GMP.
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.
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.
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.

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Term	Definition
Changed Conditions	Site conditions or materials of an unexpected nature or differing from those represented in the Contract Documents as provided by the "Changes" Section of the General Conditions.
Code Sections	Except where otherwise specified, all statutory references (e.g. "Labor Code" or "Public Contract Code") shall mean those laws enacted by the State of California, as they may be amended.
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.
County's Contingency	A fund to cover cost growth during the Project used at the discretion of the County usually for costs that result from County directed changes or unforeseen site conditions. The amount of the County's Contingency will be set by the County and will be in addition to the project costs included in the D-BE's GMP packages. Use and management of the County's Contingency during the construction phase is described in Section 3.2.
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 GMP 1, 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.

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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.
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 portion of the Contract Documents setting forth various conditions and requirements of the Contract.
GMP	Guaranteed Maximum Price.
GMP Item	An item of work or task listed in the GMP Schedule including the description, quantity (where applicable), and unit cost.
GMP Item, Deletable	A GMP Item that is considered part of the GMP but which may or may not be deleted from the Contract Price at any time prior to completion of the work.
GMP Proposal	A GMP Proposal is an offer made by the D-BE to the County in accordance with the Instruction to Respondents.
GMP Schedule	The detailed list of items of work with associated quantities, prices, and type of cost, submitted with each GMP.
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.)
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.)

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Term	Definition
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 representative identified in the Contract Documents or otherwise specified by County in writing.
Request for Change	D-BE's request that County issue a Change Order.
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.)
Special Provisions	The portion of the Contract Documents describing the specific requirements of the Project, which may include additions and revisions to the Standard Specifications setting forth conditions and requirements peculiar to the Project.
Standard Specifications	The Standard Specifications for Public Works Construction (SSPWC), known as the "Greenbook," 2021 Edition, Parts 2 through 5, including any supplements effective as of the time Proposals are due.
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 peculiar to the Project.
Traffic Control Plan (TCP)	D-BE's provisions for coordination of its traffic at the Project site. (See the "Performance" Section of the General Conditions.)

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Term	Definition
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

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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 the existing conditions. D-BE shall perform all testing required to adequately design the project such as: geotechnical investigations, utility surveys, 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.

5.1.4 Make site visit arrangements through the County Project Manager.

5.1.5 Subsurface Conditions:

- 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

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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.
- 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. Reserves remaining at the end of the Project will be included in the calculation of D-BE's Contingency.

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 fourteen (14) calendar days of receipt of a complete package of schematic design documents. If requested by County, D-BE and it's 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. Upon County's written approval of a schematic design and written authorization from County, D-BE shall address all of County's comments on the schematic design documents to County's satisfaction and shall cause to be prepared 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.

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- 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 fourteen (14) calendar 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 AND GMP UPDATES

- 5.5.1. Upon written approval of the design development documents and written authorization from **County**, D-BE shall address all of the **County's** comments on the design development documents to **County's** satisfaction and cause to be prepared 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 Following the County's A-E Guide, 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 at the 60%, 90%, and 100% 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 twenty-one calendar (21) days of receipt of 60% construction document submittals, other submittals will be commented on within fourteen calendar (14) days of receipt of 90% construction documents. D-BE responsible for 100% construction documents including all County comments, no additional formal County review time is required. Design Professionals will meet with representatives of the County to discuss the 60% construction documents. If requested by County, D-BE and its Design Professionals will meet with representatives of the County to discuss the 90% construction documents.
- 5.5.5 D-BE will revise the construction documents to address the issues raised by the County and will resubmit the construction documents to County. D-BE shall provide County with schedule for submittal of revised documents a minimum of fourteen calendar (14) 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 Materials as identified in Section 1.13, and (ii) subsurface conditions and physical conditions of the Site not reasonably identified in the documents

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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 and approval of the 100% 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 CADD format acceptable to County. The CADD documents will be sealed, and all CADD functions shall be active. In addition, D-BE shall establish and maintain an ftp site on the Internet 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 local and State authorities as may be required for the initiation, prosecution and construction 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" Plans at the Site: D-BE shall maintain at the site a complete "As-Built" set of Plans for the Project. D-BE shall update the As-Built Plans each day. D-BE shall make As-Built Plans available to County immediately upon request. Any delay by D-BE in providing County with access to properly updated As-Built Plans 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 Plans to County in a format acceptable to County and suitable for use in preparing a reproducible set of record drawings for the Project.

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:

1. Permits and applicable regulations as may be provided by law or that govern the site;
2. Use of Contingency or 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);

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3. Contract;
4. Supplementary General Conditions;
5. General Conditions;
6. Plans;
7. Specifications; and
8. 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 10 days after award of the Contract, D-BE shall furnish a payment bond for 100% of the amount of the Contract, in accordance with Civil Code Section 9554, and a performance bond for 100% of the amount of the Contract, guaranteeing the faithful performance of the Contract. D-BE shall take steps to assure that the penal sum of the bonds shall be increased by the amount of any additive adjustments to the Contract Price as a result of Change Orders.

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

The payment and performance bonds shall be in the form provided with the Instructions to Bidders 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

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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

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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.

DB-E 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 (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee. 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.

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, 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 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	\$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 each accident

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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 general contractors shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$5,000,000 per occurrence \$10,000,000 aggregate
Automobile Liability including coverage for owned or scheduled, non-owned and hired vehicles	\$2,000,000 combined single limit per accident
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per accident or disease

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	\$1,000,000 combined limit per each accident
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per accident or disease

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:

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- a) An Additional Insured endorsement using ISO form CG 20 10 04 13 or CG 20 33 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-contributory endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that D-BE's insurance is primary, and any insurance or self-insurance maintained by the County shall be excess and non-contributing.
 - c) 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, agents and employees when acting within the scope of their appointment or employment.
 4. D-BE shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.
 5. If the A-E's Professional and/or Pollution Liability policy(ies) is/are a claims-made policy, A-E 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, A-E 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 Facilities division, award may be made to the next qualified D-BE.

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9. County expressly retains the right to require D-B 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, 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.

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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.

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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 GMP 1 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.

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

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- 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 A-E 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:
- (1) Correctness of dimensions, details, quantities, or procedures indicated on the submittals.
 - (2) 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.
 - (3) 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:
- (1) 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.
 - (2) 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:
- (1) Samples shall be the precise item proposed to be furnished.
 - a. 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.
 - (2) Identify each sample with the manufacturer's name, model number or type, and its intended location in the work.

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- (3) Samples of value will be returned to the D-BE for use in the work after review by the County.
 - (4) 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.
 - (5) 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.
 - (6) 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.
 - (7) 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.
 - (8) Each sample shall have physically attached to it, in a manner not easy removable, a label bearing the following information:
 - a. Project identification.
 - b. D-BE's and subcontractor's identification.
 - c. Sample identification including full information as to manufacturer, model, catalog number, finish number, and other required information.
 - d. Space for D-BE's A-E's review stamp.
 - (9) 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.
 - (10) 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:
- (1) List of Subcontractors;
 - (2) List of Materials;
 - (3) 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;
 - (4) 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

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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:
- 9.4.3.1 D-BE has investigated the proposed item and determined that it meets or exceeds in all respects the quality, performance, and utility of the specified item.
- 9.4.3.2 D-BE will provide the same warranty as for the specified item.
- 9.4.3.3 D-BE will coordinate installation and make such modifications, which may be required for the work to be complete in all respects, with no addition to the Contract Time or the Contract Price.
- 9.4.3.4 D-BE waives all claims for reimbursement for additional costs which may subsequently become apparent by reason of the acceptance and use of such “or equal” materials, equipment, products, processes, or articles.
- 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

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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

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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

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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:

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- 11.5.1 D-BE and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by D-BE or any Subcontractor(s) in connection with the work.
- 11.5.2 Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
- 11.5.3 The information contained in the payroll record is true and correct.
- 11.5.4 The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
- 11.5.5 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.
- 11.5.6 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.
- 11.5.7 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

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.

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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

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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.

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- 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 the County's Safety and Loss Prevention Resource Manual and submit a copy of their Injury and Illness Prevention Program (IIPP) to the Project Manager prior to the start of the project. The IIPP shall meet the minimum requirement of California Code of Regulations, Title 8, Section 1509 or 3203. Contractor shall submit other safety programs that pertain to the type of job that will be performed on site.

13.3 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.
- 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.

13.4 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:
- D. County Logo (in color, graphics to be provided)
- E. Board Of Supervisors (list of 5 supervisors and district)
- F. Facility & Project Name:
- G. County of Orange
- H. Architect-Engineer: TBD
- I. D-BE - TBD
- J. D-BE shall submit sign layout and proposal exact location for review and approval by the County's Project Manager.
- K. 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.

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13.5 QUALITY OF MATERIALS AND WORKMANSHIP

- 13.5.1 D-BE shall perform all work required by the Contract Documents in a skillful, good, and workman like manner and in strict conformance with the Contract Documents. All materials and equipment furnished by D-BE shall be new and of good quality, unless otherwise required by the Contract Documents. See Section 01400, Quality Requirements for additional requirements.
- 13.5.2 D-BE shall supervise and direct the work using its best skill and attention. All labor shall be performed by individuals specially skilled in the kind of work required. D-BE shall at all times enforce strict discipline and good order among its employees and those of its Subcontractors of any tier. D-BE shall not employ for the Project any unfit person or anyone not skilled in the assigned task or otherwise unfit. D-BE shall immediately remove from the Project any person that 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.
- 13.5.3 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.
- 13.5.4 If D-BE does not promptly replace rejected material or correct rejected work, or immediately remove persons who are unfit or behaving unacceptably, 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.

13.6 SURVEYING

- 13.6.1 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.
- 13.6.2 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.
- 13.6.3 All work shall conform to the lines, elevations, and grades shown on the Plans. Three consecutive points set on the same slope shall be used together so that any variation from a straight grade can be detected. Any such variation shall be reported to 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.

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

13.7 UTILITIES

13.7.1 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.

13.7.2 Protection: D-BE shall not interrupt the service function or disturb the support of any utility without with 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.

13.7.3 Removal: Unless otherwise specified in the Contract Documents, D-BE shall remove all interfering portions of utilities represented in the Plans or Special Provisions as “abandoned” or “to be abandoned in place.” Before starting removal operations, D-BE shall ascertain 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.

13.8 TRAFFIC CONTROL

13.8.1 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

13.8.2 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.

13.9 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

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shall submit, a location plan showing the arrangement of field offices, storage sheds, equipment storage, and staging areas for County approval.

13.10 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:

- (1) Obtains County's approval in writing.
- (2) Assumes full responsibility for the system used.
- (3) Pays all costs for operation, maintenance, cleaning and restoration of the system.
- (4) Operates the system with the consent and supervision of the subcontractor responsible for the system's installation and ultimate performance.

13.11 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.

13.12 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.

13.13 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.

13.14 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.

13.15 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.

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13.16 TRANSPORTATION AND HANDLING OF PRODUCTS

D-BE shall:

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

13.17 STORAGE AND PROTECTION OF PRODUCTS

D-BE shall:

1. Store and protect products in accordance with manufacturer's instructions and applicable regulations, with seals and labels intact and legible;
2. Store sensitive products in weather-tight, climate-controlled enclosures;
3. Store hazardous materials in accordance with applicable regulations, including but not limited to those related to containment and protection of the materials and surrounding environment;
4. Store fabricated products on sloped supports above ground if such products are stored outdoors;
5. Cover products subject to deterioration with impervious sheet covering with ventilation to avoid condensation;
6. Provide equipment and personnel to store products by methods to prevent damage;
7. Arrange storage of products to permit access for inspections; and
8. Periodically inspect to ensure products are undamaged and are maintained under specified conditions.

13.18 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.

13.19 REGULATORY COMPLIANCE REQUIREMENTS

13.19.1 Permits

- a) Project plans are approved for permit from the Orange County Planning & Development Services Agency as well as list other approvals including but not limited to SWPPP and others as deemed necessary. 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.

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- 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.

13.19.2 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.

13.19.3 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 10 working days prior to any excavation or grading work. A/P shall be approved in writing by County at least 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.

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- 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:
 - i. The A/P shall draft a monitoring program and monitor all ground-disturbing activities related to the Project.
 - ii. A/P shall prepare all potential finds in excavated material to the point of identification.
 - iii. Significant finds shall be preserved as determined necessary by the A/P.
 - iv. 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.

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- v. 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.
- vi. 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:
 - i. 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.
 - ii. 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).
 - iii. 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.

13.19.4 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

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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."

13.19.5 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.

13.20 HAZARDOUS OR CONTAMINATED MATERIALS

- 13.20.1 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;
- 13.20.2 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.
- 13.20.3 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.
- 13.20.4 D-BE must restore any spill-damaged areas to their original condition in a correct and timely manner and to the satisfaction of County.
- 13.20.5 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.

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- 13.20.6 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.
- 13.20.7 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.
- 13.20.8 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.
- 13.20.9 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.
- 13.20.10 D-BE shall keep appropriate emergency response equipment and materials available in the working area at all times.
- 13.20.11 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 an 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.
- 13.20.12 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.
- 13.20.13 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.

13.21 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, Contractor may not conduct any activities governed by SCAQMD Rule 403 until County has accepted Contractor'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.

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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.

13.22 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.

13.23 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.

13.24 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. Changes made pursuant to this section are only too utilized if the appropriate Contingency fund has been exhausted. 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

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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 15% on above items if D-BE uses its own forces to perform changed work. If D-BE's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of 15% on above items and D-BE shall be entitled to a maximum of 6% on above items for its overhead and profit on the changed work. County will pay only one overhead and profit markup of 6% for D-BE and one markup of 15% for the subcontractor in

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connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work; and

- 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

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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 15% 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.
- i) Bond and insurance (2% of above items).

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.

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- 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 15% 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,

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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.

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- 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

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;

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- 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.

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.

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- 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.

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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.

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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 6250 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

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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 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
Rick De Jong, Senior Project Manager
601 North Ross
Santa Ana, California 92701

Notice via electronic mail is insufficient.

19.10 LEVINE ACT REQUIREMENT

D-BE agrees to comply with Government Code Section 84308. D-BE further agrees to disclose to the County any contribution made to any members of the 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, extension, or amendment of this Contract.

END OF GENERAL CONDITIONS

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

Ohno Construction Company, a State of Washington Corporation,

Date: 10/16/2023

DocuSigned by:
By: Yoshio Ohno
Signature 4CAACB426BBF456...

Yoshio A. Ohno 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: 10/16/2023

DocuSigned by:
By: Marcus Ohno
Signature AE6A1199313E495...

Marcus Ohno Treasurer

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

DocuSigned by:
By: William Mink
D914F6D80F0D4A5...

Date: 10/17/2023

**ATTACHMENT A
STATEMENT OF WORK**

D-BE shall perform all work as required by, and in strict accordance with, the Contract Documents (the "Project"), which consists of converting 93 acres of existing golf course to a public park consisting of Phase 2 amenities & infrastructure reflected in the Mile Square Regional Park Phase 2 Bridging Document Package. The work for this project consists of the following elements:

- a. **Design & Engineering** consisting of plans, specifications & estimates (PS&E) conforming to current applicable State Building Codes, ADA accessibility requirements, The Standard Plans for Public Works Construction (SPPWC), and Greenbook Standard Specifications for Public Works Construction to obtain required demolition, grading, building, landscape, WQMP, electrical, & plumbing permits.
- b. **Demolition** of Phase 1 features consisting of concrete paving, asphalt pedestrian paths, chain link fencing, light poles, drainage system elements, clearing & grubbing, Lake 'A' and any lake-related elements including planting, storm drain, and well water recirculation system, site irrigation pipes, valves, and appurtenances.
- c. **Earthwork** consisting of rough, fine & remedial grading, compaction, erosion & sediment control, and inlet protection. Lake 'A' shall be removed and backfilled.
- d. **Drainage** to include inlet structures, drainage piping, and connections to existing drainage facilities.
- e. **Dewatering** to maintain necessary dewatering of project site.
- f. **Water Source** to obtain and maintain water source for use on project site.
- g. **Paving** consisting of primary & secondary asphalt vehicular road, primary concrete & secondary asphalt pedestrian paths/trails, asphalt parking lots (1, 3, & 6) to accommodate approximate 390 parking spaces (striping and pavement markings), and asphalt curbs.
- h. **Lake 'A'** consisting of dewatering, removal of shoreline edge, geomembrane liner, piping, valves, overflow box structure, and drainage pipes. Lake depression to be backfilled and graded per geotechnical recommendations. Recirculated flow shall be recharged to Lake 'B' by an 8" irrigation pipe connected existing 8" pipe downstream of Lake 'A' (after overflow box).
- i. **Amphitheater** consisting of 12" thick reinforced mat slab on engineered subgrade, bandshell, finished greenroom with single stall restroom, architectural veneer, and integrated lighting.
- j. **The Great Meadow** consisting of 7.23 acres turf/lawn with level and gentle sloped areas to support car shows, fairs, community events, concerts, farmer's market, and passive activities. Grading to be adjusted to accommodate overall site material balance.

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- k. Multi-Use Field** consisting of 7.8 acres turf/lawn with engineered sub-base and level grades used for sports (soccer, cricket, lacrosse, ultimate frisbee), other youth activities, and support occasional overflow parking during peak hours & special events.
- l. Adventure Play Area** consisting of 2 acres to accommodate play structures for 2-5 & 5-12-year age groups, hillside climbers/slides, double zipline, resilient playground surfacing, water quality swales, and play area curb.
- m. Prefabricated Restroom Building** consisting of engineered concrete pad with electrical & plumbing connections to accommodate prefabricated modular restroom (8 unisex stalls) with interior fixtures & accessories (2 changing tables), exterior architectural veneer, hand washing stations (2), and drinking fountain (1).
- n. Electrical** consisting of new service (SCE Fees and primary wire by owner), distribution board, switchgear, transformer, pull boxes (conduits & wires) for amphitheater, prefabricated restroom, and future EV charging stations.
- o. Solar Lighting** consisting of exterior site lighting system for primary & secondary vehicular roadway, surface parking lots, and pedestrian hardscape circulation areas. existing recently-installed non-solar lighting to remain in place. Where roadway is to be completely demolished, existing recently-installed non-solar lighting may be repurposed onsite as practical.
- p. Utilities** consisting of prefabricated restroom and amphitheater connections, domestic water, sewer lines, storm drain, disconnect electrical irrigation controller feed from Mile Square Golf Course and install to onsite power source.
- q. Irrigation System** consisting of irrigation piping, connections, field satellite, and electrical service panel adjacent to Lake 'E' and connected to existing lake pump system to irrigate Great Meadow Multi-Use Field, and planting in & around Adventure Play Area.
- r. Planting** consisting of hydroseeding the Great Meadow and Multi-Use Field. Predominant evergreen trees (California natives, adaptive species, and existing species within the regional park) planted in & around Adventure Play Area for shade.
- s. Landscape Maintenance** to maintain existing turf and trees, as practicable during construction.

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**ATTACHMENT B
COST/COMPENSATION**

- I. COMPENSATION:** This is a Guaranteed Maximum Price (GMP) Contract between County and Contractor for design and construction services for Mile square Park Golf Course Conversion- Phase 2, 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:

A. Proposed Fee:

i. D-BE Contingency:	<u>\$ 1,728,000</u>
ii. County Contingency:	<u>\$ 1,000,000</u>
iii. GMP 1: Design, Permitting and Pre-Construction:	<u>\$ 1,700,000</u>
iv. GMP 2: Construction Phase Services, Construction:	<u>\$ 24,705,500</u>
Total Contract Price:	<u>\$ 29,133,500</u>

- 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

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- 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/OC Public Works
Attn: Rick De Jong
601 N. Ross St.
Santa Ana, CA 92701*

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.

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ATTACHMENT C
STAFFING PLAN

1. **KEY PERSONNEL**

Name	Classification/Designation	Years of Experience	Licenses/Certifications (include license number)
Michio Marcus Ohno	Project Executive	11	Seattle Univ. School of Law, Turner School of Construction Management OSHA 30 Hour
Eric Humphrey	Project Manager	10	Licensed Drone Pilot, Construction Management Degree
Norm Hubbard	Superintendent/ Project Manager	28	BA, Civil Engineering & Construction Management- Nebraska 30-Hour OSHA-HazMat Certified- CPR/First Aide Competent Person in Trenching and Excavation & Confined Space
Tyler Blitz	VP California Operations	24	First Aid/CPR Trained - 30 Hour OSHA BS, Construction Management, WSU Excel, Sure Track, MS Project, Heavy Bid
Larry Ryan	Landscape Architect	34	Licensed Landscape Architect CA 2502
Craig Sensenbach	Project Manager/Architect	30	Licensed Landscape Architect CA 2547 LEED Accredited Professional International Society of Arboriculture (ISA) Certified Arborist / WE- 11716A
Eric Chastain	Landscape Architect	26	Licensed Landscape Architect CA 3411 LEED Accredited Professional
Andrew Steen	Landscape Architect/Arborist	<u>20</u>	Licensed Landscape Architect CA 5858 Certified Arborist WE- 9969A Tree Risk Assessment Qualification FAA Certified UAV Pilot

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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 D-BE'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.

2. SUBCONTRACTOR(S)

Listed below are subcontractor(s) anticipated by D-BE to perform services specified in Attachment A. Substitution or addition of D-BE's subcontractors in any given project function shall be allowed only with prior written approval of the County Project Manager.

Company Name & Address	Contact Name and Telephone Number	Project Function
James Mickaratz Architect 2102 Business Center Dr. Ste 203D Irvine, CA 92612	James Mickaratz (949)450-1088	Architectural Design
CivTEC 999 Corporate Dr., Ste 100 Ladera Ranch, CA 92694	Thomas Edward Carcelli (949) 463-8822	Civil Engineering Design and SWPPP
Ace Electric, Inc. 6061 Fairmount Ave., San Diego, CA 92120	Chris Hinds (619) 814-4760	Electrical Value-Engineering & Electrical Installations
NMG Geotechnical 17991 Fitch Ave Irvine, CA 92614	Bob Karimi (949) 442-2442	Geotechnical Investigation and Design Advisement
FBA Engineering 150 Paularino Ave., A120 Costa Mesa, CA 92626	William R. Zavrnsnick (949) 852-9995	Electrical Engineering Design

ATTACH ADDITIONAL SHEET(S) IF NECESSARY