

C O N T R A C T

29802

THIS CONTRACT is made and entered, in duplicate, as of October 13, 2006 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on October 10, 2006, by and between ATHENA ENGINEERING, INC., a California corporation, whose address is 446 Borrega Court, San Dimas, California 91773 ("Contractor"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, pursuant to a "Notice Inviting Bids for Job Order Contract No. 9, City of Long Beach, California," dated August 18, 2006, and published by City, bids were received, publicly opened and declared on the date specified in said Notice; and

WHEREAS, the City Manager accepted the bid of Contractor; and

WHEREAS, the City Council authorized the City Manager to enter a contract with Contractor for the work described in the bid documents;

NOW, THEREFORE, in consideration of the mutual terms and conditions herein, the parties agree as follows:

1. SCOPE OF WORK. Contractor shall furnish all necessary labor, supervision, tools, materials, supplies, appliances, equipment and transportation for the work described in each Work Order, as defined in the bid documents, said work to be performed according to the Contract Documents identified below. However, this Contract is intended to provide to City complete and finished work and, to that end, Contractor shall do everything necessary to complete the work, whether or not specifically described in the Contract Documents.

2. PRICE AND PAYMENT. City shall pay to Contractor the amount(s) for each Work Order based on the adjustment factor in Contractor's Bid, attached hereto as Exhibit "A"; provided, however, that City shall not pay more than Two Million Dollars (\$2,000,000) for the initial term and for each extension period.

3. CONTRACT DOCUMENTS. The Contract Documents include: The

1 Notice Inviting Bids; City of Long Beach Standard Plans; the California Code of
2 Regulations; the various Uniform Codes applicable to trades; the prevailing wage rates;
3 Instructions to Bidders; the Bid; the bid security; the City of Long Beach Disadvantaged,
4 Minority and Women-Owned Business Enterprise Program; this Contract and all
5 documents attached hereto or referenced herein; JOC General Provisions; the
6 Construction Task Catalog; JOC Contract Documents (which contain Technical
7 Specifications); Bond for Faithful Performance; Payment Bond; Notice to Proceed; Notice
8 of Completion; any addenda; any permits required and issued for the work; and approved
9 drawings for a Work Order, if any. These Contract Documents are incorporated herein by
10 the above reference. Notwithstanding Section 2-5.2 of the Standard Specifications, if any
11 conflict or inconsistency exists or develops among or between Contract Documents, the
12 following priority shall govern: 1) this Contract; 2) permit(s) from other public agencies; 3)
13 the Bid; 4) Addenda; 5) JOC General Provisions; 6) the Construction Task Catalog; 7)
14 Technical Specifications; 8) other reference specifications; 9) other reference plans; 10)
15 approved drawings, if any; and 11) the Notice Inviting Bids.

16 4. TIME FOR CONTRACT.

17 A. The initial term of this Contract shall begin on November 15, 2006 and
18 shall end on November 14, 2007 or on City's payment of Two Million Dollars (\$2,000,000)
19 hereunder to Contractor, whichever occurs first. On the natural expiration date of the initial
20 term or on City's payment of \$2,000,000 to Contractor during the initial term, City may, at
21 its option, extend the term for two (2) separate, consecutive periods of one (1) year each
22 by giving notice to Contractor of City's intent to extend. If City exercises one or both
23 options to extend, the parties shall sign an amendment to this Contract relating to such
24 option for an additional period of twelve (12) months or until City pays to Contractor
25 \$2,000,000 during said extension period.

26 B. Contractor shall commence work on a date to be specified in a written
27 "Notice to Proceed" from City for each Work Order and shall complete all work within the
28 number of working days identified in each Work Order, subject to events beyond the

1 control of Contractor. Time is of the essence for performance of this Contract and each
2 Work Order. City will suffer damage if the work in each Work Order is not completed within
3 the time stated, but those damages would be difficult or impractical to determine. So,
4 Contractor shall pay to City, as liquidated damages, the amount stated in the Contract
5 Documents.

6 5. ACCEPTANCE OF WORK NOT TO CONSTITUTE A WAIVER. The
7 acceptance of any work or the payment of any money by City shall not operate as a waiver
8 of any provision of any Contract Document, of any power reserved to City, or of any right
9 to damages or indemnity hereunder. The waiver of any breach or any default hereunder
10 shall not be deemed a waiver of any other or subsequent breach or default.

11 6. WORKERS' COMPENSATION CERTIFICATION. Concurrently herewith,
12 Contractor shall submit certification of Workers' Compensation coverage in accordance
13 with California Labor Code Sections 1860 and 3700, a copy of which is attached hereto as
14 Exhibit "B".

15 7. CLAIMS FOR EXTRA WORK. No claim shall be made at any time upon
16 City by Contractor for and on account of any extra or additional work performed or
17 materials furnished, unless such extra or additional work or materials shall have been
18 expressly required by the City Manager and the quantities and price thereof shall have
19 been first agreed upon, in writing, by the parties hereto.

20 8. CLAIMS. Contractor shall, upon completion of the work, deliver
21 possession thereof to City ready for use and free and discharged from all claims for labor
22 and materials in doing the work and shall assume and be responsible for, and shall protect,
23 defend, indemnify and hold harmless City from and against any and all claims, demands,
24 causes of action, liability, loss, costs or expenses for injuries to or death of persons, or
25 damages to property, including property of City, which arises from or is connected with the
26 performance of the work.

27 9. INSURANCE. Prior to commencement of work, and as a condition
28 precedent to the effectiveness of this Contract, Contractor shall provide to City evidence

1 of all insurance required in the Contract Documents.

2 10. WORK DAY. Contractor shall comply with Sections 1810 through 1815
3 of the California Labor Code regarding hours of work. Contractor shall forfeit, as a penalty
4 to City, the sum of Twenty-Five Dollars (\$25) for each worker employed by Contractor or
5 any subcontractor for each calendar day such worker is required or permitted to work more
6 than eight (8) hours unless that worker receives compensation in accordance with Section
7 1815.

8 11. PREVAILING WAGE RATES. Contractor is directed to the prevailing
9 wage rates. Contractor shall forfeit, as a penalty to City, Fifty Dollars (\$50) for each
10 laborer, worker or mechanic employed for each calendar day, or portion thereof, that such
11 laborer, worker or mechanic is paid less than the prevailing wage rates for any work done
12 by Contractor, or any subcontractor, under this Contract.

13 12. COORDINATION WITH GOVERNMENTAL REGULATIONS. If the work
14 is terminated pursuant to an order of any Federal or State authority, Contractor shall accept
15 as full and complete compensation under this Contract such amount of money as will equal
16 the product of multiplying the Contract Price stated in the Work Order(s) so terminated by
17 the percentage of work completed by Contractor as of the date of such termination, and
18 for which Contractor has not been paid. If the work is so terminated, the City Engineer,
19 after consultation with Contractor, shall determine the percentage of said work so
20 completed and the determination of the City Engineer shall be final.

21 If Contractor is prevented, in any manner, from strict compliance with the
22 Contract Documents due to any Federal or State law, rule or regulation, in addition to all
23 other rights and remedies reserved to the parties City may suspend performance
24 hereunder until the cause of disability is removed, extend the time for performance, make
25 changes in the character of the work or materials, or terminate this Contract without liability
26 to either party.

27 13. NOTICES.

28 A. Any notice required hereunder shall be in writing and personally delivered

1 or deposited in the U.S. Postal Service, first class, postage prepaid, to Contractor at the
2 address first stated herein, and to City at 333 West Ocean Boulevard, Long Beach,
3 California 90802, Attn: City Manager. Notice of change of address shall be given in the
4 same manner as stated herein for other notices. Notice shall be deemed given on the date
5 deposited in the mail or on the date personal delivery is made, whichever first occurs.

6 B. Except for stop notices and claims made under the Labor Code, City will
7 notify Contractor when City receives any third party claims relating to this Contract in
8 accordance with Section 9201 of the Public Contract Code.

9 14. BONDS REQUIRED. Contractor shall, coincidentally with the execution
10 of this Contract, execute and deliver to City the bonds required in the Contract Documents,
11 on the forms provided by City.

12 15. COVENANT AGAINST ASSIGNMENT. Neither this Contract nor any
13 of the moneys that may become due Contractor hereunder may be assigned by Contractor
14 without the written consent of City first had and obtained, nor will City recognize any
15 subcontractor as such, and all persons engaged in the work of construction will be
16 considered as independent contractors or agents of the Contractor and will be held directly
17 responsible to Contractor.

18 16. CERTIFIED PAYROLL RECORDS. Contractor shall keep and cause
19 each subcontractor to keep an accurate payroll record in accordance with Division 2,
20 Part 7, Article 2 of the California Labor Code. Contractor's failure to furnish such record
21 to City in the manner provided herein for notices shall entitle City to withhold the penalty
22 prescribed by law from progress payments due to Contractor.

23 17. RESPONSIBILITY OF CONTRACTOR. Notwithstanding anything to the
24 contrary in the Standard Specifications, Contractor shall have the responsibility, care and
25 custody of the work. If any loss or damage occurs to the work that is not covered by
26 collectible commercial insurance, excluding loss or damage caused by earthquake or flood,
27 or the negligence or willful misconduct of City, then Contractor shall immediately make City
28 whole for any such loss or pay for any damage. If Contractor fails or refuses to make City

1 whole or pay, then City may do so and the cost and expense of doing so shall be deducted
2 from the amount due Contractor from City hereunder.

3 18. CONTINUATION. Termination or expiration of this Contract shall not
4 terminate the rights or liabilities of either party which rights or liabilities accrued or existed
5 prior to termination or expiration of this Contract.

6 19. TAXES AND TAX REPORTING. As required by federal and state law,
7 City is obligated to report the payment of compensation to Contractor on Form 1099-Misc.
8 and Contractor acknowledges that Contractor is not entitled to payment under this Contract
9 until it has provided its Employer Identification Number to City. Contractor shall be solely
10 responsible for payment of all federal and state taxes resulting from payments under this
11 Contract. Contractor shall cooperate with City in all matters relating to taxation and the
12 collection of taxes, particularly with respect to the self-accrual of use tax.

13 20. ADVERTISING. Contractor shall not use the name of City, its officials
14 or employees in any advertising or solicitation for business, nor as a reference, without the
15 prior approval of the City Manager, City Engineer or designee.

16 21. AUDIT. If payment of any part of the consideration for this Contract is
17 made with federal, state or county funds and a condition to the use of those funds by City
18 is a requirement that City render an accounting or otherwise account for said funds, then
19 City shall have the right at all reasonable times to examine, audit, inspect, review, extract
20 information from, and copy all books, records, accounts and other information relating to
21 this Contract.

22 22. NO PECULIAR RISK. Contractor acknowledges and agrees that the
23 work to be performed hereunder does not constitute a peculiar risk of bodily harm and that
24 no special precautions are required to perform said work.

25 23. THIRD PARTY BENEFICIARY. This Contract is intended by the parties
26 to benefit themselves only and is not in any way intended or designed to or entered for the
27 purpose of creating any benefit or right of any kind for any person or entity that is not a
28 party to this Contract.

1 24. SUBCONTRACTORS. Contractor agrees to and shall bind every
2 subcontractor to the terms of this Contract; provided, however, that nothing herein shall
3 create any obligation on the part of City to pay any subcontractor except in accordance
4 with a court order in an action to foreclose a stop notice. Failure of Contractor to comply
5 with this Section shall be deemed a material breach of this Contract. Contractor shall
6 submit a list of subcontractor(s) in compliance with Public Contract Code Sections 4100
7 et seq. on the form attached hereto as Exhibit "C" and incorporated herein by this
8 reference, for each Work Order.

9 25. NO DUTY TO INSPECT. No language in this Contract shall create and
10 City shall not have any duty to inspect, correct, warn of or investigate any condition arising
11 from Contractor's work hereunder, or to insure compliance with laws, rules or regulations
12 relating to said work. If City does inspect or investigate, the results thereof shall not be
13 deemed compliance with or a waiver of any requirements of the Contract Documents.

14 26. GOVERNING LAW. This Contract shall be governed by and construed
15 pursuant to the laws of the State of California (except those provisions of California law
16 pertaining to conflicts of laws).

17 27. INTEGRATION. This Contract, including the Contract Documents
18 identified in Section 3 hereof, constitutes the entire understanding between the parties and
19 supersedes all other agreements, oral or written, with respect to the subject matter herein.

20 28. COSTS. If there is any legal proceeding between the parties to enforce
21 or interpret this Contract or to protect or establish any rights or remedies hereunder, the
22 prevailing party shall be entitled to its costs and expenses, including reasonable attorney's
23 fees.

24 29. NONDISCRIMINATION. In connection with performance of this Contract
25 and subject to applicable rules and regulations, Contractor shall not discriminate against
26 any employee or applicant for employment on the basis of race, religion, national origin,
27 color, age, sex, sexual orientation, AIDS, AIDS related condition, handicap or disability.
28 Contractor shall ensure that applicants are employed, and that employees are treated

1 during their employment, without regard to these bases. Such actions shall include but not
2 be limited to employment, upgrading, demotion, transfer, recruitment, layoff, termination,
3 rates of pay and selection for training. It is the policy of City to encourage the participation
4 of Disadvantaged, Minority and Women-Owned Business Enterprises, and City
5 encourages Contractor to use its best efforts to carry out this policy in the award of all
6 subcontracts.

7 30. DEFAULT. Default shall include but not be limited to Contractor's failure
8 to perform in accordance with any Contract Document, failure to pay any penalties, fines
9 or charges assessed against Contractor by any public agency, failure to pay any charges
10 or fees for services performed by City, and if Contractor has substituted any security in lieu
11 of retention, then default shall also include City's receipt of a stop notice. If default occurs
12 and Contractor has substituted any security in lieu of retention, then in addition to City's
13 other legal remedies, City shall have the right to draw on the security in accordance with
14 Public Contract Code Section 22300 and without further notice to Contractor. If default
15 occurs and Contractor has not substituted any security in lieu of retention, then City shall
16 have all legal remedies available to it.

17 IN WITNESS WHEREOF, the parties have caused this document to be duly

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Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 executed with all formalities required by law as of the date first stated above.

2 ATHENA ENGINEERING, INC., a California
3 corporation

4 October 23, 2006

By [Signature]
President

Jannie Chiera
(Type or Print Name)

5 October 23, 2006

By [Signature]
Secretary

Richard Chiera
(Type or Print Name)

8 "Contractor"

9 CITY OF LONG BEACH, a municipal corporation

10 11. 7., 2006

By [Signature]
City Manager

11 "City"

12 This Contract is approved as to form on 11/2, 2006.

13 ROBERT E. SHANNON, City Attorney

14 By [Signature]
15 Deputy

16 LAC:bg

17 06-05243

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EXHIBIT “A”

JOC 9 BID

BIDDER'S NAME: Athena Engineering, Inc.

IMPORTANT

READ CAREFULLY BEFORE MAKING OUT YOUR BID INSTRUCTIONS TO BIDDERS

Do not remove any documents from, or add any documents to, this file. Any such removal or addition may invalidate your Bid.

DO NOT MAKE ANY ALTERATIONS OF ANY KIND IN THE BID FORM. FILL OUT COMPLETELY ALL BLANK SPACES. LINE OUT NONAPPLICABLE BLANKS. INCOMPLETE FORM MAY INVALIDATE BID. THE CITY RESERVES THE RIGHT TO WAIVE ANY INFORMALITIES OR TO REJECT ANY OR ALL BIDS OR TO ACCEPT ANY ALTERNATIVES WHEN CALLED FOR.

Department of Public Works, Project Management Division
9th Floor City Hall, 333 W. Ocean Boulevard
City of Long Beach, California 90802

The undersigned offers to furnish all materials, labor and equipment required for the Job Order Contract for the City of Long Beach in accordance with the City's Invitation for Bids, including addenda thereto, if any, as follows:

- I. Adjustment Factors. The Contractor bids two Adjustment Factors each of which will be applied against the prices set forth in the Construction Task Catalog. These Adjustment Factors will be used to price Work Orders by multiplying the Adjustment Factor by the unit prices and quantities for the specific Work Order.
- II. Base Period. Twelve (12) months after Contract Award or expenditure of the maximum value of the Contract, whichever occurs first.

Line 1- Unit work requirements to be performed during Normal Working Hours as ordered by the City in individual Work Orders against the Contract.

1. .7310
Utilize four decimal places

Point - seven - three - one - zero
bid for normal working hours - in words

Line 2- Unit work requirements to be performed during Other Than Normal Working Hours as ordered by the City in individual Work Orders against the Contract. Note: Line 2 cannot be less than Line 1.

2. .7310
Utilize four decimal places

Point - seven - three - one - zero
bid for other than normal working hours - in words

AWARD FORMULA

Line 1. Normal Working Hours Adjustment Factor

.7310

Line 2. Multiply Line 1 by .80

.5848

Line 3. Other Than Normal Working Hours Adjustment Factor

.7310

Line 4. Multiply Line 3 by .20

.1462

Line 5. Summation of lines 2, 4 (composite Bid Factor)

.7310

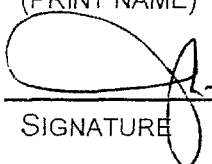


CITY OF LONG BEACH HUD SECTION 3 AFFIDAVIT

► Must be submitted with bid documents.

IMPORTANT NOTE: YOUR SIGNATURE INDICATES THAT YOU RECEIVED A COPY OF THE CITY'S SECTION 3 POLICY AND REQUIREMENTS AND THE HUD SECTION 3 COMPLIANCE CERTIFICATION (ATTACHMENT C) AND COMPLIANCE REQUIREMENTS STATED THEREIN.

I, THE UNDERSIGNED

<u>Jannie Chiera</u>	<u>President</u>
OFFICER OR AUTHORIZED	
AGENT OF COMPANY	SIGNATURE'S TITLE
(PRINT NAME)	
	
SIGNATURE	

PROJECT NAME:

JOC 9

COMPANY NAME:

Athena Engineering, Inc.

ADDRESS:

446 Borrego Ct.

TELEPHONE NUMBER:

<u>San Dimas</u>	CITY	STATE	<u>CA</u>	ZIP CODE	<u>91773</u>
(909)	599-0947				

E-MAIL ADDRESS:

janniec@athenaengineering.net

DATE:

September 13, 2006

ATTACHMENT B

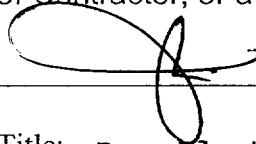
WORKERS' COMPENSATION CERTIFICATION

In accordance with California Labor Code Sections 1860 and 3700, I certify that I am aware of the provisions of Section 3700 which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with said provisions before commencing the performance of the Work of this contract.

Contractor's Name:

Athena Engineering, Inc.

Signature of Contractor, or a corporate officer
of Contractor, or a general partner of Contractor



Title: President

Date: 10/23/04

EXHIBIT "B"

THERE IS NO EXHIBIT “C”.

Executed in Two Counterparts
Bond Number: 08801844

BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS: That we, ATHENA ENGINEERING, INC., as PRINCIPAL, and Fidelity & Deposit Company of Maryland, located at 801 N. Brand Blvd., Suite, Penthouse, Glendale, CA 91203, a corporation, incorporated under the laws of the State of Maryland admitted as a surety in the State of California and authorized to transact business in the State of California, as SURETY, are held and firmly bound unto the CITY OF LONG BEACH, CALIFORNIA, a municipal corporation, in the sum of Two Million DOLLARS (\$2,000,000.00), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, our respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, said Principal has been awarded and is about to enter the annexed contract (incorporated herein by this reference) with said City of Long Beach for the Job Order Contract No. 9 and is required by said City to give this bond in connection with the execution of said contract;

NOW, THEREFORE, if said Principal shall well and truly keep and faithfully perform all of the covenants, conditions, agreements and obligations of said contract on said Principal's part to be kept, done and performed, at the times and in the manner specified therein, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect;

PROVIDED, that any modifications, alterations, or changes which may be made in said contract, or in the work to be done, or in the services to be rendered, or in any materials or articles to be furnished pursuant to said contract, or the giving by the City of any extension of time for the performance of said contract, or the giving of any other forbearance upon the part of either the City or the Principal to the other, shall not in any way release the Principal or the Surety, or either of them, or their respective heirs, administrators, executors, successors or assigns, from any liability arising hereunder, and notice to the Surety of any such modifications, alterations, changes, extensions or forbearances is hereby waived. No premature payment by said City to said Principal shall release or exonerate the Surety, unless the officer of said City ordering the payment shall have actual notice at the time the order is made that such payment is in fact premature, and then only to the extent that such payment shall result in actual loss to the Surety, but in no event in an amount more than the amount of such premature payment.

IN WITNESS WHEREOF, the above named Principal and Surety have executed, or caused to be executed, this instrument with all of the formalities required by law on this 19th day of October, 2006.

Athena Engineering, Inc.

CONTRACTOR, PRINCIPAL

By: [Signature]

Name: Jannie Chiera

Title: President

By: [Signature]

Name: Richard Chiera

Title: Secretary

Fidelity & Deposit Company of Maryland

SURETY, admitted in California

By: [Signature]

Name: Frank Morones

Title: Attorney-In-Fact

Telephone: (818) 409-2800

Approved as to form this 2nd day
of November, 2006.

ROBERT E. SHANNON, City Attorney

By: [Signature]

Deputy

Approved as to sufficiency this 6 day
of November, 2006.

By: [Signature]

City Manager/City Engineer

NOTE: 1. Execution of this bond must be acknowledged by both PRINCIPAL and SURETY before a Notary Public and a Notary's certificate of acknowledgment must be attached.

2. A corporation must execute the bond by 2 authorized officers and, if executed by a person not listed in Sec. 313, Calif. Corp. Code, then a certified copy of a resolution of its Board of Directors authorizing execution must be attached.

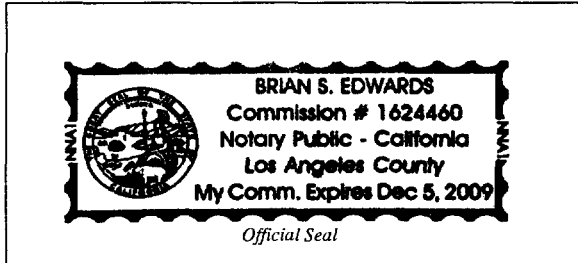
All-Purpose Acknowledgment

State of: California }
County of: Los Angeles } SS.

On October 24, 2006 before me, Brian S. Edwards,
Notary Public

Personally appeared Jannie Chiera & Richard Chiera,

☒ Personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Witness my hand and official seal.

A handwritten signature in dark ink, appearing to be "B. Edwards", written over a horizontal line.

Signature of Notary

My Commission Expires: December 05, 2009

-Optional-

Title or type of Document: City of Long Beach JOC #9

Number of Pages 1 Date Of Document N/A

Signers other than named above N/A

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by THEODORE G. MARTINEZ, Vice President, and ERIC D. BARNES, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Philip E. VEGA and Frank MORONES, both of Brea, California, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Philip E. VEGA, dated November 24, 2003.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 17th day of November, A.D. 2004.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Eric D. Barnes

Eric D. Barnes

Theodore G. Martinez

By:

Assistant Secretary

Theodore G. Martinez

State of Maryland } ss:
City of Baltimore }

On this 17th day of November, A.D. 2004, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came THEODORE G. MARTINEZ, Vice President, and ERIC D. BARNES, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Maria D. Adamski

Maria D. Adamski

Notary Public

My Commission Expires: July 8, 2007

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertaking, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

CERTIFICATE

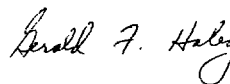
I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 19th day of October, 2006.


Assistant Secretary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

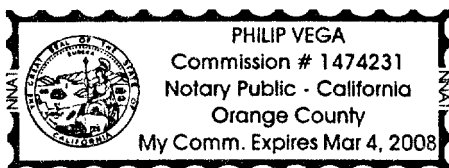
State of California

County of Orange

On 10/19/06 before me, Philip Vega, Notary Public
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Frank Morones
Name(s) of Signer(s)

☒ personally known to me -OR- ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer
- ☐ Titles(s): _____
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of Thumb here

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer
- ☐ Title(s): _____
- ☐ Partner - ☐ Limited ☐ General
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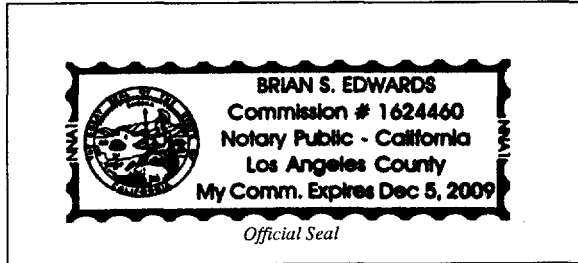
All-Purpose Acknowledgment

State of: California }
County of: Los Angeles } SS.

On October 24, 2006 before me, Brian S. Edwards,
Notary Public

Personally appeared Jannie Chiera & Richard Chiera,

☒ Personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Witness my hand and official seal.

A handwritten signature in dark ink, appearing to read "Brian S. Edwards", written over a horizontal line.

Signature of Notary

My Commission Expires: December 05, 2009

-Optional-

Title or type of Document: City of Long Beach JOC #9 Bond for Faithful Performance

.

Number of Pages 1 Date Of Document N/A

Signers other than named above N/A

Executed in Two Counterparts
Bond Number: 08801844

LABOR AND MATERIAL BOND

KNOW ALL MEN BY THESE PRESENTS: That we, ATHENA ENGINEERING, INC., as PRINCIPAL, and Fidelity & Deposit Company of Maryland, located at 801 N. Brand Blvd., Suite, Penthouse, Glendale, CA 91203, a corporation, incorporated under the laws of the State of Maryland, admitted as a surety in the State of California, and authorized to transact business in the State of California, as SURETY, are held and firmly bound unto the CITY OF LONG BEACH, CALIFORNIA, a municipal corporation, in the sum of Two Million DOLLARS (\$2,000,000.00), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, our respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, said Principal has been awarded and is about to enter the annexed contract (incorporated herein by this reference) with said City of Long Beach for the Job Order Contract No. 9 and is required by law and by said City to give this bond in connection with the execution of said contract;

NOW, THEREFORE, if said Principal, as Contractor of said contract, or any subcontractor of said Principal, fails to pay for any materials, provisions, equipment, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Act, during the original term of said contract and any extensions thereof, and during the life of any guaranty required under the contract, or shall fail to pay for any materials, provisions, equipment, or other supplies, used in, upon, for or about the performance of the work to be done under any authorized modifications of said contract that may hereafter be made, or for any work or labor done of any kind, or for amounts due under the Unemployment Insurance Act, under said modification, said Surety will pay the same in an amount not exceeding the sum of money hereinabove specified and, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court; otherwise this obligation shall be void;

PROVIDED, that any modifications, alterations, or changes which may be made in said contract, or in any of the work or labor required to be done thereunder, or in any of the materials, provisions, equipment, or other supplies required to be furnished pursuant to said contract, or the giving by the City of any extension of time for the performance of said contract, or the giving of any other forbearance upon the part of either the City or the Principal to the other, shall not in any way release the Principal or the Surety, or either of them, or their respective heirs, administrators, executors, successors or assigns, from any liability arising hereunder, and notice to the Surety of any such modifications, alterations, changes, extensions or forbearances is hereby waived. No premature payment by said City to said Principal shall release or exonerate the Surety, unless the officer of the City ordering the payment shall have actual notice at the time the order is made that the payment is in fact premature, and then only to the extent that such payment shall result in actual loss to the Surety, but in no event in an amount more than the amount of such premature payment.

This bond shall inure to the benefit of any and all persons, companies and corporations entitled by law to file claims so as to give a right of action to them or their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, the above named Principal and Surety have executed, or caused to be executed, this instrument with all of the formalities required by law on this 19th day of October, 2006.

Athena Engineering, Inc.

CONTRACTOR/PRINCIPAL

By: [Signature]

Name: Jannie Chiera

Title: President

By: [Signature]

Name: Richard Chiera

Title: Secretary

Fidelity & Deposit Company of Maryland

SURETY, admitted in California

By: [Signature]

Name: Frank Morones

Title: Attorney-in-Fact

Telephone: (818) 409-2800

Approved as to form this 2nd day
of November, 2006.

ROBERT E. SHANNON, City Attorney

By: [Signature]

Senior Deputy

Approved as to sufficiency this 6 day
of November, 2006.

By: [Signature]

City Manager/City Engineer

NOTE: 1. Execution the bond must be acknowledged by both PRINCIPAL and SURETY before a Notary Public and a Notary's certificate of acknowledgment must be attached.

2. A corporation must execute the bond by 2 authorized officers and, if executed by a person not listed in Sec. 313, Calif. Corp. Code, then a certified copy of a resolution of its Board of Directors authorizing execution must be attached.

LAC:bg
06-05243
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

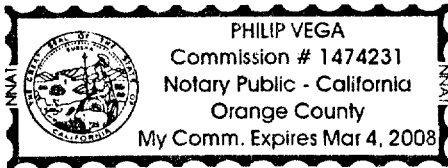
State of California

County of Orange

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Name and Title of Officer (e.g., "Jane Doe, Notary Public")

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- ☐ Title(s): _____
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer
- ☐ Title(s): _____
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
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OF SIGNER
Top of Thumb here

All-Purpose Acknowledgment

State of: California }
County of: Los Angeles } SS.


On October 24, 2006 before me, Brian S. Edwards,
Notary Public

Personally appeared Jannie Chiera & Richard Chiera,

☒ Personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Witness my hand and official seal.


Signature of Notary

My Commission Expires: December 05, 2009

-Optional-

Title or type of Document: City of Long Beach JOC #9 Labor & Material Bond

.

Number of Pages 1 Date Of Document N/A

Signers other than named above N/A

**Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by THEODORE G. MARTINEZ, Vice President, and ERIC D. BARNES, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Philip E. VEGA and Frank MORONES, both of Brea, California, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as aforesaid, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Philip E. VEGA, dated November 24, 2003.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 17th day of November, A.D. 2004.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Eric D. Barnes

Eric D. Barnes

Theodore G. Martinez

By:

Assistant Secretary

Theodore G. Martinez

State of Maryland } ss:
City of Baltimore }

On this 17th day of November, A.D. 2004, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came THEODORE G. MARTINEZ, Vice President, and ERIC D. BARNES, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Maria D. Adamski

Maria D. Adamski

Notary Public

My Commission Expires: July 8, 2007

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertaking, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

CERTIFICATE

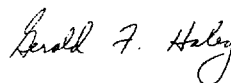
I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 19th day of October, 2006.


Assistant Secretary