

FIRST AMENDMENT TO DESIGN BUILD CONTRACT NO. 31834

31834

THIS FIRST AMENDMENT TO DESIGN BUILD CONTRACT NO. 31834 (this "Amendment") is made and entered, in duplicate, as of November 29, 2010, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on July 13, 2010, by and between FERNALD, a California corporation, and PARK WEST GENERAL CONTRACTORS, a California corporation (collectively, "Design-Builder") and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the parties entered into Design Build Contract No. 31834, dated September 22, 2010 (the "Contract") whereby Consultant agreed to design and construct certain improvements on City property administered by the Long Beach Gas & Oil Department ("Project"); and

WHEREAS, the parties desire to clarify certain obligations thereunder, without expanding the scope of work or the compensation to be paid by City to Design-Builder.

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

1. Section 10.3 of the Contract is hereby amended and restated in its entirety to read as follows:

"10.3 Bonds and Incremental Notices to Proceed. 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

1 may, with the approval of Owner, submit separate good and sufficient performance
2 bonds and/or good and sufficient labor and materials bonds, in amounts equal to
3 one hundred percent of the costs of each of the discreet components of the total
4 Contract Price as shown on Exhibit "A" attached hereto, or in such other amounts
5 acceptable to Owner. Each separate bond shall be released by Owner upon
6 completion, and acceptance by Owner, of the project component for which the
7 bond was issued. In the event the bonds required hereunder are in an amount
8 less than one hundred percent (100%) of the Contract Price, the Notice to Proceed
9 issued by Owner hereunder shall only authorize Design-Builder to proceed with a
10 portion of the Work which costs no more than the amount of the corporate surety
11 bond, and both Owner and Design-Builder acknowledge and agree that multiple
12 Notices to Proceed shall be issued in order to complete the Project. Design-
13 Builder shall not be obligated under Subcontracts outstanding at any given time
14 where the aggregate amount Design-Builder is obligated to pay to Subcontractors
15 under such Subcontracts exceeds the amount of the current valid corporate surety
16 bond. Upon Owner's written request, Design-Builder shall make all Subcontracts
17 available to Owner for its review and approval. Design-Builder shall indemnify
18 Owner against any loss or liability which may arise from Design-Builder's failure to
19 provide corporate surety bonds in an amount equal to one hundred percent
20 (100%) of the Contract Price."

21 2. Except as expressly amended herein, all of the terms and conditions
22 of the Contract are ratified and confirmed and shall remain in full force and effect.

23 /

24 /

25 /

26 /

27 /

28 /

IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

OWNER:

CITY OF LONG BEACH, a municipal corporation

By Patrick H. West
City Manager
Type or Print Name

Date: 12.8.10

DESIGN BUILDER:

FERNALD, a California corporation

By Leslie Gentile
President
Type or Print Name

By _____
Secretary

Type or Print Name

Date: 11-29-10

PARK WEST GENERAL CONTRACTORS, a California corporation

By Christopher A. Hostert
President
Type or Print Name

By _____
Secretary

Type or Print Name

Date: 11-29-10

This First Amendment to Contract No. 31834 is approved as to form on December 1, 2010.

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

A10-02172