

DESIGN-BUILD CONTRACT

31822

THIS CONTRACT is made and entered, in duplicate, as of October 6, 2010 for reference purposes only, pursuant to a minute order adopted by the City of Long Beach at its meeting held on August 3, 2010, by and between the following parties, for services in connection with the Project identified below.

OWNER OR CITY: CITY OF LONG BEACH, a municipal corporation
333 West Ocean Boulevard
Long Beach, California 90802

DESIGN-BUILDER: GOLDEN ACQUISITION CORPORATION DBA EFS WEST,
a California corporation
27525 Newhall Ranch Road, Suite 9
Valencia, California 91355

PROJECT: Shoreline Marina Fuel Dock and Underground
Storage Tank Upgrade

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1 Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents, including but not limited to Exhibit "A" attached to this Contract and incorporated herein by reference. In addition, Design-Builder shall take all reasonable steps to protect from damage facilities and all personal property, equipment, furniture, furnishings and fixtures within the facilities at which Design-Builder is performing Work, including but not limited to preventing the intrusion of persons or things into the facilities.

Article 2
Definitions

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments and change orders to this Contract issued in accordance with the General Conditions of Contract Between Owner and Design-Builder ("General Conditions of Contract") attached hereto as Exhibit "B" and incorporated herein by reference;

2.1.2 This Contract, including all exhibits and attachments;

2.1.3 Written Supplementary Conditions, if any, to the General Conditions of Contract;

2.1.4 The General Conditions of Contract;

2.1.5 Construction documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract; and

2.1.6 Standard Specifications for Public Works Construction, latest edition.

2.2 All other capitalized terms used herein without definition shall have the meanings ascribed to them in the Contract Documents.

Article 3
Interpretation and Intent

3.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1.

3.2 Terms, words and phrases used in the Contract Documents, including this Contract, shall have the meanings given them in the General Conditions of Contract.

3.3 The Contract Documents form the entire Contract between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated

herein. No oral representations or other contracts have been made by the parties except as specifically stated in the Contract Documents.

Article 4 Ownership of Work Product

4.1 Property of Owner. All Design Documents prepared or furnished by or for Design-Builder or its Subcontractors or Design Consultants in connection with the Project's specific services shall be the property of Owner, whether or not the Project is completed, and all common law and statutory copyrights now held or acquired in the future by Design-Builder and its Subcontractors and Design Consultants in the design documents or in the design of the Project, or any portion of the Project, are hereby irrevocably assigned to Owner. Design-Builder and its Subcontractors and Design Consultants are hereby granted by Owner a limited license, revocable at any time by Owner, to copy and use the Design Documents for the purposes of completing the Project only.

4.2 Delivery to Owner. Design-Builder shall deliver Design Documents to Owner as each phase of the Project is completed, or the date this Contract is terminated for any reason prior to completion of all services. If this Contract is terminated for any reason, Owner and its agents, employees, representatives and assigns may use the Design Documents, in whole or in part, or in modified form, at Owner's sole discretion to complete the Project and without further employment of, or payment of further compensation to, Design-Builder or any third party.

4.3 Use by Design-Builder. Design-Builder shall not use the Design Documents, or any portion thereof (except for standard or generic construction details or details created by Design-Builder's Design Consultants prior to commencement of performance of their design services for the Project that are of a type and nature that are unique or original) other than in connection with the Project without the prior written approval of Owner, which approval may be granted or withheld in Owner's sole discretion.

4.4 Indemnity. To the fullest extent allowed by law, in the event Owner terminates this Contract pursuant to Article 8 or General Conditions Section 11.2, Owner shall defend, indemnify and hold Design-Builder and its employees and agents harmless from and against any and all loss arising solely out of Owner's misuse or modification of the Design Documents following such termination.

4.5 Official Submissions. Submissions or distribution of documents to meet official regulatory requirements or for other purposes in connection with the Project shall not be deemed as publication in derogation of copyrights or other reserved rights.

4.6 Inclusion in Contracts. Design-Builder shall include the provisions of Sections 4.1 through 4.6 in all contracts it enters with its Subcontractors and Design Consultants and shall require such Subcontractors and Design Consultants to include such provisions in all contracts with lower tier Subcontractors and Design Consultants.

Article 5 Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days after Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Completion.

5.2.1 Completion of the Work shall be achieved no later than one hundred eighty (180) calendar days after Design-Builder's receipt from Owner of Notice to Proceed, which such date shall be the "Scheduled Completion Date" and shall also be the expiration date of this Contract, unless both are extended pursuant to mutual written agreement of Owner and Design-Builder.

5.2.2 There may be interim milestones of identified portions of the Work as of the date of execution of this Contract. However, interim milestones shall be mutually agreed upon by Owner and Design-Builder.

5.2.3 Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable.

5.2.4 All of the dates set forth in this Article 5 are collectively referred to as Contract Times or individually referred to as a Contract Time and shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Damages. Design-Builder understands that if completion is not attained by the Scheduled Completion Date, Owner will suffer damages. Design-Builder agrees that if completion is not attained by fifteen (15) days after the Scheduled Completion Date (the LD Date), Design-Builder shall pay to Owner Seven Hundred Fifty Dollars (\$750.00) as liquidated damages for each day that completion extends beyond the LD Date. The liquidated damages shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving completion.

Article 6
Contract Price

Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a sum not to exceed Two Hundred Seventy Two Thousand One Hundred Seventy Five Dollars (\$272,175) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract and based on the type of Work and number of City facilities on which Work is performed. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

Article 7
Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the last day of each month, beginning with the first month after the Date of Commencement, Design-Builder's application for payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate application for payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2 Retainage on Progress Payments.

7.2.1 Owner will retain ten percent (10%) of each application for payment but, when fifty percent (50%) of the Work has been completed by Design-Builder, Design-Builder may request that Owner retain only five percent (5%) of each application for payment and, if progress on the work is satisfactory to Owner, then Owner may reduce the retention accordingly.

7.2.2 Deposits in Lieu of Withholding Retainage.

7.2.2.1 Substitution of Securities. At the request and expense of Design-Builder, a substitution of securities may be made as found in Government Code Section 16430 and as authorized by the Public Contract Code Section 22300 in lieu of monies retained by Owner to ensure performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract Documents for each application for payment shall be deposited by Design-Builder with a

state or federally chartered bank in the State of California (“Escrow Agent”), which shall hold such securities pursuant to the Escrow Contract (defined below) until final payment is due in accordance with the Contract Documents. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. Design-Builder shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.

7.2.2.2 Escrow Deposit. Alternatively to Paragraph 7.2.2.1 above, and at the request and expense of Design-Builder, Owner shall deposit retention directly with Escrow Agent. Design-Builder may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by Escrow Agent upon the same terms provided for securities deposited by Design-Builder.

7.2.2.3 Escrow Contract. A prerequisite to the substitution of securities in lieu of retention or the deposit of retention into escrow shall be the execution by Design-Builder, Owner and Escrow Agent of an Escrow Contract for Deposit of Securities in Lieu of Retention and Deposit of Retention form provided by Owner (“Escrow Contract”). The terms of the Escrow Contract are incorporated into the requirements of Paragraph 7.2.2 of this Contract.

7.2.3 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

7.3 Final Payment. Design-Builder shall submit its final application for payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder’s properly submitted and accurate final application for payment within thirty (30) days after Owner’s receipt of the final application for payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing 30 days after payment is due at the rate of ten percent (10%) per annum.

7.5 Record Keeping and Finance Controls. With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three

(3) years after final payment, Owner and Owner's Auditor or his representatives be afforded access from time to time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after final payment.

Article 8
Termination for Convenience

8.1 On ten (10) days prior notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Contract. In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work executed for which Design-Builder has not yet been paid;

8.1.2 Proven loss, cost or expense in connection with the Work but excluding overhead; and

8.1.3 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants.

8.2 If Owner terminates this Contract pursuant to Section 8.1 and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Design Documents shall be as set forth in Article 4 hereof.

Article 9
Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its senior representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Frank Neely
Supervisor
Department of Public Works
333 West Ocean Boulevard
Long Beach, California 90802
(562) 570-5457

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its senior representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Von Regli
Golden Acquisition Corporation dba EFS West
27525 Newhall Ranch Road, Bldg 9
Valencia, California 91355
(818) 267-2400

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

As of the date of execution of this Contract, Design-Builder has not designated any other representatives. All duties of Design-Builder's Representative shall be performed by Design-Builder's Senior Representative unless and until an Owner's Representative is designated by Owner.

Article 10
Bonds and Insurance

10.1 Insurance. As a condition precedent to the effectiveness of this Contract, Design-Builder shall procure and maintain at Design-Builder's expense for the duration of this Contract from insurance companies that are admitted to write insurance in California or from authorized non-admitted insurance companies that have ratings of or equivalent to A:VIII by A.M. Best Company the following insurance:

(a) Commercial general liability insurance equivalent in coverage scope to ISO form number CG 00 01 11 85 in an amount not less than Five Million Dollars (\$5,000,000) per occurrence and in aggregate. This coverage shall include explosion, collapse and underground hazards (XCU), sudden and accidental pollution liability, and products and completed operations liability. Design-Builder shall require any all tiers of subcontractors to carry this coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate. Design-builder and all tiers of subcontractors shall name the Owner, its boards, officials, employees and agents as additional insureds.

(b) Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000). This policy shall be endorsed to state that the insurer waives its right of subrogation against Owner, its boards and commissions, and their officials, employees and agents.

(c) Professional liability or errors and omissions insurance in an amount not less than One Million Dollars (\$1,000,000) per claim.

(d) Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident.

(e) Environmental impairment liability insurance including underground storage tank liability covering third-party bodily injury, property damage, and cleanup coverage on and off site. Such insurance shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence and in aggregate, with a deductible of not more than Fifty Thousand Dollars (\$50,000). If this insurance is written on a "claims-made" basis, it shall have no retroactive date. Design-Builder shall require any environmental consultant or environmental remediation contractor or subcontractor to carry this coverage and to name the Owner, its boards, officials, employees and agents as additional insureds. Design-Builder shall also be required to obtain this coverage from any contractor, subcontractor or subconsultant with potential environmental liability exposure, as determined by the City's Risk Manager or designee at City's discretion.

Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by Owner's Risk Manager or designee and shall protect Owner, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed, or canceled except after thirty (30) days prior written notice to Owner, and shall be primary and not contributing to any other insurance or self-insurance maintained by Owner, and shall be endorsed to state that coverage maintained by Owner shall be excess to and shall not contribute to insurance or self-insurance maintained by Design-Builder. Design-Builder shall notify Owner in

writing within five (5) days after any insurance required herein have been voided by the insurer or cancelled by the insured.

If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Contract expires or is terminated, unless Design-Builder guarantees that Design-Builder will provide to Owner evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Contract expires or is terminated.

Design-Builder shall require that all Subcontractors and Sub-subcontractors which Design-Builder uses in the performance of services hereunder maintain insurance in compliance with this Section unless otherwise agreed in writing by Owner's Risk Manager or designee.

Prior to the start of performance, Design-Builder shall deliver to Owner certificates of insurance and required endorsements for approval as to sufficiency and form. The certificate and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. In addition, Design-Builder shall, within thirty (30) days prior to expiration of the insurance required herein, furnish to Owner certificates of insurance and endorsements evidencing renewal of such insurance. Owner reserves the right to require complete certified copies of all policies of Design-Builder, Subcontractors and Sub-subcontractors, at any time. Design-Builder shall make available to Owner's Risk Manager or designee all books, records and other information relating to the insurance coverage required herein, during normal business hours.

Any modification or waiver of the insurance requirements herein shall only be made with the approval of Owner's Risk Manager or designee. Nor more frequently than once a year, Owner's Risk Manager or designee may require that Design-Builder, Subcontractors and Sub-subcontractors change the amount, scope or types of coverages required herein if, in his or her sole opinion, the amount, scope, or types of coverages herein are not adequate. Any additional cost resulting from a change in insurance requirements will be compensable as a change under Article 9 of the General Conditions of Contract.

The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Design-Builder's performance or as full performance of or compliance with the indemnification provisions of this Contract.

10.2 Builder's Risk Property Insurance.

10.2.1 Design-Builder shall procure and maintain from insurance companies authorized to do business in the state of California builder's risk property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Design-Builder shall include as

additional insureds and loss payees the interests of Owner, Design-Builder, Design Consultants, Subcontractors, and shall insure against perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's application for payment and approved by Owner.

10.2.2 Unless the Contract Documents provide otherwise, Design-Builder shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors.

10.2.3 Prior to Design-Builder commencing any Work, Design-Builder shall provide Owner with certificates evidencing that (i) all property insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder.

10.2.4 Any loss covered under Property Insurance shall be adjusted with Owner and Design-Builder and made payable to Owner as trustees for the insureds as their interests may appear. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10.

10.2.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, Sub-subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants, Subcontractors and Sub-subcontractors and shall require each of them to include similar waivers in their contracts.

10.3 Bonds. Design-Builder shall, coincidentally with the execution of this Contract, execute and deliver to Owner a good and sufficient corporate surety bond, in the form attached as Exhibit "C", in the amount of one hundred percent (100%) of the Contract Price, conditioned on the faithful performance of this Contract by Design-Builder, and a good and sufficient corporate surety bond, in the form attached as Exhibit "D" in the amount of one hundred percent (100%) of the Contract Price, conditioned on the payment of all labor and material claims incurred in connection with this Contract.

Article 11
Other Provisions

11.1 Taxes and Reporting.

11.1.1 As required by federal and state law, Owner is obligated to report the payment of compensation to Design-Builder on Form 1099-Misc. Design-Builder shall be solely responsible for payment of all federal and state taxes resulting from payments under this Contract. Design-Builder's Employer Identification Number is 300188416.

11.1.2 Design-Builder shall cooperate with the City in all matters relating to taxation and the collection of taxes, particularly with respect to the self-accrual of use tax. Design-Builder shall cooperate as follows: (i) for all leases and purchases of materials, equipment, supplies, or other tangible personal property totaling over \$100,000 shipped from outside California, Design-Builder shall complete and submit to the appropriate governmental entity the application forms for a Use Tax Direct Payment Permit contained in Exhibit "E" attached hereto; and (ii) for construction contracts and subcontracts totaling \$5,000,000 or more, Design-Builder shall obtain a sub-permit from the State Board of Equalization for the Site. In completing these forms, Design-Builder shall use the address of the Site as its business address and may use any address for its mailing address. Copies of these forms shall also be delivered to the City Engineer. These forms must be submitted as soon as Design-Builder receives a Notice to Proceed. Design-Builder shall not order any materials, equipment, supplies or other tangible personal property over \$100,000 from vendors outside California until these forms are submitted and, if Design-Builder does so, it shall be a material breach of this Contract. Design-Builder shall insert this language in all subcontracts for the Project. Design-Builder shall not be entitled to and hereby waives any claim or damages for delay against Owner if Design-Builder does not timely submit these forms to the appropriate governmental entity. Design-Builder may contact the City Controller at 562/570-6450 for assistance with these forms.

11.1.3 In addition, Design-Builder shall make all purchases from its vendors' Long Beach sales office if its vendors have a Long Beach office. All purchases under this Contract by Design-Builder and its subcontractors which are subject to use tax of \$500,000 or more shall be allocated to the City of Long Beach. If Design-Builder fails to comply with this Section, it shall be a material breach of this Contract.

11.2 Audit. If payment of any part of the consideration for this Contract is made with federal, state, or county funds and a condition to the use of those funds by Owner is a requirement that Owner render an accounting or otherwise account for said funds, then Owner, the U.S. Department of Housing and Urban Development, and the U.S. Comptroller General shall have the right at all reasonable times to examine, audit, make excerpts and transcriptions from any books, records, documents, and papers of Design-Builder that are directly pertinent to this Contract. Design-Builder must retain all books,

records, documents, and papers that are directly pertinent to this Contract for five (5) years after Owner makes final payment.

11.3 No Peculiar Risk. Design-Builder acknowledges and agrees that the Work to be performed hereunder does not constitute a peculiar risk of bodily harm and that no special precautions are required to perform the Work.

11.4 No Duty to Inspect. No language in this Contract shall create and Owner shall not have any duty to inspect, correct, warn of, or investigate any conditions arising from Design-Builder's Work hereunder, or to insure compliance with laws, rules or regulations relating to the Work. If Owner does inspect or investigate, the results thereof shall not be deemed compliance with or a waiver of any requirements of the Contract Documents.

11.5 Nondiscrimination. In connection with performance of this Contract and subject to applicable rules and regulations, Design-Builder shall not discriminate against any employee or applicant for employment on the basis of race, religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or disability. Design-Builder shall ensure that applicants are employed, and that employees are treated during their employment without regard to these bases. Such actions shall include but not be limited to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. It is the policy of Owner to encourage the participation of Disadvantaged, Minority and Women-owned Business Enterprises and Owner encourages Design-Builder to use its best efforts to carry out this policy in the award of all subcontracts.

11.6 Equal Benefits Ordinance. Unless otherwise exempted in accordance with the provisions of the Ordinance, this Contract is subject to the applicable provisions of the Equal Benefits Ordinance ("EBO"), Section 2.73 et seq. of the Long Beach Municipal Code, as amended from time to time.

11.6.1 During the performance of this Contract, Design-Builder certifies and represents that Design-Builder will comply with the EBO. Design-Builder agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a Contract with the City of Long Beach, Design-Builder will provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of Long Beach's Equal Benefits Ordinance may be obtained from the City of Long Beach Business Services Division at 562-570-6200."

11.6.2 The failure of Design-Builder to comply with the EBO will be deemed to be a material breach of the Contract.

11.6.3 If Design-Builder fails to comply with the EBO, Owner may cancel, terminate or suspend the Contract, in whole or in part, and monies due or to become due under the Contract may be retained by Owner. Owner may also pursue any and all other remedies at law or in equity for any breach.

11.6.4 Failure to comply with the EBO may be used as evidence against Design-Builder in actions taken pursuant to the provisions of Long Beach Municipal Code 2.93 et seq., contractor responsibility.

11.6.5 If Owner determines that Design-Builder has set up or used its contracting entity for the purpose of evading the intent of the EBO, Owner may terminate the Contract. Violation of this provision may be used as evidence against Design-Builder in actions taken pursuant to the provisions of Long Beach Municipal Code Section 2.93 et seq., contractor responsibility.

11.7 Warranty. Design-Builder shall comply with all warranty requirements applicable to property and/or equipment installed in connection with the Project, and shall take such actions as are necessary to assign such warranties to Owner upon completion of the Project.

11.8 DIR Compliance Monitoring. Design-Builder acknowledges that the Project may be subject to the requirements of California Code of Regulations ("CCR"), Title 8, Chapter 8, Subchapter 4.5, concerning compliance monitoring and enforcement by the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California ("DIR"). Design-Builder and each Subcontractor and Sub-subcontractor, agree to comply, at their own expense, with all applicable provisions of the California Code of Regulations, including but not limited to, the obligation to furnish certified payroll records in electronic format, if requested, directly to the Division of Labor Standards Enforcement in accordance with CCR, Title 8, Section 16461. Pursuant to CCR, Title 8, Section 16451(d), Design-Builder shall post a notice on each job site that is subject to compliance monitoring and enforcement by the DIR which contains the following language:

"This public works project is subject to monitoring and investigative activities by the Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site to enable the CMU to ensure compliance with and enforcement of prevailing wage laws on public projects.

The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate job site

posting of minimum prevailing rates required to be maintained by the public entity which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this project may be filed with the CMU at any office of the Division of Labor Standards Enforcement (DLSE). The local office telephone number is _____.

Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the project that the CMU may take legal action against those responsible.

Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc.) as well as the name of the employer, the public entity which awarded the public works contract, and the location and name of the project.

For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the Department of Industrial Relations website found at www.dir.ca.gov/dlse/publicworks.html.”

11.9 Default. Default shall include but not be limited to Design-Builder’s failure to perform in accordance with the Contract Documents, failure to pay any penalties, fines or charges assessed against Design-Builder by any public agency, failure to pay any charges or fees for municipal services performed by Owner, and if Design-Builder has substituted any security in lieu of retention, then default shall also include Owner’s receipt of a stop notice. If default occurs and Design-Builder has substituted any security in lieu of retention, then in addition to Owner’s other legal remedies, Owner shall have the right to draw in the security in accordance with Public Contract Code Section 22300 and without further notice to Design-Builder. If default occurs and Design-Builder has not substituted any security in lieu of retention, then Owner shall have all legal remedies available to it.

11.8 No Political Purpose. Design-Builder shall not use any Community Development Block Grant funds, if any, received under this Contract for political campaign contributions, promotion of political candidates, or any other political purpose.

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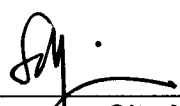
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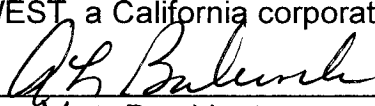
In executing this Contract, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Contract, and each has the necessary corporate approvals to execute this Contract, and perform the services described herein.

OWNER: CITY OF LONG BEACH, a municipal corporation

DESIGN BUILDER: GOLDEN ACQUISITION CORPORATION DBA EFS WEST, a California corporation

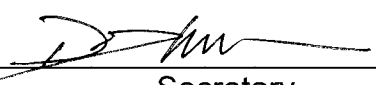
By  Assistant City Manager

Patrick H. West City Manager
Type or Print Name

By  Vice President

Art Babcock
Type or Print Name

Date: 10.6.10 EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

By  Secretary

DANTE JUMANAN
Type or Print Name

Date: 8/24/2010

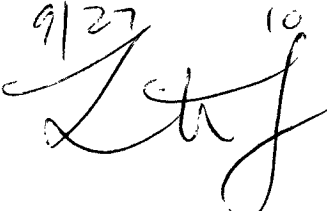
9/27/10


EXHIBIT “A”

Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete Phase I of the Project, consisting of **Item Numbers 1, 5 and 10** as described in the following attachments entitled, “REVISED-PROPOSAL June 22, 2010” and “REQUEST FOR PROPOSAL”.



PLANNING • DESIGN • CONSTRUCTION

27525 Newhall Ranch Road Bldg 9, Valencia, CA 91355

June 24, 2010

Mr. Philip Balmeo, Assistant City Engineer
Department of Public Works
City of Long Beach
333 W. Ocean Blvd, 9th Floor
Long Beach, CA 90802

Subject: Revised Price Proposal for Long Beach Shoreline Marina Fuel Dock RFP

Dear Mr. Balmeo;

EFS West is pleased to submit this revised Price Proposal for the Shoreline Marina Fuel Dock upgrade project. Our revised price proposal is based your letters of June 16th and June 22nd and on our phone conversation. Our revised price proposal is based on the following:

1. All costs to remove and dispose of the water in the USTs are included in Line Item 3 and in Line Item 10 (Deductive Alternate 2).
2. All costs to remove and replace the conduits and wire along the jetty are included in Line Item 3. New conduits will be PVC-coated Rigid.
3. All costs to remove deadmen or hold down slabs are included in Line Item 3 and Line Item 10.
4. All costs for dewatering, if necessary, are included in Line Item 3. The UST manufacturer has confirmed that installation of the USTs in a wet hole is an acceptable practice, as long as the work is performed per their published procedures. It remains EFS West's intention to perform the work without dewatering. If no dewatering is performed, EFS West offers the City a credit of \$74,000.
5. The cost for installation of Schedule 40 stainless steel pipe, per the June 16th specification, is included in Line Item 3. We will install double-walled stainless steel piping along the jetty and on the fuel dock. OmegaFlex piping will be used along the gangway to connect the rigid stainless pipe between the jetty and dock.
6. Pricing for Additive Alternates 1A and 1B reflect the cost for the floating dock replacement and gangway replacement, respectively. Per your instruction, the cost does not include replacement of the buildings. However we will salvage the existing structures if practical. The line item prices are based on the attached quote from Swift Slip, which identifies the proposed size and type of construction for the dock and gangway. In addition, attached is a second quote from Bellingham Marine for comparison purposes. As you can see, there is a wide range of pricing and it will be necessary to develop a specification for the dock system before firm, final pricing can be obtained. EFS West will work with the City following contract award to define a

specification for the dock and gangway replacement and to evaluate construction options, should the City choose to proceed with these alternatives.

ADA compliance features include non-skid surfaces on the dock and gangway, a 4' wide gangway with 42" handrails, end plates on the gangway to allow wheelchair access, and a yellow visibility stripe around the edge of dock. Prior experience with permitting similar docks suggests this configuration will be acceptable, but actual ADA requirements will be determined through discussions with Long Beach B&S during the design phase.

7. Deductive Alternate 2 includes only the costs to remove the existing USTs as an independent process from the installation of the new USTs, per our phone conversation. These costs include shoring the excavation on four sides, pumping and disposing of the water in the USTs, removing and disposing of the USTs and underground piping, sampling of water and soil, and backfilling and resurfacing of the excavation and trenches. These costs are also included in Line Item 3. However, should the City choose to perform this work independently of the installation work, the costs for shoring, excavation, backfilling, and resurfacing must be added to the installation price, since these activities will have to be performed twice.

Please do not hesitate to contact me if you have any questions about our proposal, or if you need any additional information. I can be reached at (661) 705-8236 or on my cell at (818) 235-6293.

Sincerely,
EFS West



Art Babcock
Vice President

REVISED – PROPOSAL June 22, 2010

Pursuant to and in compliance with your Notice Inviting Proposals, and the other documents related thereto, the undersigned Proposer, having familiarized themselves with the terms of the contract, the local conditions affecting the performance of the contract and the cost of work at the place where the work is to be performed, and with the plans thereto, hereby proposes and agrees to perform the contract, including all of its component parts and everything required to be completed, and transportation services necessary to perform the contract, and complete in a workmanlike manner, all of the work covered by contract in connection with the City of Long Beach Shoreline Marina Fuel Dock and Underground Storage Tank Upgrade project identified as:

Design, Installation, and Start-up of Shoreline Marina Fuel Dock and Underground Storage Tank Upgrade

Note: Proposers must propose each item in this schedule. All entries in the entire PROPOSAL must be legible and made in blue ink.

| Item | Description | Total Price |
|------|---|--------------|
| 1 | Final Fuel Dock and UST Design/Drawings/Final Approved Permit Submittal Package | \$ 55,375 |
| 2 | Fueling Equipment and Installation | \$ 496,800 |
| 3 | Civil Improvements (excludes Dock improvements (refer to alternate 1A and 1B), asphalt/concrete breaking, trenching, electrical tie-in, conduits, include removal of existing tanks, include dewatering, etc.) | \$ 346,750 |
| 4 | Station start-up and testing, training, and deliverables (O&M manuals, permit certification, final building certificate of occupancy, final fire acceptance, as-builts (mylars and ACAD), reports, etc.) | \$ 31,000 |
| 5 | Allowance for Environmental Remediation Costs – Construction Costs only (Excludes assessment costs. Assessment and reporting costs shall be part of original RFP refer back to RFP) | \$70,000.00 |
| 6 | Allowance for Various Miscellaneous Items | \$130,000.00 |
| 7 | TOTAL DELIVERED PRICE FOR THE DESIGN, INSTALLATION AND START-UP OF CITY OF LONG BEACH SHORELINE MARINA FUEL AND UNDERGROUND STORAGE TANK UPGRADE INCLUDING ALLOWANCES | \$ 1,129,925 |
| 8 | Additive Alternate 1A: Remove and replace existing floating Dock System and incorporate all other fueling station improvements to comply with ADA requirements and all appurtenant equipment. This includes all design, construction, means and methods. | \$ 235,000 |
| 9 | Additive Alternate 1B: Remove and replace existing gangway to comply with ADA requirements and incorporate all other fueling station improvements and all appurtenant equipment. This includes all design, construction, means and methods, etc | \$ 112,500 |
| 10 | Deductive Alternate 2: Remove and conduct and obtain all required procedures, permits, and means and methods to abandon existing tanks (backfill and cover excavation) in accordance with all jurisdiction requirements immediately upon issuance of NTP and then continue to design and install new tanks and fueling dispensers and all appurtenant equipment, include dewatering if required. Includes all design, reporting, construction, means and methods. | \$ 146,800 |
| 11 | Price for optional long-term operation and maintenance contract (2 additional years beyond standard warranties (standard overall is 1 year warranty)) | \$ 16,450 |

Note: Failure to complete the blanks may be grounds for rejecting the proposal.

W. H. Balouch Signature *EFS West* (Name of Proposer)

6-24-2010 Date *Art Babcock, V.P.* (Name and Title of Signing Official)

EFS West Company



REQUEST FOR PROPOSAL

Shoreline Marina Fuel Dock and Underground
Storage Tank Upgrade

REFUELING STATION

CITY OF LONG BEACH
DEPARTMENT OF PUBLIC WORKS

March 2, 2010

Solicited by the
CITY OF LONG BEACH
DEPARTMENT OF PUBLIC WORKS

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EXECUTIVE SUMMARY

Opportunity

The City of Long Beach, Department of Public Works, is soliciting a private sector team to design and construct a public access Fuel Dock and Underground Storage Tank (UST) refueling station.

Location

The proposed refueling station is located at Shoreline Marina, more specifically at 700 E. Shoreline Dr, Long Beach.

Schedule

The City would like to complete the refueling station as soon as possible to accommodate the public's demand to refuel water vessels.

Selection Process

The selection process described in the RFP is a two-step process. Step one requires that all interested teams submit a proposal outlining the team members, qualifications, certifications, licenses, and relevant experience.

The City will review all proposals and create a "short-list" of finalists who will be requested to meet the requirements of step two. The number of proposers selected for the "short-list" will depend on the total number and quality of proposals received.

Step two requires the "short-list" teams to prepare and submit cost proposals. Detailed instructions for the preparation of the cost proposals will be mailed to the "short-list" firms only. The City will invite each team on the "short-list" to make an oral presentation and to present the details of their cost proposal. These presentations will provide an opportunity for teams to elaborate on the materials presented in their responses to the RFP.

The City will select a team based on the combination of qualifications and cost. The successful team will be notified in writing to commence further negotiations with the City.

Additional detailed information describing the opportunity, background, project description, development approach, proposed site, design guidelines, submittal requirements and selection process is included on the pages that follow.

THE OPPORTUNITY

The City of Long Beach, Bureau of Fleet Services, is soliciting a private sector team to design and construct a public access Fuel Dock and Underground Storage Tank (UST) refueling station.

PROJECT DESCRIPTION

The project requires a private sector team to design and construct the replacement of an existing Marina Fuel Dock fueling system.

Existing Fueling System

The current fuel system was installed in 1982 and consists of the following major components:

UST's (four single-walled Xerxes fiberglass tanks)

- 10,000 gallon gasoline tank (87 octane)
- 10,000 gallon gasoline tank (slurry filled)
- 10,000 gallon diesel tank
- 4,000 gallon gasoline tank (91 octane)

Note that the UST's are set below groundwater level and held in place by concrete anchors.

Underground Piping: Double-walled fiberglass piping runs between the UST's and the tank vents, and between the UST's and a transition sump located at the base of the jetty. The piping is buried in approximately 125 feet of trench, approximately three feet below grade (a combination of asphalt and concrete).

Transition Sump: Piping connections between the double walled underground piping and the single walled aboveground piping are located in a product-tight fiberglass sump that is approximately four feet by four feet by four feet. The sump is protected by a concrete enclosure with a steel lid.

Above-Ground Piping: Painted, single-walled steel piping runs approximately 1,000 feet along the jetty between the transition sump and the base of the floating fuel dock. Additionally, single walled piping on top of the fuel dock from the gangway to the dispensers.

Flexible Piping: Single-walled flexible piping, routed through flexible ducting, runs the sixty feet from the jetty to the fuel dock.

Dispensers: There are two banks of dispensers on the fuel dock. The dispensers are contained in under dispenser containment (UDC) systems.

Monitoring System: The UST site is monitored with a Veeder Root TLS 350 monitoring panel located in a janitorial closet approximately 100 feet east of the tanks.

See Exhibit A for site plans of the existing system.

Proposed Fueling System

The proposed fueling system shall consist of the following major components and all associated equipment. When specific equipment makes or models are named, no substitutions shall be made unless the term "or equivalent" is mentioned.

UST's: Two double-walled fiberglass, hydrostatically monitored tanks:

- 12,000 gallon diesel tank
- 13,000 gallon split tank (87 octane- 8,000 gallons; 91 octane- 5,000 gallons)

Underground Piping: Vacuum monitored, Fiberglass Systems (Smith), Red Thread, double-walled piping shall be used between the tanks and the vents, and between the tanks and the transition sump.

Transition Sump: The transition from underground to above-ground piping takes place in the existing aboveground sump.

Above-Ground Piping: The 1,000 foot (approx.) run along the jetty and all other piping on the dock shall be Brugg double-walled stainless steel piping.

Splitter Sump: Prior to spanning the gangway towards the fuel dock, the three product lines shall split into six lines inside of an aboveground, covered sump positioned on the jetty.

Dispensers: The system shall consist of two, two-product dispensers for gasoline (87 and 91 octane) and two single-product dispensers for diesel. Dispensers shall be Gasboy 9100 series. Bravo brand above-dock UDC's shall be installed. Six hose reels shall be contained in above-dock sumps.

Monitoring: The system shall use two Veeder Root monitoring panels. The existing Veeder Root TLS 350 panel shall monitor the UST's, underground piping and transition sump. A new Veeder Root TLS 300 shall monitor the splitter sump, UDC's.

Telemetry: The system shall be fully integrated with the existing City wide telemetry system for leak monitoring and detection and alarm scenarios.

See Exhibit A for conceptual site plans of the new site.

DEVELOPMENT APPROACH

Design/Build Project

The proposer shall design, build and commission the refueling station as a turnkey facility and provide training on the operation and maintenance of the station to key City personnel.

Environmental Documentation

The City will obtain the categorical exclusion and the coastal commission permit for this project. The proposer shall pay and procure for all other permits and plan

check, including, but not limited to SCAQMD, Regional Water Quality Control Board, Health Department, Building Department, Public Works, Fire Department, etc. The proposer shall assist the City in obtaining the coastal commission permit if additional design is required to complete the permit and obtain approval.

PROJECT TEAM QUALIFICATIONS

The project team must be composed of experienced professionals who have demonstrated their capacity to produce superior refueling stations on a cost effective basis.

The City seeks a team under a single, responsible lead entity or "Proposer". The Proposer shall form a team which includes California Registered Engineers, Licensed California Class "A" contractors, and equipment providers with expertise in the design, fabrication and installation of UST and dispenser appurtenances. Project management, engineering firms, general contractors or other firms may submit as a "Proposer" provided they assume the responsibility described in the RFP.

Project team as submitted must include, at minimum:

- Engineer (Mechanical, Electrical, and Civil (both general and structural)) all licensed in the State of California)
- Registered Geologist (licensed in the State of California – for tank closure)
- California Registered Class "A" General Contractor(s)

Other team members may be identified in the proposal for City's approval at a later date. It is important to note that the City will only enter into a contract with one Proposer. All other team members shall be considered subcontractors or subconsultants to the Proposer.

Duties of the Proposer shall include:

- Overall responsibility for the project performance including schedule and budget
- Coordination of all team members and government representatives
- Obtain and pay for all required permits, entitlements, and City approvals
- Submit and obtain approval for all required reports to all regulatory agencies for UST removal and new installations. This includes all required remediation efforts if required by jurisdictional authorities.

Duties of engineer shall include:

- Program assimilation, review, validation, and workshops
- Design drawings (preliminary and final)
- Design development (preliminary and final)
- Preparation of cost estimates
- Construction drawings (pre-final and final)
- Review of shop drawings
- Approval of invoices and construction supervision
- Change order approval

- Final stamped and signed As-Builts in CADD and printed mylars per City Standards

Duties of the general contractor (if different from the Proposer) shall include:

- Overall construction
- Preparation of cost estimates
- Value engineering and constructability reviews during the design phase
- Subcontractor pre-qualification
- Subcontractor coordination
- Provision of performance and payments bonds
- Schedule of values and prices
- Critical Path Scheduling (CPM or other network-type schedule)
- Invoice approval
- Change order recommendation
- Construction quality control
- Construction survey
- Job-site safety
- Ensuring City operations are not interfered with or impacted

THE SITE

The proposed refueling station is located at Shoreline Marina, more specifically 700 E. Shoreline Drive, Long Beach. The Shoreline Marina opened in 1982 and has 1,764 slips for recreational boaters. It is located between the Queen Mary and the Long Beach Convention Center in the heart of downtown Long Beach. The City constructed a refueling station at this site in 1985 for gasoline and diesel (see site conceptual configuration Exhibit A).

DESIGN GUIDELINES

The RFP is not a design competition, but the City has identified principles which are integral to achieving the Project's intent. These principles should guide proposers in assembling the appropriate team and anticipating the approach to the project. The project must meet high functional and finish standards, yet be affordable.

The following design recommendations are provided for general guidance:

- Primary design purpose should be functionality of station
- Station should be designed to minimize maintenance costs
- Safety, traffic flow and convenience of use should be important factors in the design
- Consideration must be given to minimize downtime during gasoline and diesel deliveries

As additional guidance, the attached concept (Exhibit A) shows a possible layout for the station. This is only a suggestion. The City anticipates a creative collaboration process with the selected project team.

PROJECT APPROVAL

In addition to the building plan check process, upon request the Proposer must submit the project to a fleet review committee. This process and submission requires an application with the following information illustrated:

- Vicinity map
- Site plan
- Full elevations (As Deemed necessary)
- Foundations and footings (As Deemed necessary)
- Tank installation/Impounding/Containment
- Tank Systems
- Piping & trench with flow diagram
- Dispenser/Island
- Leak Detection/Shutdown Fire Suppression
- Electrical

Following approval by the fleet review committee, the project will be subject to final approval by the City's Planning and Building Department and Fire Prevention Bureau.

SUBMITTAL REQUIREMENTS

Proposers to this RFP must submit ten (10) numbered sets of the information requested below. The City prefers the submittal in 8-1/2 x 11 inch vertically bound format, either loose-leaf or spiral, with section heads, tabbed and marked by subject. Clear and brief responses will be appreciated.

Pertinent Experience and Track Record

1. State the intended roles of each person or firm listed in the proposal and provide the names, addresses and telephone numbers of at least three references for each.
2. Identify management level personnel, support personnel and the team's project manager. Include a graphic depiction of the organizational structure of the firms and persons associated with the project. The project team shall not substitute any individuals or firms for those identified without the written permission of the City. Also, provide documentation of projects where team members have worked together. Include resumes of key members in the project team, describing each individual's professional qualifications and experience.
3. Provide evidence of relevant experience in the design, construction and management of gasoline and diesel refueling stations of similar construction. Include a list of relevant, completed projects demonstrating the competence of all project managers, architects, engineers, contractors and consultant included on the project team both for individuals and firms. Experience related to refueling station structure designed and constructed for municipal or other government agencies should be noted.

The City recognizes that relevant individual experience may have occurred during previous professional affiliations. Proposers are encouraged to note these circumstances. Identify and describe relevant previous projects including:

- Location
 - Relevance to this project
 - Size and cost
 - Client and principal operator
 - Construction timeline (from NTP to acceptance)
 - Quality control measures
 - Current status
 - **References and contact information (Current email and telephone numbers are required as part of submittal in order to conduct proper reference verifications)**
 - Project delivery methods (i.e., design-build, design-bid-build, etc.)
4. The City prefers that team members be sufficiently near to each other so as to expedite meetings and drawings. It is the sole responsibility of the Proposer to coordinate the various team members and travel arrangements if required. No additional compensation will be tendered for these arrangements.
5. The project team, unless advised otherwise, must adhere to City of Long Beach, outreach goals and participation for Minority Business Enterprises, Women Business Enterprises and Disadvantaged Business Enterprises (see Exhibit B). The Proposer will be considered the “Prime” and all other team members will be considered “subcontractors” or sub-consultants for purposes of City’s MBE/WBE/DBE outreach and participation requirements.

Project Approach

Present your team’s intended approach to the project design:

- Project management and team organization
- Methodology for assimilating the project documents
- Coordination with the City
- Design quality
- Alternative construction methods
- Alternative phasing requirements

Include a description of the project management system used, detailing operating procedures, quality control procedures and other management methods to be employed.

Cost Proposal (Short-listed Candidates Only)

Cost proposals for the design and construction of the refueling station and other improvements described in this RFP must be submitted by project teams on the “short list”.

SELECTION PROCESS

Issuance of the Request for Proposals

This document with attachments (listed at the end of document) is a Request for Proposals (RFP) only.

Evaluation of Qualifications

A selection panel (the "Panel") will conduct a two-step evaluation process.

- **Step One**

The Panel will review the submittals and create a "short list" of finalists for oral presentations and cost proposals. Notice of this "short list" will be mailed to all proposers on or about May 10, 2010. Detailed instructions for the preparation of the cost proposals will be mailed to the "short list" firms only. The number of proposers selected for the short list will depend on the total number of submittals and the quality of the proposals.

- **Step Two**

The Panel will invite each team on the short list to make an oral presentation and submit a cost proposal. These presentations will provide an opportunity for teams to elaborate on the materials presented in their proposals.

At the presentations, all identified members of the team, including the Engineer and general contractor, must submit a cost proposal. The City will outline the terms of the cost proposal and send it with the "short list" notification.

As schedules are established, the general contractor shall pre-qualify and obtain bids from at least three sub-contractors for each construction trade. This sub-contractor bidding process shall be conducted in compliance with applicable construction laws governing MBE/WBE/DBE of the City of Long Beach. Contractor and sub-contractors shall be subject to the City's Section 3 requirements.

Please note: The Panel is not obligated to make its final selection based on cost alone. However, the City retains the right to negotiate with runners-up if agreement cannot be reached with the City's first choice.

SELECTION SCHEDULE

Deadline for Submission

The proposals must be received no later than 5:00 p.m., April 6, 2010. To ensure fairness, no proposals will be accepted after 5:00 p.m. Faxes and E-mails will not be accepted. All proposals shall be marked "Long Beach Shoreline Marine Fuel Dock and UST Upgrade RFP" on the outside and addressed to:

**Department of Public Works
City of Long Beach**

**333 W. Ocean Blvd
9th Floor
Long Beach, CA 90802
Attention: Phillip Balmeo, Assistant City Engineer**

Individuals authorized to bind the team to all terms and conditions of the proposal shall sign it. All proposals shall provide the name, title, address and telephone number with the individuals with authority to contractually bind the Proposer and the person who may be contacted by the City during the evaluation process and contract award process.

Schedule

The City believes the selection schedule will be as follows:

| | |
|-------------------------------|----------------|
| Statements due: | April 6, 2010 |
| Short - list prepared: | April 27, 2010 |
| Short - list interviews: | May 17, 2010 |
| Recommendation for selection: | May 28, 2010 |

Questions regarding this Request for Proposal should emailed to:

Phillip Balmeo
Assistant City Engineer
Phillip.balmeo@longbeach.gov

Questions may only be delivered via email. All requests for interpretation shall be submitted to the Fleet Services Manager in writing no later than April 1, 2010.

Proposers are strongly cautioned **NOT** to contact elected officials or members of the selection Panel regarding the selection process. Efforts to lobby or influence individuals or organizations involved in the selection may result, at the City's sole discretion, in dismissal from further consideration.

Expenses

The project team shall bear all expenses incurred during the solicitation and negotiation process with the City. This RFP does not and shall not commit the City to enter any agreement, to pay any costs incurred in the preparation of the proposals, or to procure or contract for services or supplies.

OTHER TERMS AND CONDITIONS

Policy on Disadvantaged, Minority- and Women-owned Business Enterprises

It is the policy of the City of Long Beach to encourage the use of Disadvantaged-, Minority- or Women-Owned Business Enterprises in all aspects of contracting relating to construction, materials and services, professional services, land development related activities, leases and concessions whenever possible.

HUD Section 3 Requirements

This contract is subject to HUD Section 3 requirements. Refer to Exhibit B.

Equal Benefits Ordinance

Proposers are advised that any contract awarded pursuant to this procurement process shall be subject to the applicable provisions of Long Beach Municipal Code (LBMC) Section 2.73 et seq., the Equal Benefits Ordinance. Proposers shall refer to the LBMC for further information regarding the requirements of the Ordinance.

All proposers shall complete and return, with their proposal, the Equal Benefits Ordinance Compliance Form and the Equal Benefits Ordinance Disclosure Form contained in Exhibit B.

Equal Employment Opportunity

The City of Long Beach is an equal opportunity employer and requires all consultants to comply with policies and regulations concerning equal employment opportunity.

Conflict of Interest

The consultant shall be required to complete conflict of interest forms (Form 700). Additionally, if selected to provide the required services, the consultant's firms or its subsidiaries may not be allowed to propose or bid on other aspects of the projects.

Use Tax

The consultant shall cooperate with the City in all matters relating to taxation and the collection of taxes. It is the policy of the City to self-accrue use tax associated with its contracts. The use tax, which is self-accrued, will be remitted to the State of California pursuant to the City's permit with the State Board of Equalization. See Exhibit B.

Insurance

The selected proposer shall comply with the insurance specifications in the specimen Design-Build Agreement. Please refer to Exhibit B for information.

Miscellaneous

1. The City reserves the right to amend the Request for Proposal by addendum prior to the final due date for submission.
2. The City reserves the right to modify aspects of the selection process and to waive any defects of form or content in proposals.
3. The City reserves the right to accept or reject any and all proposals received as a result of this RFP, and to cancel in part or entirely the RFP. If all proposals are rejected, the City may seek further proposals at a later time.
4. All reports, proposals or other data or materials which are submitted shall become the sole property of the City and a matter of public record. However, all submittals will not be made public nor considered a public record until after the City Council takes action to award a contract.

Proposers must identify all copyrighted material, trade secrets, or other proprietary information that they claim are exempt from disclosure under California Public Records Act (California Government Code Sections 6250 et. Seq.). In the event a proposer claims such an exemption, it must state in the proposal that:

The Proposer shall indemnify the City of Long Beach and hold it harmless from any claim, damage, loss, liability cost or expense and defend any action brought against the City for City's refusal to disclose materials marked "confidential", trade secrets or other proprietary information to any person making a request therefor.

Failure to include such a statement shall constitute a waiver of the proposer's right to claim an exemption from disclosure and authority for the City to provide a copy of the submittals or any part thereof to the requester.

5. All products used or developed in the execution of any contract resulting from this RFP shall remain in the public domain at the completion of this project.
6. THERE IS NO OBLIGATION TO ENTER ANY BINDING LEGAL DOCUMENT UNTIL FINAL APPROVAL BY THE LONG BEACH CITY COUNCIL IS RECEIVED.
7. This RFP is not, and shall not be construed to be, an offer, but is merely a request for proposal.
8. The City shall not be liable for any costs or expenses incurred by any person or entity in the preparation of proposal or for attending any meetings or interviews prior to the award of a contract for the project.
9. The submittal of a proposal to the RFP shall be considered a representation by the proposer that it has read and understands the RFP and is evidence that the proposer has inspected the site and is fully aware of all conditions which may affect the project and its response to the RFP, whether or not such conditions are referred to in the RFP. The failure or omission of any proposer to examine the RFP or visit the site of the work shall not relieve any proposer from its obligation with respect to the RFP or the documents to be executed by the parties upon selection of the project team.
10. Whenever any proposer experiences doubt as to the meaning or intent of any part of the RFP or other documents pertaining to the work of the RFP, the

proposer must submit a written request for interpretation in accordance with the schedule contained herein.

11. In consideration of delivery of the RFP and as an inducement to the City to review the proposal and consider choosing a proposer, the proposer by its submittal agrees that its proposal shall be irrevocable and shall not be withdrawn for a period of ninety (90) days after the submittal deadline.
12. Proposers are cautioned that prevailing wage rates must be paid for construction, demolition, inspection and surveying work on the project.

EXHIBIT “B”

GENERAL CONDITIONS OF CONTRACT

Article 1

General

1.1 Mutual Obligations

Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 Day or Days shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.2 Design Consultant is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

1.2.3 Hazardous Conditions are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.4 Legal Requirements are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.5 Final Scope Letter as shown on Exhibit "A" attached to the Contract is developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

1.2.6 Site is the land or premises on which the Project is located.

1.2.7 Subcontractor is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.8 Sub-Subcontractor is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.9 Substantial Completion is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.10 Work is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

1.2.11 Design Documents are all drawings, specifications and calculations prepared by the Design-Builder, its Design Consultants or Subcontractors, in the performance of this Contract whether prepared before or after the execution of this Contract.

1.2.12 Final Completion is the date when the Design-Builder has completed all of the obligations of the Contract including the satisfactory completion of all punch list items, and furnishing to the Owner all items required by Section 6.7.2.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, and (iv) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Times.

2.1.3 Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Times. The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Times, as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Contract to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate

the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services

Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services

The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, in the event that the Contract Documents specify that portions of the work be performed in accordance with a specific performance standard, the design services shall be performed so as to achieve such standards.

2.4 Design Development Services

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following

the design review meeting, Owner shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 Design-Builder shall submit to Owner Contract Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Contract Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Contract Documents in accordance with the procedures set forth Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Contract Documents and shall submit one set of approved Contract Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. With the exception of the existing pile capacities, neither Owner's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Times shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Contract affecting the performance of the Work, or if a

Guaranteed Maximum Price is established after the date of the Contract, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Contract, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Times shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

2.7.4 Design-Builder assumes responsibility for and shall ensure the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder shall reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder shall implement and monitor all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative

shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty

Design-Builder warrants to Owner that the design shall be performed in accordance with the Contract Documents and that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work

2.10.1 Design-Builder shall correct any Work that does not conform to the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days after receipt of notice from Owner that the Work does not conform to the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall pay for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

2.10.3 The one year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.2 Owner's Representative

Owner's Representative shall provide Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

3.3 Government Approvals and Permits

3.3.1 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.4 Owner's Separate Contractors

3.4.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and immediately notify Owner within 12 hours and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include retaining qualified independent experts to ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides Design-Builder with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder,

Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt notice to Owner of such condition, which notice shall not be later than fourteen (14) days after a Differing Site condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements

5.1.1 Design-Builder's liability insurance set forth in the Contract shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.2 Any professional liability insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

Article 6

Payment

6.1 Schedule of Values

Within ten (10) days after execution of the Contract, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.2 Monthly Progress Payments

6.2.1 On or before the date established in the Contract, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 The Application for Payment shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments

6.3.1 On or before the date established in the Contract, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment, it will notify Design-Builder in writing at least five (5) days prior to the date

payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Except for stop notices and for amounts withheld pursuant to the California Labor Code, the Owner will notify Design-Builder when the Owner receives any third party claims relating to this Contract, in accordance with Section 9201 of the Public Contract Code.

6.3.3 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Contract.

6.4 Right to Stop Work and Interest

If Owner fails to pay Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate of 10% per annum.

6.5 Design-Builder's Payment Obligations

Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.1 hereof.

6.6 Substantial Completion

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete. Within five (5) days after Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be substantially complete provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement,

provided that Design-Builder has completed all of the Work in conformance with the Contract Documents.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

- .1** an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
- .2** a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
- .3** consent of Design-Builder's surety, if any, to final payment;
- .4** all operating manuals, warranties and other deliverables required by the Contract Documents; and
- .5** certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.
- .6** As-built/Record Drawings completed in accordance with the Owner's standards.

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion, (iii) the terms of any special warranties required by the Contract Documents, and (or) Design-Builder's negligence.

Article 7

Indemnification

7.1 General

The Design-Builder shall indemnify, hold harmless, and protect City, its Boards, Commissions, and their officials, employees and agents ("Indemnified Parties") from and against any and all demands, liability, loss, suit, claim, action, cause of action, damage, cost, judgment, settlement, decree, arbitration award, stop notice, penalty, loss of revenue, and expense (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, and costs of investigation, mediation, arbitration, litigation and appeal), in law or in equity, of every kind and nature whatsoever, arising out of or in connection with, resulting from or related to, or claimed to be arising from the Contract or the Work performed by Design-Builder, or any of its officers, agents, employees, subcontractors of any tier, material suppliers, or any person for whose acts any of them may be liable, regardless of whether such claim, suit or demand is caused, or alleged to be caused, in part, by an Indemnified Party including, but not limited to, liability arising from:

- (1) Bodily or personal injury, emotional injury, sickness or disease, or death to any persons;
- (2) Damage to property, including property under the care and custody of City;
- (3) Civil fines or penalties;
- (4) Any dangerous, hazardous, unsafe or defective condition of, in or on the Work site, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the Work site by Design-Builder, its officers, agents, employees or subcontractors;
- (5) Any operation conducted upon or any use or occupation of the Work site by Design-Builder, its officers, agents, employees, or subcontractors under or pursuant to the provisions of the Contract or otherwise;
- (6) Any act, omission or negligence of Design-Builder, its officers, agents, employees, or subcontractors;

(7) Infringement of any patent rights, licenses, copyrights or intellectual property which may be brought against the Design-Builder or City arising out of Design-Builder's Work, for which the Design-Builder is responsible;

(8) Any and all claims against City seeking compensation for labor performed or materials used or furnished to be used in the Work or alleged to have been furnished, including all incidental or consequential damages resulting to City from such claims;

(9) Failure to comply with any applicable law, statute, code, ordinance, regulation, permit, or orders;

(10) Any misrepresentation, misstatement or omission with respect to any statement made in or any document furnished by the Design-Builder in connection therewith;

(11) Any breach of any duty, obligation, or requirement under the Contract Documents.

All of the above are collectively hereafter referred to as "Claims" and individually as a "Claim".

7.2 Enforcement and Restrictions

7.2.1 In addition to Design-Builder's duty to indemnify, Design-Builder shall have a separate and wholly independent duty to defend Indemnified Parties against all Claims. If any Claim is alleged or brought against Indemnified Parties, Design-Builder shall defend Indemnified Parties at Design-Builder's expense by legal counsel approved by City and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Design-Builder shall be required for the duty to defend to arise. City shall notify Design-Builder of any Claim, shall tender the defense of the Claim to Design-Builder, and shall assist Design-Builder, as may be reasonably requested, in the defense.

7.2.2 Design-Builder's obligations under this Section 7 shall apply regardless of whether or not such Claim was caused in part or contributed to by any actual or alleged negligent act or omissions of an Indemnified Party.

7.2.3 If a court of competent jurisdiction determines that a Claim was caused by the active negligence, sole negligence or willful misconduct of Indemnified Parties, Design-Builder's costs of defense and indemnity shall be (1) reimbursed in full if the court determines sole negligence by the Indemnified Parties, or (2) reduced by the percentage of active negligence and/or willful misconduct attributed by the court to the Indemnified Parties.

7.2.4 If this Contract includes work or services performed by a design professional, such as an architect, landscape architect, professional engineer or professional land surveyor, subject to California Civil Code Section 2782.8, Design-Builder shall defend and indemnify Indemnified Parties against design-related Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design-Builder or a subcontractor.

7.2.5 Design-Builder agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subcontractor in performance of the Contract.

7.2.6 Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. In the event of any claim, suit or demand made against any Indemnified Parties, the City may in its sole discretion reserve, retain, or apply any monies due to the Design-Builder under the Contract for the purpose of resolving such claims; provided, however, that the City may release such funds if the Design-Builder provides the City with reasonable assurance of protection of the City's interests. The City shall in its sole discretion determine whether such assurances are reasonable. Design-Builder's obligations under this Section 7 extend to claims occurring after termination of the Design-Builder's performance of the Contract or final payment to the Design-Builder.

7.3 No Limitations

Design-Builder's obligations under this Section 7 are in addition to any other rights or remedies which the Indemnified Parties may have under the law or under the Contract Documents. Design-Builder's

indemnification and defense obligations set forth in this Section 7: (i) are separate and independent from the insurance provisions set forth above; and (ii) do not limit, in any way, the applicability, scope, or obligations set forth in the insurance provisions. In claims, suits, or demands against any Indemnified Party by an employee of the Design-Builder, a subcontractor, anyone directly or indirectly, employed by them, or anyone for whose acts they may be liable, the Design-Builder's indemnification and defense obligations shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Design-Builder or a subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

Article 8

Time

8.1 Obligation to Achieve the Contract Times

Design-Builder shall commence performance of the Work and achieve the Contract Times in accordance with Article 5 of the Contract.

8.2 Delays to the Work

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Times for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Times include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price excluding overhead and fee as set forth in Article 2

of the Contract, provided, however, that the Contract Price shall not be adjusted for those events set forth in Section 8.2.1 above that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders

9.1.1 A Change Order is a written instrument issued after execution of the Contract signed by Owner and Design-Builder, stating their agreement upon all of the following:

- .1** The scope of the change in the Work;
- .2** The amount of the adjustment to the Contract Price, if any; and
- .3** The extent of the adjustment to the Contract Times, if any.

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.2 Work Change Directives

9.2.1 A Work Change Directive is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work

Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

- .1** Unit prices set forth in the Contract as subsequently agreed to between the parties;
- .2** A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
- .3** Costs, fees and any other markups set forth in the Contract; and
- .4** If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including overhead and fee as set forth in Article 2 of the Contract. If the net result of both additions and deletions to the Work is an increase in the Contract Price, overhead and profit shall be calculated on the basis of the net increase to the Contract Price. If the net result of both additions and deletions to the Work is a decrease in the Contract Price, there shall be no overhead or profit adjustment to the Contract Price. Design-Builder shall maintain a documented, itemized

accounting evidencing the expenses and savings associated with such changes.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. Payment shall be as later determined by mediation or arbitration, if the Owner and Design-Builder agree thereto, or as fixed in a court of law. Although not to be construed as proceeding under extra work provisions, the Contractor shall keep and furnish records of disputed work. The basis for establishing costs shall be as stated in the 2003 Greenbook Section 3-3.3.2.

9.5 Emergencies

In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief

If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, notice shall be given within a reasonable time, not to exceed ten (10) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange

relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If, after meeting, the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, within ten days after selection of the mutually acceptable mediator, then by procedures established by the mediator.

10.3 Duty to Continue Performance

unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.4 CONSEQUENTIAL DAMAGES

10.4.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.4.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.4.2 The consequential damages limitation set forth in Section 10.4.1 above is not intended to affect the payment of damages, if any, set forth in Section 5.4 of the Contract.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not

exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Times if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of work by Owner.

11.2 Owner's Right to Perform and Terminate for Cause

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide notice to Design-Builder that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within seven (7) days after Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Contract terminated for default by providing notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Contract terminated pursuant to Section 11.2.2 above, Owner may enter the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person

or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.4 hereof.

11.2.4 If Owner improperly terminates the Contract for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Contract.

11.3 Bankruptcy of Design-Builder

11.3.1 If Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

- .1** The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and
- .2** The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek

assumption or rejection of the Agreement within sixty (60) days after the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.3.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

Article 12

Miscellaneous

12.1 Assignment

Neither Design-Builder nor Owner shall without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

12.2 Successorship

Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.3 Governing Law

The Contract and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

12.4 Severability

If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal

Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts or the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.5 No Waiver

The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12.6 Headings

The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.7 Notice

Whenever the Contract Documents require that notice be provided to the other party, notice shall be in writing and deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice or, (ii) by registered mail, return receipt, postage prepaid to the address indicated in the Agreement on the date shown on the return receipt. Notice shall be deemed given on the date personal delivery is made or on the date shown on the return receipt, whichever is earlier.

12.8 Amendments

The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS: That we, GOLDEN WEST ACQUISITION CORPORATION DBA EFS WEST, a California corporation, as PRINCIPAL, and The Ohio Casualty Insurance Company located at see *, a corporation, incorporated under the laws of the State of Ohio, 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 see ** DOLLARS (\$272,175.00, 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. * 27525 Newhall Ranch Road, Bldg. 9, Valencia, Ca. 91355

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 Shoreline Marina Fuel Dock and Underground Storage Tank Upgrade 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;

****Two Hundred Seventy-Two Thousand One Hundred Seventy-Five and no/100**

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 23rd day of August, 2010.

Golden West Acquisition Corp.
DBA: EFS West

The Ohio Casualty Insurance Company
SURETY, admitted in California

Contractor
By: [Signature]

By: [Signature]

Name: DANTE ILMANAA

Name: David Noddle

Title: [Signature]

Title: Attorney-in-fact

By: [Signature]

Telephone: 858-450-0582

Name: ART BABCOCK

Title: Vice Pres.

Approved as to form this 27th day of September, 2010.

Approved as to sufficiency this 26 day of August, 2010.

ROBERT E. SHANNON, City Attorney

By: [Signature]
Deputy City Attorney

By: [Signature]
City Manager/City Engineer

- NOTE: 1. Execution of 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 or, 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.

EXHIBIT "C"

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of LOS ANGELES

On Sept. 14, 2010 before me, LIANE JUMANAN, NOTARY PUBLIC,
(Here insert name and title of the officer)

personally appeared ARTHUR L. BABCOCK and DANTE JUMANAN

who 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~~ 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.

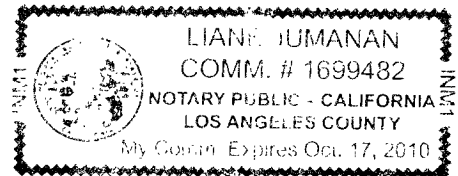
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment. Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.

The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public). Print the name(s) of document signer(s) who personally appear at the time of notarization.

Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~ is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.

The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form. Signature of the notary public must match the signature on file with the office of the county clerk.

Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document. Indicate title or type of attached document, number of pages and date. Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).

Securely attach this document to the signed document.

DESCRIPTION OF THE ATTACHED DOCUMENT

BOND #4059520

(Title or description of attached document)

EXHIBIT "C"

(Title or description of attached document continued)

Number of Pages 1 Document Date 08-23-10

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

ACKNOWLEDGMENT

State of California
County of Los Angeles)

On 08-23-2010 before me, Christopher John Rizzotti, Notary
(insert name and title of the officer)

personally appeared David Noddle,
who 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.

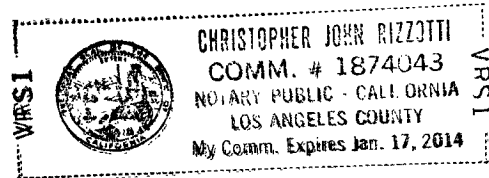
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

Signature of Officer



CERTIFIED COPY OF POWER OF ATTORNEY
THE OHIO CASUALTY INSURANCE COMPANY

No. 41-826

Know All Men by These Presents: That THE OHIO CASUALTY INSURANCE COMPANY, an Ohio Corporation, pursuant to the authority granted by Article III, Section 9 of the Code of Regulations and By-Laws of said Company, does hereby nominate, constitute and appoint: **David Noddle, Sheila Noddle or Angela Bisordi of Tarzana, California** its true and lawful agent (s) and attorney (s)-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, UNDERTAKINGS, and RECOGNIZANCES, not exceeding in any single instance **TEN MILLION (\$10,000,000.00) Dollars**, excluding, however, any bond(s) or undertaking(s) guaranteeing the payment of notes and interest thereon

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 Fairfield, Ohio, in their own proper persons.
The authority granted hereunder supersedes any previous authority heretofore granted the above named attorney(s)-in-fact.

In WITNESS WHEREOF, the undersigned officer of the said The Ohio Casualty Insurance Company has hereunto subscribed his name and affixed the Corporate Seal of the said The Ohio Casualty Insurance Company this **20th day of November, 2008**.



Mark E. Schmidt

Mark E. Schmidt, Assistant Secretary

STATE OF OHIO,
COUNTY OF BUTLER

On this **20th day of November, 2008** before the subscriber, a Notary Public of the State of Ohio, in and for the County of Butler, duly commissioned and qualified, came **Mark E. Schmidt, Assistant Secretary** of THE OHIO CASUALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn deposes and says, that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer 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 at the City of Hamilton, State of Ohio, the day and year first above written.



Cheryl S. Gregory

Notary Public in and for County of Butler, State of Ohio
My Commission expires August 5, 2012.

This power of attorney is granted under and by authority of Article III, Section 9 of the Code of Regulations and By-Laws of The Ohio Casualty Insurance Company, extracts from which read:

Article III, Section 9: Appointment of Attorneys-in-Fact. The Chairman of the Board, the President, any Vice-President, the Secretary or any Assistant Secretary of the corporation shall be and is hereby vested with full power and authority to appoint attorneys-in-fact for the purpose of signing the name of the corporation as surety to, and to execute, attach the seal of the corporation to, acknowledge and deliver any and all bonds, recognizances, stipulations, undertakings or other instruments of suretyship and policies of insurance to be given in favor of any individual, firm, corporation, partnership, limited liability company or other entity, or the official representative thereof, or to any county or state, or any official board or boards of any county or state, or the United States of America or any agency thereof, or to any other political subdivision thereof

This instrument is signed and sealed as authorized by the following resolution adopted by the Boards of Directors of the Companies on October 21, 2004:

RESOLVED, That the signature of any officer of the Company authorized under Article III, Section 9 of its Code of Regulations and By-laws and the Company seal may be affixed by facsimile to any power of attorney or copy thereof issued on behalf of the Company to make, execute, seal and deliver for and on its behalf as surety any and all bonds, undertakings or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment. Such signatures and seal are hereby adopted by the Company as original signatures and seal and shall, with respect to any bond, undertaking or other written obligations in the nature thereof to which it is attached, be valid and binding upon the Company with the same force and effect as though manually affixed.

CERTIFICATE

I, the undersigned Assistant Secretary of The Ohio Casualty Insurance Company, do hereby certify that the foregoing power of attorney, the referenced By-Laws of the Company and the above resolution of its Board of Directors are true and correct copies and are in full force and effect on this date.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this **23rd** day of **August** A.D., **2010**



Sam Lawrence

Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-513-867-3471 between 9:00 am and 4:30 pm EST on any business day.

LABOR AND MATERIAL BOND

KNOW ALL MEN BY THESE PRESENTS: That we, GOLDEN ACQUISITION CORPORATION DBA EFS WEST, as PRINCIPAL, and The Ohio Casualty Insurance Company, located at See* a corporation, incorporated under the laws of the State of Ohio, 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, a municipal corporation, in the sum of See** DOLLARS (\$272,175.00) 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.

*27525 Newhall Ranch Road, Bldg. 9, Valencia, Ca. 91355
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 Shoreline Marina Fuel Dock and Underground Storage Tank Upgrade is required by law and by said City to give this bond in connection with the execution of said contract;

*Two Hundred Seventy-Two Thousand One Hundred Seventy-Five and no/100
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 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 23rd day of August, 2010.

Golden Acquisition Corp.
DBA: EFS West
Contractor

The Ohio Casualty
Insurance Company
SURETY, admitted in California

By: [Signature]

By: [Signature]

Name: DANTE JUMANAN

Name: David Neddle

Title: [Signature]

Title: Attorney-in-fact

By: [Signature]

Telephone: 858-450-0582

Name: Aa BABCOCK

Title: VP

Approved as to form this 27th day of September, 2010.
ROBERT E. SHANNON, City Attorney

Approved as to sufficiency this 26 day of August, 2010.

By: [Signature]
Deputy City Attorney

By: [Signature]
City Engineer

- NOTE: 1. Execution of 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 or, 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.

EXHIBIT "D"

ACKNOWLEDGMENT

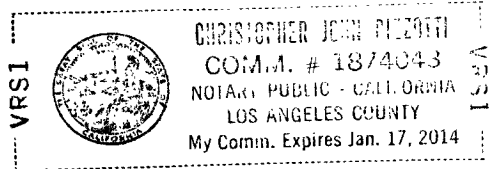
State of California
County of Los Angeles)

On 08-23-2010 before me, Christopher John Rizzotti, Notary
(insert name and title of the officer)

personally appeared David Noddle,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.



Signature _____ (Seal)

Signature of Officer

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of LOS ANGELES


On Sept. 14, 2010 before me, LIANE JUMANAN, NOTARY PUBLIC
(Here insert name and title of the officer)

personally appeared ARTHUR BABCOCK and DANTE JUMANAN

who 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.

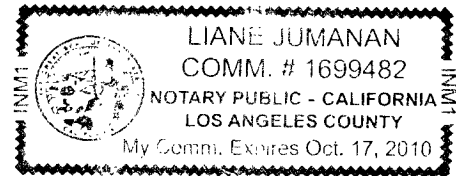
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment
Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed

The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).

Print the name(s) of document signer(s) who personally appear at the time of notarization.

Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.

The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.

Signature of the notary public must match the signature on file with the office of the county clerk.

Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document. Indicate title or type of attached document, number of pages and date. Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).

Securely attach this document to the signed document

DESCRIPTION OF THE ATTACHED DOCUMENT

BOND # 4059520

(Title or description of attached document)

EXHIBIT "D"

(Title or description of attached document continued)

Number of Pages 1 Document Date 09-23-10

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

EXHIBIT “E”

BOE-400-DP (FRONT) REV 2 (8-05)
**APPLICATION FOR
 USE TAX DIRECT PAYMENT PERMIT**

STATE OF CALIFORNIA
 BOARD OF EQUALIZATION

Please type or print clearly. Read instructions on reverse before completing this form.

SECTION I – BUSINESS INFORMATION

| | |
|---|---|
| NAME OF BUSINESS OR GOVERNMENTAL ENTITY | SALES/USE TAX PERMIT NUMBER |
| BUSINESS ADDRESS (street) | CONSUMER USE TAX ACCOUNT NUMBER |
| CITY, STATE, & ZIP CODE | If applicant is applying for either a sales/use tax permit or a consumer use tax account in addition to a use tax direct payment permit check here <input type="checkbox"/> |
| MAILING ADDRESS (street address or po box if different from business address) | |
| CITY, STATE, & ZIP CODE | NAME UNDER WHICH BUSINESS IS TO BE TRANSACTED IF DIFFERENT THAN ABOVE |

SECTION II – MULTIPLE BUSINESS LOCATIONS

LIST BELOW THE BUSINESS AND MAILING ADDRESSES OF ALL LOCATIONS WHERE PROPERTY PURCHASED UNDER A USE TAX DIRECT PAYMENT CERTIFICATE WILL BE USED. IF ADDITIONAL SPACE IS NEEDED, ATTACH A SEPARATE SHEET

| | |
|--------------------|--------------------|
| 1 BUSINESS ADDRESS | 4 BUSINESS ADDRESS |
| MAILING ADDRESS | MAILING ADDRESS |
| 2 BUSINESS ADDRESS | 5 BUSINESS ADDRESS |
| MAILING ADDRESS | MAILING ADDRESS |
| 3 BUSINESS ADDRESS | 6 BUSINESS ADDRESS |
| MAILING ADDRESS | MAILING ADDRESS |

SECTION III – CERTIFICATION STATEMENT

I hereby certify that I qualify for a Use Tax Direct Payment Permit for the following reason: (Please check one of the following)

I have purchased or leased for my own use tangible personal property subject to use tax at a cost of five hundred thousand dollars (\$500,000) or more in the aggregate, during the calendar year immediately preceding this application for the permit. I have attached a "Statement of Cash Flows" or other comparable financial statements acceptable to the Board for the calendar year immediately preceding the date of application and a separate statement attesting that the qualifying purchases were purchases that were subject to use tax.

I am a county, city, city and county, or redevelopment agency.

I also agree to self-assess and pay directly to the Board of Equalization any use tax liability incurred pursuant to my use of a Use Tax Direct Payment Permit.

The above statements are hereby certified to be correct to the knowledge and belief of the undersigned, who is duly authorized to sign this application.

| | |
|-------------------------|-------|
| SIGNATURE | TITLE |
| NAME (typed or printed) | DATE |

(See reverse side for general information and filing instructions)

USE TAX DIRECT PAYMENT PERMIT (General Information and Filing Instructions)

Revenue and Taxation Code section 7051.3 authorizes the State Board of Equalization to issue a *Use Tax Direct Payment Permit* to qualified applicants. This permit allows purchasers and lessees of tangible personal property (other than lessees of motor vehicles the lease of which is subject to the terms of section 7205.1 of the Sales and Use Tax Law) to self-assess and pay use taxes directly to the Board instead of to the vendor or lessor from whom the property is purchased or leased.

Permit holders will be provided with a *Use Tax Direct Payment Exemption Certificate* which they can issue to retailers and lessors when they purchase tangible personal property subject to use tax or make qualified leases of tangible personal property. Vendors who timely take the certificate in good faith from a permit holder are relieved of the duty to collect use taxes on the sales for which the certificate was issued. Permit holders who acquire property under a certificate must self-assess and report the use taxes directly to the Board on their tax returns, and allocate the local taxes to the county, city, city and county, or redevelopment agency in which the property is first used. Permit holders who fail to properly pay any use taxes that are due on property for which a certificate was given are subject to interest and penalties assessments in addition to their tax liability.

To qualify for a *Use Tax Direct Payment Permit*, an applicant must meet the following conditions:

- (1) The applicant must agree to self-assess and pay directly to the Board any use tax which is due on property for which a use tax direct payment exemption certificate was given; and
- (2) The applicant must certify to the Board either of the following:
 - (A) The applicant has purchased or leased for its own use tangible personal property subject to use tax which cost five hundred thousand dollars (\$500,000) or more in the aggregate, during the calendar year immediately preceding the application for the permit; or
 - (B) The applicant is a county, city, city and county, or redevelopment agency.

Persons wishing to obtain a use tax direct payment permit must be pre-qualified and either hold a California seller's permit or a consumer use tax account.

Persons other than governmental entities who currently hold either a California seller's permit or a consumer use tax account must complete the application for a *Use Tax Direct Payment Permit*, sign the certification statement attesting that they qualify for a permit under conditions of Part (2)(A) above, and submit a "Statement of Cash Flows" or other comparable financial statements acceptable to the board for the calendar year immediately preceding the date of application which discloses total purchases of property and equipment for own use and a separate statement under company letterhead certifying that five hundred thousand dollars (\$500,000) or more of such purchases were subject to use tax.

Persons other than governmental entities who are not required to hold a seller's permit and who do not currently hold a consumer use tax account must obtain a consumer use tax account and then complete the application for a *Use Tax Direct Payment Permit*, sign the certification statement attesting that they qualify for a permit under the conditions of Part (2)(A) above and submit a "Statement of Cash Flows" or other comparable financial statements acceptable to the board for the calendar year immediately preceding the date of application which discloses total purchases of property and equipment for own use and a separate statement under company letterhead certifying that five hundred thousand dollars (\$500,000) or more of such purchases were subject to use tax.

Governmental entities who currently hold either a California seller's permit or a consumer use tax account must complete the application for a *Use Tax Direct Payment Permit*, sign the certification statement attesting that they qualify for a permit under the conditions of Part (2)(B) above, and submit an additional statement to that effect under official letterhead and signed by an authorized governmental representative.

Governmental entities who do not hold a California seller's permit or a consumer use tax account must obtain a consumer use tax account and then complete the application for a *Use Tax Direct Payment Permit*, sign the certification statement attesting that they qualify for a permit under the conditions of Part (2)(B) above, and submit an additional statement to that effect under official letterhead and signed by an authorized governmental representative.

The completed *Application for Use Tax Direct Payment Permit*, certification statement, and qualifying documentation should be returned to the address shown below. Upon determination that the applicant qualifies, a *Use Tax Direct Payment Permit* and a *Use Tax Direct Payment Exemption Certificate* will be mailed to the applicant.

If you would like additional information regarding the *Use Tax Direct Payment Permit* or need assistance in completing this application, you can call 916-445-5167, or write to the Board of Equalization, Compliance Policy Unit, P.O. Box 942879, Sacramento, CA 94279-0040.