

DESIGN-BUILD CONTRACT

31834

THIS CONTRACT is made and entered, in duplicate, as of SEPTEMBER 22, 2010 for reference purposes only, pursuant to a minute order adopted by the City of Long Beach at its meeting held on July 13, 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
Long Beach Gas & Oil Department
2400 E. Spring Street
Long Beach, California 90806

DESIGN-BUILDER: FernaldWest, a joint venture between Fernald, a California corporation, and Park West General Contractors, a California corporation
4821 E. Second Street
Long Beach, California 90803
Phone: (714) 632-8001

PROJECT: (1) Design of an approximately 14,000sf building on a portion of the property managed by the Long Beach Gas & Oil Department located at 2400 E. Spring Street, Long Beach, CA, (2) Construction of the building, and (3) Rehabilitation of certain adjacent structures to accommodate the design-build of the main structure.

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 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 August 1, 2011, 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 Five Hundred Dollars (\$500.00) 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 Five Million Seven Hundred Forty-Two Thousand Dollars (\$5,742,000) ("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 Design-Builder's application for payment in accordance with the schedule contained in the Contract Documents, including without limitation Exhibit "A" attached hereto, and otherwise 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.

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:

Christopher J. Garner
Director
Long Beach Gas & Oil Department
2400 E. Spring Street
Long Beach, California 90806
(562) 570-2041

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:

Craig Beck
Manager, Business Operations Bureau
Long Beach Gas & Oil Department
2400 E. Spring Street
Long Beach, California 90806
(562) 570-2041

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:

Ed La Civita
Fernald West
4821 E. Second Street
Long Beach, California 90803
(714) 296-0917

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 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than One Million Dollars (\$1,000,000) per each occurrence and Two Million Dollars (\$2,000,000) general aggregate. Such coverage shall include but not be limited to broad form contractual liability, cross-liability, independent contractors liability, and products and completed operations liability. Owner, its officials, employees, and agents shall be named as additional insureds by endorsement (on Owner's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall contain no special limitations on the scope of protection given to Owner, its officials, employees and agents.

(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.

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-contractors 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 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 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. Design-Builder may, with the approval of Owner, submit separate good and sufficient performance bonds and/or good and sufficient labor and materials bonds, in amounts equal to one hundred percent of the costs of each of the discreet components of the total Contract Price as shown on Exhibit "A" attached hereto. Each separate bond shall be released by Owner upon completion, and acceptance by Owner, of the project component for which the bond was issued.

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 20-5747956.

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, gender, 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, _____ 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 Employment Development Program. Design-Builder shall collaborate with the City of Long Beach Workforce Development Bureau to implement an employment program ("Program") for Long Beach residents in connection with Design-Builder's performance of the Work under this Contract. The goal of the Program is to employ qualified Long Beach residents or qualified recent graduates of an appropriate Long Beach Workforce Development training program for the designated skill in the construction of the Project. Design-Builder and Owner envision the Program as a cooperative partnership, and acknowledge that the Program will evolve as Design-

Builder and Owner work together to identify the most effective methods to maximize employment of Long Beach residents and qualified Workforce Development program graduates. Design-Builder and Owner shall work together to make the Program work as efficiently and cost-effectively as possible.

11.8 Labor Agreement. Design-Builder shall enter into an agreement with the local Laborer's Union which shall provide for employment opportunities for union members in connection with the Project. Owner's Senior Representative may waive this requirement if after good faith efforts Design-Builder cannot come to reasonable mutual agreement with the local Laborer's Union on the terms of the agreement.

11.9 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.

11.10 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.”

11.11 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.

11.12 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.

11.13 Joint and Several Liability. If Design-Builder is comprised of more than one legal entity, all of such entities shall be jointly and severally liable hereunder.

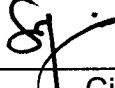
In executing this Contract, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Contract, and each has the necessary corporate approvals to execute this Contract, and perform the services described herein.


OWNER:

DESIGN BUILDER:

CITY OF LONG BEACH, a municipal corporation
Assistant City Manager

FERNALD, a California corporation

By 
EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.
City Manager
PATRICK H. WEST
Type or Print Name

By 
President
Leslie Gentile
Type or Print Name

Date: 9.22.10


By _____
Secretary

Type or Print Name


Date: 9-20-10

APPROVED AS TO FORM

9.20 20 10

By 
ROBERT E. SMITH, City Attorney
DEPUTY CITY ATTORNEY

PARK WEST GENERAL CONTRACTORS, a California corporation

By 
President
CHRIS A HOSTEAT
Type or Print Name

By _____
Secretary

Type or Print Name

Date: 9-20-10

LIST OF EXHIBITS

Exhibit A – Scope of Work

Exhibit B – General Conditions of Contract

Exhibit C – Form of Completion Bond

Exhibit D – Form of Labor & Materials Bond

Exhibit E – Use Tax Direct Payment Application

FERNALD WEST**Scope of Work - LBGO Design Build Contract****SUMMARY**

	Project Descriptions	Estimated Cost	Billing Frequency/ Project Completion %	Estimated Design Timeline	Estimated Construction Timeline
1	Building 560 Tenant Improvements	\$43,744	2	n/a	3 weeks
	Tenant Improvements		30%, 100%		
	Roll Up Door				
2	Carpenters Shop	\$68,939	2	n/a	3 weeks
	Tenant Improvements		30%, 100%		
3	Site Demo: all foundations	\$246,882	2	n/a	4 weeks
	#551		30%, 100%		
	#552				
	#553				
	Carwash				
	LEED				
4	New Restroom/Shower/Locker Facility	\$400,000	5	12 weeks	10 weeks
	Permits		10%, 30%, 60%, 90%, 100%		
	Design				
	Site work				
	Construction				
5	Bulk Storage Area	\$273,175	2	7 weeks	6 weeks
	Permits		30%, 100%		
	Design				
	Civil				
	Construction				
	Demo Old Storage				
6	New Office	\$4,000,000	9	19 weeks	21 weeks
	Modular Design		10%, 20%, 30%, 45%,		
	Landscape Design		60%, 70%, 80%, 90%, 100%		
	Furniture Procurement				
	Site Work				
	Construction				
7	Tenant Improvements Bldg 560 (PW)	\$147,555	2	2 weeks	4 weeks
	Design/Civil		30%, 100%		
	Construction				
8	LEED certification (1)	\$100,000	TBD		
9	Contingency	\$461,705	TBD		
	TOTAL	\$5,742,000			

FERNALD WEST

LBGO Design Build Contract

3028 E La Palma Ave Anaheim Ca, 92806. Office: 714-632-8001, Fax 714-632-8420 CA #891320, NV #73170

1) BUILDING 560 TENANT IMPROVEMENTS

Description of Scope:

- A) Remove exterior 2 walls of office and 1 interior wall.
- B) Remove all lighting in exterior office.
- C) Frame new interior wall to close up office, no elect on wall figured.
- D) Relocate electrical panel as needed.
- E) Cut exterior block for 1 new electronic roll up door.
- F) Supply and Install structural steel at new roll up door opening for support.
- G) Run power for new door.
- H) Supply and install new 10' x 10' powered roll up door.
- I) Paint new construction work only.
- J) Clean up and removal

TOTAL

\$43,744

FERNALD WEST

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2) CARPENTERS SHOP

Description of Scope:

- A) Frame 3 sides with 6" 18ga. Metal stud full height.
- B) Supply and install 1 layer metal siding to match existing close possible
- C) Repair west side existing panel.
- D) Supply and install (2) 3'0"x6'8" metal door with hardware.
- E) Supply and install (2) 10'x10' roll up manual doors.
- F) Add plywood 3/4" 4' high inside perimeter
- G) Install owner supplied ceiling hung lights.
- H) Supply and install quad plugs every 8' along perimeter.
 - I) Remove and clean up ceiling area of heat units, excessive piping water, air lines rerun new as needed for air and water connections.
- J) Replace any missing drain covers.
- K) Add new switching for new entries.
- L) No plans or permits included.
- M) Clean up and removal

TOTAL

\$68,939

FERNALD WEST

LBGO Design Build Contract

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3) SITE DEMO

Description of Scope:

A) Building 551	\$92,889
Remove building, slabs, foundations and basement structures all voids and basement will be filled to rough grade with on site soil Include removal and proper disposal of asbestos contain roof material Include removal of windows with asbestos contain material.	
B) Building 552	\$65,068
Remove building slab and footing, Include removal and proper disposal of transit panels. Include removal of windows with asbestos contain material.	
C) Building 553	\$22,596
Remove building slab and footing, Include removal and proper disposal of asbestos contain roof material Include removal of windows with asbestos contain material. Stabilize lead contain paint from exterior walls	
D) Car Wash	\$18,067
Complete removal of Car wash system, remove any foundations Back fill 4 pits, 4'x4' by 24" deep.	
E) Electrical	\$21,511
Disconnect and remove 4 #500 MCM from 400amp distribution panel located in the #555 building back to distribution board in #560 building Change out the 600 amp breaker located in MSB outside fueling station to a 200 amp breaker. Install a new "H" frame for a new 200 amp 480/277 outdoor volt panel Intercept, relocate and reconnect to 4 underground circuits feeding the fuel station underground light poles and cameras. Relocate the existing 45KVA transformer to new "H" location Provide and install 1- 100 amp 3 PH/4W, 120/208 volt temporary power sites. All demo info per Manny	
F) Plumbing	\$10,589
Provide labor to cap off known and unknown water sewer, storm and gas piping at existing building demo. Utilities to be capped off below ground at point of discovery.	
G) LEED Consultant	\$9,875
LEED consultant figured to gain all available LEED points.	
H) Foundation Removal	\$6,287

TOTAL **\$246,882**

FERNALD WEST

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4) NEW LOCKER/SHOWER ROOM

Description of Scope:

Construction of new LEED certified mens and womens locker, shower and restroom facility.
The area for women providing 4 individual inclosed showers, and 20 lockers. 2 inclosed showers and 10 lockers for men.

SITE PREP

- A) Demo existing building and remove all fixtures.
- B) Remove foundation for new footings.
- C) Cut slab for underground plumbing for new tie in.
- D) **Electrical:** intercept existing 4" underground conduit for 400 amp feed that is supplying Panel Q
- E) Install 1-3'x3'x4' underground pull box with traffic cover.
- F) New 1-4" PVC conduit with #600MCM & 1 #1/0 wires from new pull box to new 400 amp 277/480V,
- G) 3PH/4W stand up distribution section located outside new ADA restrooms
- H) Provide and Install 1 new 45 KVA transformer.
 - I) Provide and install 1 new 125 amp 120/208V 1ph/3W panel with 2-50 amp 2 pole breakers
 - J) for distribution to new bathrooms panels
- K) Install 3 new 2" PVC stub outs from new 277/480 distribution section fro future.
- L) Terminate the main power connections to bath panels.
- M) Install ground for panels at modular building locations
- N) Relocate Air Compressor to another building.
- O) 1 new Bike rack system.
- P) Surrounding Hardscape and landscape approx 4' surround.
- Q) New Men's & Women's Modular restroom with 6 showers, 12 lockers, per unit and water
- R) closets and sinks as speced..
- S) No A/C unit

	Total	\$400,000
<i>Alternative Add - Gas/Electric High Efficiency A/C Unit</i>	<i>\$27,868</i>	
	<i>Total With A/C Unit</i>	<i>\$427,868</i>

4) NEW LOCKER/SHOWER ROOM - *description of allowances continued*

<p>ADA TOILET ROOM WITH (3) SINKS</p> <p>American Standard floor mount w/ Sloan dual Flush Grab bars, mirrors, toilet paper dispenser, soap dispenser paper towel w/ trash dispenser, shower curtains and shower rods. ADA SHOWER IN BOTH MEN'S AND WOMEN'S AREAS each shower has privacy drying area SHOWER FIXTURE SHOWER CURTAIN ROD DUAL CURTAIN ADA GRAB BAR ADA SHOWER BENCH</p>	<p>\$10,000</p>
<p>SHOWER WALL TILE, SHOWER FLOOR TILE Daletile Greenworks ceramic</p> <p>SHOWER WALL TILE FLOOR TILE</p>	<p>\$17,000</p>
<p>LOCKER & REST ROOM FLOORING.</p> <p>Finished Stained and Sealed Concrete</p>	<p>\$1,500</p>
<p>EXTERIOR STUCCO</p> <p>Site applied sand finish w/ aluminum decorative expansion joints ENERGY STAR WHITE RUBBER ROOF (WARRANTY YRS)</p>	<p>\$30,000</p>
<p>8 ea 3 tube t-8 day light occupancy sensors lights.</p> <p>12 Single lockers bench Separate vanity sink with laminate top locker area. Dressing Mirror. Locker area wall finish paint grade green drywall. Skylights 8 ea 21" solar tube. Greenheck 500 CFM Ventilation fans.</p>	<p>\$12,000</p>
<p>Hardware Grade 1 Schlage</p>	<p>\$2,120</p>
<p>Interior Doors Solid Core Birch with urethane finish w/ Timeley frame</p>	<p>\$2,000</p>
<p>Exterior 18ga Steel door KD steel frame louver vents</p> <p>Low VOC water based Paint. Water heater AO Smith ASCE 120 gallon solar water heater Gray water reclaim tank for toilets. Floor drains (8) 12"x14" wall lovers for fresh air ventilation</p>	<p>\$3,000</p>

FERNALD WEST

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5) BULK STORAGE AREA

Description of Scope:

- A) Structural, Civil an Design plans.
- B) Demo existing Bulk Storage leaving foundation @ # 560 Building
- C) Trench and plumb for water (1) 3/4" hose bib and supply 100; no kink hose.
- D) Trench and run new electrical and add 2 pole lights approx 10' high
- E) New concrete footing 2'x2'
- F) New poured in place seperation walls for 5 spaces.
- G) **Shed style roof for protection. Minimum roof height 20'** **Allowance** **\$38,500**
- H) Metal structure figured with corrigated roof
- I) No provision for Case ons due to new location.
- J) 5 Bays 30' x 30' x 8'.
- K) Storgae capacity approx 500 tons
- L) Turning pad 150' x 50'
- M) Storm run off must be filtered for hydrocarbon runoff.

allowance based ob verbal communications only. No plans or designs at this time

TOTAL **\$273,175**

FERNALD WEST

LBGO Design Build Contract

3028 E La Palma Ave Anaheim Ca, 92806. Office: 714-632-8001, Fax 714-632-8420 CA #891320, NV #73170

6) NEW OFFICE

Description of Scope:

Construction of new 15,000 - 17,000 square foot Office facility with LEED Gold certification

- A) Design, Plans, Civils, Landscaping for new LEED GOLD Mod Building
- B) LEED consultant for N.M.B.
- C) **General Information**
 20lb Roof Load, 80mph exposure "C" exterior walls, Type 5 building non rated
 California HCD building approval, wired only for life safety
- D) **Permits and Jurisdiction**
 Site permits by GC, Foundation design by CMS and permitted by GC, building placement on site by GC
 Building (structure) approved and inspected by HCD through CMS, site utilities by GC, Site modification by GC

Note: the local building department only has jurisdiction over site and building placement and cannot inspect or alter building.
 City may have different years of codes they require and the state of California supersedes those codes with regard to structure
 Codes: California Housing and Community Development.
 1991 UBC, UMC, 1993 NEC, 1986 ANSI and Title 24.
 Building size: Per Fernald Design plan dated 7-21-10
 Foundation: Concrete
- E) Building Structural consist of 26 steel cubes
 (2) 12'x26', (9) 12'x34', (3) 12'x 38', (2) 12'x50', (9) 12'x58', (9) 14'x30' and (1) 14'x50'
 Floor framing will be steel w/ 1-1/8" T&G plywood.
 Exterior walls 2x6 wood studs installed inside steel cube frame.
 Interior walls 2x4 wood stud non load bearing constructed thru ceiling line.
 Structural roof supports are in walls with no structural post exposed
 No interior structural walls
 Roof Framing steel clear span trusses with 2x10 wood rafters in between
 Roof decking will be 7/16" FR Class "C"
- F) HVAC: 41 Tons York D@NXO R-410 A Roof mount high efficiency gas / electric allowance \$259,000
 Units complete with economizers, programmable thermostats, SMACNA flex duct
 Toro Air Supply and return adjustable air distribution, engineered to meet LEED
 Insulation
 Floor, exterior wall and roof insulation will be R-19
 Interior wall insulation to be R-13
 Exterior Finishes
- G) Site applied Stucco with aluminum decorative expansion joints as needed. allowance \$150,000
 Parapet wall to continue exterior walls above roof line.
 Roof membrane .045 white EPDM
- H) Store Front Door (2) 6070 with solarban 60 glazing allowance \$25,000
 Store Front Door (1) 3070 with solarban 60 glazing
 Store Front windows (48) 4040 with solarban 60 glazing
- I) SolaTubes Skylights (36) 21" allowance \$54,000
 Interior Finishes
- J) Dale tile Green works ceramic floor & wainscott in restroom allowance \$60,000
 Carpet 26oz commercial grade glue down allowance included above
 Top set cove base 4" allowance included above
 Drywall 1/2" textured & painted

6) NEW OFFICE - description of scope continued

K) Wainscott in bathrooms Acoustical suspended ceiling 10' armstrong 2'x4' lay in tile.heavy duty	allowance	\$5,000
L) Doors (32) Finished Birch solid core with Timley Frames.	allowance	\$25,000
M) Door Hardware Grade 1 Schlage	allowance	\$7,000
N) Electrical 200 Amp sub panels (14) Ceiling light fixtures 2x4 3 tube T-8 with prismatic lenses outlets, daylight sensors, occupancy light sensors and exit lighting.		
O) Plumbing		
P) Fire Sprinkler system above and below as required	allowance	\$45,000
Q) American Standard floor mounted w/ sloan dual flush	allowance	\$8,000
R) Waterless Urinals	allowance	included above
S) American Standard Wall Mount Sinks	allowance	included above
T) Dual Point instantaneous water heater	allowance	included above
U) Fiat baked enamel privacy partitions	allowance	included above
V) Bathroom accessories BOBRICK or Equal Replacement of sewer pumps in #550 building ABS waist piping Copper water piping access ladder.	allowance	\$7,500
W) Site Work Demo any existing covered structures, walkways, landscaping etc. Site prep and grading for new foundation and footings. Undercover all underground P.O.C. Rough all Plumbing and Sewer to new building and P.O.C. Rough all Electrical to new building and P.O.C. Removal of all dirt and excavation debris. Relocate utilities		
X) Landscape T.B.D. SITE STRUCTURES Fountain Colored Concrete Infiltration Basin PLANTING Soil Import - Cu Yds Soil Testing 24" Box Trees Plants Turf IRRIGATION (poc to final fitting) Court Yard Work to be done, but no information at this time		
Y) Building Labor and material to construct new building facades as by Designer.		
Z) Furniture procurement and install	allowance	\$300,000

TOTAL **\$4,000,000**

FERNALD WEST

LBGO Design Build Contract

3028 E La Palma Ave Anaheim Ca, 92806. Office: 714-632-8001, Fax 714-632-8420 CA #891320, NV #73170

7) Building 560 Tenant Improvements for Public Works

Description of Scope:

- A) Minimal Drawings and Design.
- B) Structural design
- C) Frame new 2 story offices approx 10' and 10' total approx 20 high. 2'x6' Wood framing
- D) Exterior 3 walls to sheered with plywood.
- E) 2nd floor office metal stud framing, all drywall 5/8"
- F) All exterior walls insulated with R-19, all interior offices with R-11
- G) Doors: 8 ea. 3060 Solid Core paint grade in timely frame. With Side lite allowance \$6,687
- H) Hardware Schlage Privacy
- I) Electrical Budgeted (30) 2x4 lights (20) Duplexes & Data, (10) standard switching,
- J) power for HVAC no alarm or area sensors
- K) HVAC 5 ton unit. Ducted allowance \$7,800
- L) Suspended Acoustical ceiling both floors 2'x4' Armstrong lay-in. allowance \$4,467
- M) Flooring: Medium 26oz carpet n pad. allowance \$3,800
- N) Cove base 4" rubber.
- O) Stair Handrails metal.

TOTAL \$147,555

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

Subject to Section 7.2, the Design-Builder hereby assumes liability for and agrees to defend (at Indemnified Party's option), 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.

7.2 Enforcement and Restrictions

7.2.1 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.

7.2.2 Design-Builder's obligations under this Section 7 shall not extend to any loss, damage or expense arising from the sole negligence or willful misconduct of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party.

7.2.3 Without affecting the rights of City under any provision of the Contract, Design-Builder shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is determined to have been actively negligent and where City's active negligence

accounts for only a percentage of the liability involved, the obligation of Design-Builder will be for that entire portion or percentage of liability not attributable to the active negligence of City.

7.2.4 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 Design-Builder.

7.2.5 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.

7.2.6 Notwithstanding any provision of the Contract, to the extent this Contract is a professional service agreement for 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, the provisions of this Section 7 regarding Design-Builder's duty to defend and indemnify shall be limited to apply only to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of 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 below; 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.

Exhibit C – Form of Performance Bond

BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS: That we, _____, as PRINCIPAL, and _____, located at _____, a corporation, incorporated under the laws of the State of _____, 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 _____ DOLLARS (\$_____), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, our respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, said Principal has been awarded and is about to enter the annexed contract (incorporated herein by this reference) with said City of Long Beach for the _____ and is required by said City to give this bond in connection with the execution of said contract;

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

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

IN WITNESS WHEREOF, the above-named Principal and Surety have executed, or caused to be executed, this instrument with all of the formalities required by law on this _____ day of _____, 20__.

Contractor
California

SURETY, admitted in

By: _____

By:

Name: _____

Name:

Title: _____

Title:

Telephone: _____

By: _____

Name: _____

Title: _____

Approved as to form this ____ day
this ____ day
of _____, 20__.
20__.

ROBERT E. SHANNON, City Attorney

By: _____

Deputy City Attorney
Engineer

Approved as to sufficiency
of _____,

By:

City Manager/City

- 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 – Form of Labor & Materials Bond

LABOR AND MATERIAL BOND

KNOW ALL MEN BY THESE PRESENTS: That we, _____, as PRINCIPAL, and _____, located _____ at _____, a corporation, incorporated under the laws of the State of _____, 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 _____ DOLLARS (\$ _____), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, our respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, said Principal has been awarded and is about to enter the annexed contract (incorporated herein by this reference) with said City of Long Beach for the _____ is required by law and by said City to give this bond in connection with the execution of said contract;

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

PROVIDED, that any modifications, alterations or changes which may be made in said contract, or in any of the work or labor required to be done thereunder, or in any of the materials, provisions, equipment, or other supplies required to be furnished pursuant to said contract, or the giving by the City of any extension of time for the performance of said contract, or the giving of any other forbearance upon the part of either the City or the Principal to the other, shall not in any way release the Principal or 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 _____ day of _____, 20__.

Contractor
California

SURETY, admitted in

By: _____

By:

Name: _____

Name:

Title: _____

Title:

Telephone:

By: _____

Name: _____

Title: _____

Approved as to form this ____ day
this ____ day
of _____, 20__.
20__.

Approved as to sufficiency
of _____,

ROBERT E. SHANNON, City Attorney

By: _____

By:

Deputy City Attorney
Engineer

City Manager/City

- 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 E – Use Tax Direct Payment Application