

# PROJECT MANUAL

OCEANO DRAINAGE UTILITY RELOCATION

PROJECT OCEANO, CA  
CONTRACT NO. 2019-02



**Oceano**

**Services District**

**Community**

**OCEANO COMMUNITY SERVICES DISTRICT  
PROJECT MANUAL**

**OCEANO DRAINAGE UTILITY  
RELOCATION PROJECT  
CONTRACT NO. 2019-02  
OCEANO, CA**

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**OCEANO COMMUNITY SERVICES DISTRICT  
NOTICE INVITING BIDDERS**

**FOR**

**OCEANO DRAINAGE UTILITY RELOCATION PROJECT**

**OCEANO, CA  
CONTRACT NO. 2019-02**

**OCEANO COMMUNITY SERVICES DISTRICT  
NOTICE INVITING BIDS**

Notice is given that sealed bids will be received at the District office District at 1655 Front Street  
before 3:00 p.m. on Thursday,  
March 28, 2019 ("Bid Deadline"), for the following public works project:

**OCEANO DRAINAGE UTILITY RELOCATION  
PROJECT  
OCEANO, CA  
CONTRACT NO. 2019-02**

Bids will be opened and declared by the Business and Account Manager District at 3:15 p.m. on the bid opening date at a public meeting at 1655 Front Street, Oceano, CA, 93445.

Any bid received at the District Office at or after 3:00 p.m. on the date specified above will not be accepted, and will be returned to the bidder unopened.

Bids are required for the entire work described in the Contract Documents. The award of the contract, if it be awarded, will be to the responsible bidder with the lowest responsive bid price on the base bid without any consideration of any prices on the additive bid items, if any. The District does not currently include any additive bid items on the bid sheet but reserves the right to include an additive bid item with an addendum if necessary. If an additive bid item is included with an addendum, then the addendum will state how the lowest responsive bid price will be determined. The District reserves the right to the award of the contract after the lowest responsible bidder has been determined, and the bidder is bound by its bid amount for said additive bid items. Such award, if made, will be made within 90 calendar days after the opening of proposals, and bidder agrees to be bound by its bid, including all of its bid prices, for the entire 90 day period. The District reserves the right to reject all bids and the right to self-perform the work as provided by Public Contract Code Section 22038.

**COORDINATION WITH SAN LUIS OBISPO COUNTY  
CONTRACT NO. 300465.08.02**

The work described in the Contract Documents is also included as an additive bid item for San Luis Obispo County Contract No. 300465.08.02 - Oceano Drainage Improvement Project Phase II. The bidding and contracting process conducted by the County is independent of the bidding and contracting process conducting by the District. The work reflects permanent water and wastewater utility relocation of certain District facilities that the District is obliged to perform as a result of the County's Oceano Drainage Improvement Project Phase II. The District reserves the right to have the County's contractor perform the work as an additive bid item even if the District's responsible bidder with the lowest responsive bid provides a bid that is lower than the bid amount for related work obtained by the County.

Agreement between County and District

The agreement between the County and the District is included in Exhibit "G." The agreement provides that the District waives any right(s) it may have to protest or challenge the County's bidding and contracting process and that the District's sole remedy regarding any bidding concerns for the additive work is to reject having the work performed as part of the County's Construction Contract.

District Contract No. 2019-02 serves to mitigate the waiver required by the County since the District's sole remedy necessitates that the District is able to award a contract independent of the County. If the District awards a contract to its responsible bidder with the lowest responsive bid, the District will incur additional costs, including but not limited to those costs relating to contract administration, all of which are indeterminable at this time. As a result, and in addition to other reasons that may be in the best interest of the District, the District reserves the right to reject the lowest responsible bid to mitigate additional District costs that will be incurred by awarding and administering Contract No. 2019-02.

The District's bid opening is scheduled to occur simultaneously with the County's bid opening. In the event that the County's bid opening is postponed, the District will also postpone its bid opening so that it will occur simultaneously with the County's revised bid opening. If the County rejects all bids, the District will reject all bids. The District's Contract No. 2019-02 is not federally funded.

Bidders should also recognize that the bid package includes several contract documents that were prepared by the County of San Luis Obispo, including the Environmental Summary in Exhibit "G." The bid package is for the purpose of relocating water and wastewater utilities that are mandated by the County in order to accommodate the Oceano Drainage Improvement Project Phase II (County Contract No. 300456.08.02). Bidders should expect that the encroachment permit issued by CalTrans for work within Highway One and the encroachment permit issued by the County of San Luis Obispo for work within County roads will require compliance with conditions established in the County prepared Environmental Summary. Costs associated with (1) a Storm Water Pollution and Prevention Plan, (2) mitigation of Archeological Resources and (3) mitigation of contaminated soil, if any are required, will be paid as Extra Work pursuant to Contract Section 7.3 after a Change Order has been issued in accordance with Article 7 of the General Conditions (Exhibit "C" of the Construction Contract).

**NOTICE PURSUANT TO THE  
UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT (Act)**

The District's estimated project costs are less than \$200,000 and noticing is being provided pursuant to the Act. **The District Engineer's estimate for the scope of work is \$114,862.**

In accordance with Public Contract Code 22034(a)(2), a notice inviting informal bids including a description of the project in general terms and how to obtain more detailed information about the project, and the time and place for submission of bids, has been emailed to the following construction trade journals:

Required Journals	San Luis Obispo County Journals
Construction Bidboard (Ebidboard) 11622 El Camino Real, #100 San Diego, CA 92130 Phone: 800-479-5314 Email: support@ebidboard.com Website: www.ebidboard.com	Central Coast Builders Association 242 East Romie Lane Salinas, CA 93907 Phone: 831-758-1624 Email: staff@ccbabuild.com Website: www.ccbabuilds.com
Dodge Data & Analytics 830 Third Avenue, 6th Floor New York, NY 10022	San Luis Obispo County Builders Exchange 153 Cross Street, #130 San Luis Obispo, CA 93401

Phone: support@construction.com Email: support@construction.com Website: www.construction.com	Phone: 805-543-7330 Email: info@slocbe.com Website: www.slocbe.com
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Obtaining detailed information, which is the Bid package, (also referred to herein as the "Project Manual" or "Contract Documents") are posted on the District's website:

<http://www.oceanocsd.org>

If the website and/or links are not providing access to the bid package and related information, please contact the District's Business and Accounting Manager at 805-481-6730.

Any changes, additions, or deletions to these Contract Documents will be in the form of written addenda issued by the District. Any addenda will be posted on the website. Prospective bidders must check the website for addenda or other relevant new information at up to 5:00 p.m. the day before the prescribed date/time for submittal of bids. The District is not responsible for the failure of any prospective bidder to receive such addenda. All addenda so issued shall become a part of this Bid.

All bidders are required to acknowledge and confirm receipt of every addendum in their bid proposal.

All bidder Requests for Information must be submitted no later than 3:00 p.m., 5 business days prior to the bid opening date. Requests submitted after said date may not be considered. All questions pertaining to the content of this invitation to Bid must be made in writing through the District website. Questions and responses will be posted on the District website and can be viewed by accessing the Invitation to Bid located at the District website. The identity of the entity submitting the question will not be posted. The District reserves the right to determine the appropriateness of comments / questions that will be posted on the website.

The bidder must have either a Class A license or a combination of class C licenses that make up a majority of the work at the time the Contract is awarded (Public Contract Code § 3300). When the bidder holds a combination of Class C licenses, all work to be performed outside of the bidder's license specialties, except work that is incidental or supplemental to the licenses of the bidder, shall be performed by licensed Subcontractors in compliance with the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code)

Pursuant to section 1770 et seq. of the California Labor Code, the Contractor and all Subcontractors shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations and comply with all applicable Labor Code provisions, which include, but are not limited to the employment of apprentices, the hours of labor, and the debarment of Contractors and Subcontractors. The Director of the California Department of Industrial Relations determines the general prevailing wage rates. Copies are available at the District Office or at the DIR website, <http://www.dir.ca.gov/DLSR/PWD>.

Pursuant to Public Contract Code section 1771.1:

- A Contractor or Subcontractor shall not be qualified to bid on, be listed in the Bid Proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of this public works project, unless currently registered with the Department of Industrial Relations and qualified to perform work pursuant to Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by

Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

- This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Bids must be submitted under sealed cover plainly marked as a bid and identified with the project number, the date and time for receipt of sealed bids, and the name of the bidder.

Bids must be accompanied by cash, a certified or cashier's check, or a bidder's bond in favor of the District in an amount not less than ten percent (10%) of the submitted total base Bid.

Pursuant to Public Contract Code section 22300, the successful bidder may substitute certain securities for funds withheld by District to ensure performance under the Contract or, in the alternative, request the District to make payment of retention to an escrow agent.

The successful bidder will be required to furnish the District with payment and performance bonds, with each issued by a California admitted surety insurer equal to 100% of the Contract Price.

By order of the General Manager of the Oceano Community Services District, made this 12<sup>th</sup>  
day of March, 2019.

By Paavo Ogren  
Paavo Ogren, General Manager  
Oceano Community Services District



## INSTRUCTIONS TO BIDDERS

### 1. CONTRACT DOCUMENTS

The Contract Documents may be obtained from the District at the location specified in the Notice to Bidders.

The Contract Documents include the Notice to Bidders, Instructions to Bidders, Bid Forms, Agreement, General Conditions, Technical Provisions, and Project Plans and Specifications, and documents incorporated by reference therein.

Contract Documents can also be obtained from the District website at:

<http://www.oceanocsd.org>

If the website and/or links are not providing access to the bid package and related information, please contact the District's Business and Accounting Manager at 805-481-6730.

The District does not assume any liability or responsibility based on any defective or incomplete copying, excerpting, scanning, faxing, downloading, or printing of the Contract Documents.

### 2. JOB SITE AND CONTRACT DOCUMENT EXAMINATION

Bidders are responsible for examining the job site and the Contract Documents, including any Addenda issued prior to the Bid Deadline, and for informing themselves with respect to local labor availability, means of transportation, necessity for security, laws and codes, local permit requirements, wage scales, local tax structure, contractors licensing requirements, availability of required insurance, and other factors that could affect the work. Bidders are responsible for consulting the standards referenced in the Contract Documents.

Submission of a Bid is a bidder's acknowledgment that the bidder has examined the job site and bid documents and is satisfied with:

- A. General and local conditions to be encountered
- B. Character, quality, and scope of work to be performed
- C. Quantities of materials to be furnished
- D. Character, quality, and quantity of surface and subsurface materials or obstacles
- E. Requirements of the Contract Documents

Bidders should also recognize that the bid package includes several contract documents that were prepared by the County of San Luis Obispo, including the Environmental Summary in Exhibit "G" of the Construction Contract. The bid package is for the purpose of relocating water and wastewater utilities that are mandated by the County in order to accommodate the Oceano Drainage Improvement Project Phase II (County Contract No. 300456.08.02). Bidders should expect that the encroachment permit issued by CalTrans for work within Highway One and the encroachment permit issued by the County of San Luis Obispo for work within County roads will require compliance with conditions established in the County prepared Environmental Summary. Costs associated with (1) a Storm Water Pollution and Prevention Plan, (2) mitigation of Archeological Resources and (3) mitigation of contaminated soil, if any are required, will be paid as Extra Work pursuant to Contract Section 7.3 after a Change Order has been issued in accordance with Article 7 of the General Conditions (Exhibit "C" of the Construction Contract).

### 3. PRE-BID CONFERENCE

A pre-bid conference will not be held for this Contract.

#### **4. ADDENDA**

The District reserves the right to revise the Contract Documents prior to the Bid opening date. Revisions, if any, will be made by written Addenda. All Addenda issued by the District shall be included in the Bid and made part of the Contract Documents. Pursuant to Public Contract Code section 4104.5, if the District issues an Addendum that includes material changes to the work less than 72 hours prior to the Bid Deadline, the District will extend the Bid Deadline. The District may determine, in its sole discretion, whether an Addendum warrants postponement of the Bid Deadline.

All Addenda issued will be posted on the following website: <http://www.oceanocsd.org>

If the website and/or links are not providing access to the bid package and related information, please contact the District's Business and Accounting Manager at 805-481-6730.

Prospective bidders must check the website for addenda or other relevant new information during the response period. The District is not responsible for the failure of any prospective bidder to receive such addenda. All addenda so issued shall become a part of this Bid.

All bidders are required to acknowledge and confirm receipt of each and every addendum in their Bid. Failure to acknowledge all Addenda may result in a Bid being deemed nonresponsive and not eligible for award of the Contract.

#### **5. ENGINEER'S ESTIMATE**

Any engineer's estimate provided by the District relating to this work has been provided strictly for informational purposes and cannot be relied upon by any bidder as representing an accurate estimate of the value of the work. The purpose of providing any such engineer's estimate is simply to provide each potential bidder with some preliminary information relating to whether the work may be within its bonding capacity and available resources. Under no circumstance may a bidder rely upon the engineer's estimate as representing a reasonable value of the work.

#### **6. COMPLETION OF BID FORMS**

Prepare bids using only copies of the Bid Forms, which are included in the Contract Documents issued by the District. The use of Bid Forms other than clear and correct photocopies of those provided by the District will not be permitted. Bids must be executed by an authorized signatory as described in these Instructions to Bidders. Bidders must fill in all blank spaces (including inserting "N/A" where applicable) and initial all interlineations, alterations, or erasures to the Bid Forms. Bidders must not delete, modify, or supplement the printed matter on the Bid Forms or make substitutions thereon. Use of black or blue ink, indelible pencil, or a typewriter is required. Deviations in the Bid Forms may result in a Bid being deemed nonresponsive and not eligible for award of the Contract.

#### **7. LICENSING REQUIREMENTS**

Pursuant to section 7028.15 of the Business and Professions Code, bidders must possess licenses issued by the California Contractors State License Board for performance of this Contract. Subcontractors must possess the appropriate licenses for each specialty subcontracted.

The District has determined that bidders must have the class of license designated in the Notice to Bidders to be eligible for award of this Contract. The Contractor shall be properly licensed by the time the Contract is awarded, pursuant to the provisions of Public Contract Code section 20103.5. Failure of the bidder to obtain proper and adequate licensing for award of the Contract constitutes a failure to execute the Contract and shall result in the forfeiture of the security of the bidder.

**8. REGISTRATION REQUIREMENTS**

A Contractor or Subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of Public Contract Code section 4104, or engage in the performance of this Contract unless currently registered with the California Department of Industrial Relations and qualified to perform public work pursuant to Labor Code section 1725.5. It is not a violation of Labor Code section 1725.5 for an unregistered Contractor to submit a Bid on this Contract provided the Contractor is registered to perform public work pursuant to Section 1725.5 at the time this Contract is awarded.

**9. BID SECURITY**

Each Bid shall be accompanied by Bid Security consisting of: (a) cash; (b) a certified check made payable to the Oceano Community Services District; (c) a cashier’s check made payable to the Oceano Community Services District; or (d) a bidder’s bond in favor of the Oceano Community Services District executed by the bidder as principal and surety as obligor, in an amount not less than 10% of the total base Bid.

The surety insurer shall be admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120. Personal sureties and unregistered surety companies are unacceptable. The cash, check, or bidder’s bond shall be given as a guarantee that the bidder: (1) will execute the Contract if it is awarded to the bidder, and (2) shall provide the required payment and performance bonds and insurance certificates and endorsements as required by the Contract Documents. Failure to provide the required documents may result in forfeiture of the Bid Security and the District may award the Contract to another bidder or may call for new Bids.

**10. BID ITEM LIST**

Bidder shall submit a Bid based on the bid item quantities the District shows on the Bid Item List. The Bid Item List is included in the Bid Forms.

In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price shall prevail, except as provided:

- A. If the amount set forth as a unit price is ambiguous, unintelligible, or uncertain for any reason, or is omitted, or is the same amount as the entry in the “Total” column, then the amount set forth in the “Total” column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price.
- B. (Decimal Errors) If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, or one-hundredth, etc. from the entered total, the discrepancy will be resolved by using the entered unit price or item total, whichever most closely approximates percentage-wise the unit price or item total in the District’s final estimate of cost.

**11. DESIGNATION OF SUBCONTRACTORS (Public Contract Code 4100-4114)**

On the *Designation of Subcontractors - Base Bid and the Designation of Subcontractors – Base Plus Additive Bid forms*, Bidders shall list each Subcontractor to whom the bidder proposes to directly subcontract portions of the work in an amount in excess of 1/2 of one percent of the total Bid. The *Designation of Subcontractors* forms for listing Subcontractors are included in the Bid Forms.

For each Subcontractor listed, the *Designation of Subcontractors* forms must show:

- 1. Business name and the location of its place of business.
- 2. California contractor license number.
- 3. Public works contractor registration number
- 4. Portion of work it will perform. Show the portion of the work by:

- 4.1. Description of portion of subcontracted work
- 4.2. Bid item numbers for the work involved in the portion of work listed
- 4.3. Percentage of the total Bid for each bid item listed

## **12. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS**

In accordance with the provisions of the Labor Code, Contractors or Subcontractors may not perform work on a public works project with a Subcontractor who is ineligible to perform work on a public project pursuant to section 1777.1 or section 1777.7 of the Labor Code. Any contract on a public works project entered into between a Contractor and a debarred Subcontractor is void as a matter of law. A debarred Subcontractor may not receive any public money for performing work as a Subcontractor on a public works contract. Any public money that is paid to a debarred Subcontractor by the Contractor shall be returned to the District. The Contractor shall be responsible for the payment of wages to workers of a debarred Subcontractor used on the work

A list of Contractors barred by the Division of Labor Standards Enforcements is available on the following Department of Industrial Relations website:

<http://www.dir.ca.gov/dlse/debar.html>

## **13. DECLARATION OF NONCOLLUSION**

The *Declaration of Noncollusion* form shall be signed, under penalty of perjury, certifying that the Bid is not the result of and has not been influenced by collusion. Any Bid made without such declaration, or believed to be made in violation thereof, may be rejected.

## **14. IRAN CONTRACTING ACT CERTIFICATION**

Each bidder shall submit the certification required by the Iran Contracting Act of 2010, Public Contract Code section 2200 et seq. with its Bid. The certification is included in the Bid Forms section of the Contract Documents.

## **15. SIGNING OF BIDS**

All Bids submitted shall be executed by the bidder or its authorized representative. Bidders may be asked to provide evidence in the form of an authenticated resolution of its Board of Directors or a Power of Attorney evidencing the capacity of the person signing the Bid to bind the bidder to each Bid and to any Contract.

If the bidder is a corporation, the legal name of the corporation shall be set forth on the Bid Proposal Form with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If the bidder is a partnership, the true name of the firm shall be set forth on the Bid Proposal Form with the signature of the partner or partners authorized to sign contracts on behalf of the partnership. If the bidder is an individual, his or her signature shall be placed on the Bid Proposal. If signature is by an agent, other than an officer of a corporation or a member of a partnership, a Power of Attorney must be submitted with the Bid; otherwise, the Bid will be disregarded as irregular and unauthorized.

## **16. SUBMISSION OF SEALED BIDS**

Once the Bid Forms have been completed and signed as set forth herein, place them, along with the Bid Security and other required materials, in an envelope, sealed, addressed, and delivered or mailed, postage prepaid, to the District as indicated in the Notice to Bidders. No oral or telephonic bids will be considered. No forms transmitted via the internet, e-mail, facsimile, or any other electronic means will be considered. Bids must be plainly marked as a Bid and identified with the Project number, the date and time of receipt of sealed Bids, and the name of the bidder.

**17. DELIVERY AND OPENING OF BIDS**

Bids will be received by the District at the address shown in the Notice to Bidders prior to the date and time shown therein. The District will leave unopened any Bid received after the specified date and time, and any such unopened Bid will be returned to the bidder. It is the bidder's sole responsibility to ensure that its Bid is received as specified. Bids may be submitted earlier than the date and time indicated.

Bids will be opened as stated in the Notice to Bidders, and the amount of each Bid will be read aloud and recorded. All bidders may, if they desire, attend the opening of Bids. The District may in its sole discretion, elect to postpone the opening of the submitted Bids. District reserves the right to reject any or all Bids and to waive any informality or irregularity in any Bid.

**18. WITHDRAWAL OF BID**

Any bidder may withdraw its Bid by written request any time prior to the time set forth in the Notice to Bidders for the opening of Bids by notice to the District's Business and Accounting Manager at 1655 Front Street, Oceano, CA 93445. Such notice shall be in writing signed by the bidder and shall be received, and date-stamped and time-stamped by the District. Withdrawn Bids may be resubmitted on or before the time set forth in the Notice to Bidders for receipt of Bids provided that they are in full conformance with the Contract Documents. Once submitted, all Bids are irrevocable, except as otherwise provided by law. Each bidder agrees by submitting a Bid that its Bid shall remain open, is irrevocable, and may not be modified, withdrawn, or cancelled for a period of at least 90 days after Bid opening. Any request for District's consent to permit a bidder to withdraw a Bid after the Bid Deadline must be made in accordance with Public Contract Code section 5100 et seq., including, but not limited to, submission of written notice to the District within 5 business days after Bid opening specifying in detail how the mistake occurred.

**19. RESERVATION OF RIGHTS**

The District reserves the right to reject any or all bids, and to waive discrepancies, irregularities, informalities, or any other error in the bid or bidding, if to do so seems to best serve the public interest. The right of the District to waive errors applies even if the Contract Documents state that a discrepancy, irregularity, informality, or other error make a bid nonresponsive, so long as the error does not constitute a material error.

The District reserves the right, in its sole discretion, to: judge the bidder's representations as stated in the Bid forms and any post-Bid information to determine whether or not bidder is qualified to perform the work; be the sole judge regarding the suitability of the products, services, or supplies offered; to not purchase all items or the full quantity of each item listed in the Bid Item List; reject any or all Bids; waive any deficiencies, irregularities, or informalities in any Bids or in the bidding process; modify, cancel, or withdraw the Notice to Bidders; issue a new Notice to Bidders; suspend or abandon the Project; seek the assistance of outside technical experts in Bid evaluation; require a bidder to provide a guarantee (or guarantees) of the Contract by a third party; and not issue a Notice to Proceed after execution of the Contract. In submitting a Bid in response to the Notice to Bidders, the bidder is specifically acknowledging the District holds these rights. The Notice to Bidders does not commit the District to enter into a Contract, to reject, in its sole discretion, all Bids, nor does it obligate the District pay for any costs incurred in preparation and submission of a Bid or in anticipation of a Contract. By submitting a Bid, the bidder disclaims any right to be paid for such costs.

**20. BASIS OF AWARD; BALANCED BIDS**

The District will award the Contract to the responsible bidder that submits the lowest responsive Bid, which shall be determined as set forth in the Notice to Bidders and as provided in these Instructions to Bidders and subject to the rights reserved by the District.

**21. DISQUALIFICATION OF BIDDERS; INTEREST IN MORE THAN ONE BID**

No bidder shall be allowed to make, submit, or be interested in more than one Bid. However, a person, firm, corporation or other entity that has submitted a proposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a proposal or quoting prices to other bidders submitting a Bid to the District, or submitting a Bid to the District as a prime bidder.

Submitting bids on County Contract 300465.08.02 does not preclude a bidder from submitting a bid on District Contract 2019-02.

A firm that the District has hired to provide architectural or engineering services to the District for this Contract before Bid submittal for this Contract is prohibited from all of the following:

1. Submitting a Bid;
2. Subcontracting for a part of the work; and
3. Supplying materials.

**22. INSURANCE REQUIREMENTS**

The successful bidder shall procure and maintain insurance in the forms, in the amounts and for the durations specified in the General Conditions.

**23. RESPONSIVE BID**

A responsive Bid is a Bid that conforms, in all material respects, to these Instructions to Bidders. Non-responsive Bids will be rejected.

**24. RESPONSIBLE BIDDER**

A responsible bidder means a bidder who has demonstrated the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform fully the requirements of the Contract Documents and the moral and business integrity and reliability that will assure good faith performance in the sole discretion of the District. Any determination of a bidder's non-responsibility by the District shall be based on the fitness and capacity of the bidder to satisfactorily perform the obligations of the Contract, whether or not the bidder is qualified to perform those obligations, whether or not the bidder is trustworthy, and such other bases as may be relevant.

**25. EVIDENCE OF RESPONSIBILITY AND ADDITIONAL INFORMATION**

In addition to other provisions of the Bidding Requirements, upon the request of the District, a bidder whose Bid is under consideration for the award of the Contract shall promptly submit satisfactory evidence to District showing the bidder's financial resources, experience in the field, and organization and other factors evidencing bidder's ability to successfully execute and complete the Contract.

**26. AWARD PROCESS**

Once all Bids are opened and reviewed to determine the lowest responsive and responsible bidder, the District may award the Contract or reject all Bids. Once the District notifies the selected bidder of the award, the bidder will have 10 business days from the date of the award and tender of Contract to deliver to the District the executed Contract, all of the required bonds, evidence of insurance, and other materials

set forth in the Contract Documents. Once the District receives all of the properly executed documents and certifications, the District will deliver the fully executed Contract to the Contractor and issue a Notice to Proceed. If the District's issuance of a Notice to Proceed is delayed due to Contractor's failure to return fully-executed Contract, insurance, bond, and other required documents within 5 working days after the award and tender of the Contract, then Contractor agrees to the deduction of 1 working day from the number of days in the Contract Time for every day of delay in District's receipt of said documents. This right is in addition to and does not affect the District's right to demand forfeiture of the Bid Security if Contractor persistently delays in providing the required documentation. The Contractor's failure to return all of the required documents within 5 working days may result in the award of the contract to the next lowest bidder or rejection of all bids if, in the General Manager's sole discretion, it is determined that uncertainty in awarding and contract execution for the work impairs the District's ability to meet the deadline established in the District's agreement with the County regarding the permanent utility relocation work for the Oceano Drainage Improvement Project.

**27. RETENTION AND SUBSTITUTION OF SECURITY**

The District will make monthly progress payments based upon work performed in accordance with the Contract Documents. Unless otherwise specified in the Notice to Bidders, the District will retain five percent (5%) of each progress payment as provided by the Contract Documents. At the request and expense of the Contractor, the Contractor may substitute securities for the amount so retained, or in the alternative, request the District make payment to an escrow agent in accordance with Public Contract Code section 22300. Contractor shall have 30 days following award of the Contract to submit a written request to the District to permit substitution of securities or payment of retention to an escrow agent; failure to do so shall be deemed a waiver of the right.

**28. PERFORMANCE BOND AND PAYMENT (LABOR AND MATERIALS) BOND REQUIREMENTS**

The successful bidder shall deliver to the District two (2) fully executed, identical counterparts of the performance bond and payment (labor and materials) bond in the form supplied by the District and included in the Contract Documents. The penal amount of each bond shall be for one hundred percent (100%) of the total base Bid plus the additive bid items, if added by District. The surety insurer shall be admitted to transact surety business in the State of California, in accordance with Code of Civil Procedure section 995.120. Personal sureties and unregistered surety companies are unacceptable. Failure to furnish a bond within this time may, in the sole discretion of District, result in the forfeiture of the Bid Security.

**29. SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES AND FEES**

Contractor and its Subcontractors performing work under this Contract will be required to pay California sales tax and other applicable taxes, and to pay for permits, licenses, and fees required by the agencies with authority in the jurisdiction in which the work will be located, unless otherwise expressly provided by the Contract Documents. Bidders shall include all applicable taxes and fees that are in effect or reasonably anticipated at the Bid Deadline in all Bid prices.

**30. BID PROTEST PROCEDURE**

Bid protests and other challenges to the award of this Contract must comply with Rules Governing Bid Protests and Other Challenges to Awards of Construction Contracts ("Rules"). A copy of the Rules is attached to this Contract as an appendix. In addition, any Bid protest must be submitted in writing to the Oceano Community Services District, 1655 Front Street, Oceano CA 93445; Attention: General Manager.

END OF INSTRUCTIONS TO BIDDERS

**OCEANO COMMUNITY SERVICES DISTRICT**

**BID FORMS**

**FOR**

**OCEANO DRAINAGE UTILITY RELOCATION PROJECT**

**OCEANO, CA**

**CONTRACT NO. 2019-02**



**BID PROPOSAL FORM**  
**TO THE BOARD OF DIRECTORS**  
**OF THE OCEANO COMMUNITY SERVICES DISTRICT**  
**OCEANO DRAINAGE UTILITY RELOCATION PROJECT**  
**OCEANO, CA**  
**CONTRACT NO. 2019-02**

**NAME OF BIDDER** \_\_\_\_\_

**BUSINESS P.O. BOX** \_\_\_\_\_

**CITY, STATE, ZIP** \_\_\_\_\_

**BUSINESS STREET ADDRESS** \_\_\_\_\_  
(include even if P.O. Box used)

**CITY, STATE, ZIP** \_\_\_\_\_

**PHONE NO: AREA CODE ( \_\_\_\_\_ )** \_\_\_\_\_

**FAX NO: AREA CODE ( \_\_\_\_\_ )** \_\_\_\_\_

**CONTRACTOR LICENSE NO.** \_\_\_\_\_ **CLASSIFICATION** \_\_\_\_\_

**PUBLIC WORKS CONTRACTOR REGISTRATION NO:** \_\_\_\_\_

**TAX I.D. NUMBER:** \_\_\_\_\_

**BUSINESS TYPE (Check one):** Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Sole Proprietorship \_\_\_\_\_  
Limited Liability Company \_\_\_\_\_

**CONTACT PERSON NAME** \_\_\_\_\_

**CONTACT PERSON PHONE No.** \_\_\_\_\_

**CONTACT PERSON E-MAIL** \_\_\_\_\_

**EMPLOYER'S TAX IDENTIFICATION NUMBER** \_\_\_\_\_

Bidder agrees that the Bid and all prices shall remain open and shall not be withdrawn for a period of not less than **90 days** from the Bid Deadline, or until rejected by the District, whichever period is shorter.

**1. ADDENDA**

The undersigned acknowledges and confirms the receipt of the following Addenda: Addenda

<u>Number</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____

and agrees that said addenda are covered in the bid proposal and shall form a part of the Contract Documents.

**2. CERTIFICATION OF INSPECTION OF THE SITE AND CONTRACT DOCUMENTS**

By signing below, bidder certifies that it: has received, carefully examined, and is fully familiar with all of the provisions of the Contract Documents, including all Addenda and attachments, and that said Contract Documents contain sufficient detail regarding the work to be performed; has notified the District of any errors or omissions in the Contract Documents and unusual site conditions; has carefully checked all words, prices, and statements in this Bid Proposal Form; and has visited the job site and conducted such other field investigations which are prudent and reasonable in preparing the Bid. Bidder agrees that the District will not be responsible for any errors or omissions on the part of the undersigned in making the Bid.

**3. BIDDER’S REPRESENTATIONS REGARDING INSURANCE AND BONDS**

This Bid is made with the full knowledge of the kind, quantity, and quality of the materials and work required and, if it is accepted by the District, the bidder will enter into a Contract and furnish the bonds, insurance and other documents as required by the Contract Documents within 5 business days after award and tender of the Contract. **By its signature below, the bidder agrees to provide the proper evidence of insurance and bonds within 5 business days after District’s tender of the Contract. Failure to do so may result in forfeiture of Bid Security and rescission of the award by the District.**

**4. CONTRACTORS LICENSE CERTIFICATION.**

The undersigned certifies that:

Contractors License No. \_\_\_\_\_ issued by the California Contractors State License Board (“CSLB”) to the undersigned on \_\_\_\_\_, \_\_\_\_\_, is current, valid, has not been revoked, suspended or cancelled, and is appropriate to the work to be undertaken.

Contractors License Classification(s): \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Name of Qualifying Individual: \_\_\_\_\_

**5. TIME FOR COMPLETION**

The bidder agrees that if awarded the Contract, it shall complete the work within the number of working days specified in the Contract Documents.

## 6. ATTACHMENTS TO THIS BID PROPOSAL FORM

Enclosed herewith (except as otherwise provided for optional forms) and by this reference incorporated herein and made a part of this Bid Proposal Form are the following items:

1. Bid Item List
2. Designation of Subcontractors Base Bid Form
3. Declaration of Noncollusion
4. Contractor's Certification Regarding Workers' Compensation Insurance
5. California Public Contract Code 10162 Questionnaire
6. California Public Contract Code 10232 Statement
7. California Public Contract Code 10285.1 Statement
8. Iran Contracting Act Certification
9. Bidder's Bond or other Bid Security

Bids are to be submitted for the entire work. The amount for Bid comparison purposes will be the total of all items.

The bidder shall set forth for each unit basis item of work a unit price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for that purpose. In the case of unit basis items, the amount set forth under the "Total" column is the extension of the unit price bid on the basis of the approximate quantity for the item.

Accompanying this Bid Proposal is a bidder's bond, cash, cashier's check, or a certified check, payable to the Oceano Community Services District, for the sum of at least ten percent (10%) of the total of the base bid. The proceeds thereof shall become the property of the District if the Bid is withdrawn after the time fixed in the Notice to Bidders for the opening of Bids, or if, in case this Bid is accepted by the District and such bidder has received written notice that the Contract has been awarded to him/her, the undersigned shall fail within 5 business days to execute the Contract with the District and furnish all documents required in section 3-1.18 of the General Conditions. Otherwise, said Bid Security, except a bidder's bond, will be returned to the undersigned.

**7. BIDDER'S ORGANIZATION AND SIGNATURE AUTHORIZATION**

The undersigned certifies that he/she/they is/are authorized to sign this Bid and any subsequent Contract on behalf of the bidding firm or company and that the nature of this bidding firm is an individual, partnership, corporation, or limited liability company with the principals or authorized officers of the firm listed as follows:

Nature of Firm:

(Corporation, Partnership, Individual, etc.) \_\_\_\_\_

Principal Officers/Partners/Members: \_\_\_\_\_

\_\_\_\_\_

Name of President of Corporation: \_\_\_\_\_

Name of Secretary of Corporation: \_\_\_\_\_

Corporation is organized under laws of State of \_\_\_\_\_, and is authorized to transact business in the State of California.

\_\_\_\_\_  
Company/Contractor Legal Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (print/type)

\_\_\_\_\_  
Title (print/type)

\_\_\_\_\_  
Date

**BID FORM - BID ITEM LIST**

**BASE BID**

ITEM NO.	DESCRIPTION OF ITEM	APPROX. QUANTITY	UNIT OF MEASURE	UNIT PRICE (IN FIGURES)	TOTAL AMOUNT DOLLARS. CENTS
1	SR-1 STA 10+90 12" WATERLINE MODIFICATION	1	LS		
2	RAILROAD STREET 6" SEWER MODIFICATION	1	LS		
3	15TH STREET STA 13+85 12" WATERLINE MODIFICATION	1	LS		
4	PASOROBLES STREET STA 10+156" WATERLINE MODIFICATION	1	LS		
5	RAILROAD STREET STA 13+456" WATERLINE MODIFICATION	1	LS		
<b>GRAND TOTAL BASE BID</b>					

***ADDITIVE BID ITEM 1***

ITEM NO.	CODE NO.	DESCRIPTION OF ITEM	APPROX. QUANTITY	UNIT OF MEASURE	UNIT PRICE (IN FIGURES)	TOTAL AMOUNT DOLLARS. CENTS
		N/A				
<b>TOTAL ADDITIVE BID ITEM 1</b>						

<b>GRAND TOTAL BASE BID PLUS ADDITIVE BID ITEMS</b>					
---	--	--	--	--	--

Name of bidder \_\_\_\_\_

Signature of bidder \_\_\_\_\_

Printed Name and Title \_\_\_\_\_

Date \_\_\_\_\_

**DESIGNATION OF SUBCONTRACTORS – BASE BID**

In accordance with the provisions of Public Contract Code section 4100 et seq., the undersigned bidder sets forth the following:

- a. The name, location of the place of business, and California contractors license number of each Subcontractor who will perform work or labor, or render service to the undersigned Prime Contractor in or about the construction of the work or improvement, or a Subcontractor licensed by the State of California who, under subcontract to the Prime Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent of the undersigned Prime Contractor's Total Bid.
- b. The portion of the work which will be done by each such Subcontractor. Only one Subcontractor shall be listed for each such portion. If the Subcontractor is not performing all of the work under the bid item number(s) listed for that Subcontractor, the bidder shall set forth the portion of the work relating to said bid item number(s) that will be done by the Subcontractor.

Bid Item No.	Description of Trade/Portion of Work	Subcontractor Name	License No.	DIR Reg No.**	Business Address	Percent of Total Bid

By: \_\_\_\_\_  
 (Bidder's Company Name)

NOTES: \*When there is a failure to list a Subcontractor as required, or when the bidder lists two Subcontractor for the same portion of the work, the law provides that the bidder agrees that bidder is fully qualified to perform that portion itself, and that the bidder shall perform that portion itself. In such case, bidder must be authorized to perform said work. Any Bid not complying with the provisions hereof may be rejected.

\*\* Pursuant to Labor Code Section 1771.1, no contractor or Subcontractor may be listed on the bid proposal for this public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

**DECLARATION OF NONCOLLUSION**

In accordance with Public Contract Code Section 7106, the bidder declares as follows:

I am the \_\_\_\_\_ [title] of \_\_\_\_\_ [name of bidder], the party making the foregoing Bid. The Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham Bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham Bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the Bid price, or of that of any other bidder. All statements contained in the Bid are true. The bidder has not, directly or indirectly, submitted his or her Bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose. Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

\_\_\_\_\_ [date], at \_\_\_\_\_ [city], \_\_\_\_\_ [state].

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

If the bidder fails to complete and properly sign this declaration, the Bid will be considered non-responsive and will be rejected.

**CONTRACTOR'S CERTIFICATION REGARDING WORKERS' COMPENSATION INSURANCE**

State of California

County of San Luis Obispo  
Oceano Community Services District

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Note: The penalty for making false statements in offers is prescribed in 18 USC 1001 and other applicable Federal and State law.

Company: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE**

The bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes \_\_\_\_\_ No \_\_\_\_\_

If the answer is yes, explain the circumstances in the following space.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Company: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PUBLIC CONTRACT CODE SECTION 10232 STATEMENT**

The bidder, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the bidder's failure to comply with an order of a federal court which orders the bidder to comply with an order of the National Labor Relations Board.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

Company: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT**

The bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder has \_\_\_\_, has not \_\_\_\_ - been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

**Note: The bidder must place a check mark after "has" or "has not" in one of the blank spaces provided (above).**

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

Company: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**IRAN CONTRACTING ACT CERTIFICATION**

**(Public Contract Code section 2200 et seq.)**

As required by California Public Contract Code section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status regarding the Iran Contracting Act of 2010 (Public Contract Code section 2200 et seq.) is true and correct:

- The Contractor is not:
  - (i) identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code section 2203; or
  - (ii) a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.
- The County has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the County will be unable to obtain the goods and/or services to be provided pursuant to the Contract.
- The amount of the Contract payable to the Contractor for work does not exceed \$1,000,000.

Company: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Note: In accordance with Public Contract Code section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Contract Price, termination of the Contract and/or ineligibility to bid on contracts for three years.

**BIDDER'S BOND**

KNOW ALL BY THESE PRESENTS:

That we, \_\_\_\_\_

\_\_\_\_\_

as Principal, and \_\_\_\_\_

\_\_\_\_\_

as Surety, are held and firmly bound unto the Oceano Community Services District, County of San Luis Obispo, State of California (hereinafter called "District") in the penal sum of Ten Percent (10%) of the total aggregate amount of the base Bid of the Principal above named, submitted by said Principal to the District for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. In no case shall the liability of the Surety hereunder exceed the sum of \_\_\_\_\_

\_\_\_\_\_ (\$\_\_\_\_\_).

THE CONDITION OF THIS OBLIGATION IS SUCH,

That whereas a bid to District for certain construction specifically described as follows, for which bids are to be opened on \_\_\_\_\_, 20\_\_\_\_\_, has been submitted by

Principal to District for:

**OCEANO DRAINAGE UTILITY RELOCATION PROJECT  
OCEANO, CA  
CONTRACT NO. 2019-02**

NOW, THEREFORE, the penal sum guaranteed by this bond shall be forfeited to the District in the event of any of the following:

(1) The aforesaid Principal withdraws said bid after the time fixed in the Notice to Bidders for the opening of bids; or,

(2) Principal fails to provide the District within the time(s) specified in the aforesaid contract documents all of the completed DBE documents required to perfect the Principal's bid before the contract is awarded; or

(3) Principal fails, within five (5) business days after receipt of written notice that the contract has been awarded to Principal, to enter into a written contract with District, in the prescribed form, in accordance with the bid as accepted, and file with the District the certificates of insurance as stipulated in section 7-1.06 of the General Conditions and the two bonds (in the prescribed forms), one to guarantee faithful performance and the other to guarantee payment for labor and materials.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said contract or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

In the event suit is brought upon said bond by District and judgment is recovered, the Surety shall pay all costs incurred by District in such suit, including a reasonable attorney's fee to be fixed by the court. Death of the Principal shall not relieve Surety of its obligations hereunder.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Seal)

Principal

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Seal)

Surety

\_\_\_\_\_

\_\_\_\_\_

Address

NOTE: Signatures of those executing for Surety must be properly acknowledged.

OCEANO COMMUNITY SERVICES DISTRICT

CONSTRUCTION CONTRACT

OCEANO DRAINAGE UTILITY RELOCATION  
PROJECT

PROJECT NO. 2019-02

April \_\_\_\_, 2019



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## CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT entered into on \_\_\_\_\_, 2019 (“Execution Date”) by and between the OCEANO COMMUNITY SERVICES DISTRICT, a California community services district (“District”), and \_\_\_\_\_ (“Contractor”), is made with reference to the following:

### RECITALS:

A. District is a community services district duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California.

B. Contractor is a Corporation or company duly organized and in good standing in the State of \_\_\_\_\_, License Number \_\_\_\_\_. Contractor represents that it is duly licensed by the State of California and has the background, knowledge, experience and expertise to perform the obligations set forth in this Construction Contract.

C. On \_\_\_\_\_, District issued a Notice Inviting Bids to contractors for \_\_\_\_\_ Project. A copy of District’s Notice Inviting Bids is attached hereto as Exhibit “A” and incorporated by reference. In response to District’s Notice Inviting Bids, Contractor submitted its Bid. A copy of Contractor’s Bid is attached hereto as Exhibit “B” and incorporated herein by reference. Also attached hereto and incorporated by reference are the following:

- Exhibit C – General Conditions.
- Exhibit D – Project Plans, Special Provisions, Technical Specifications and County of San Luis Obispo Revised Standard Specifications (Dated 04-20-2108).
- Exhibit E – Payment and Performance Bonds.
- Exhibit F – Insurance Requirements.
- Exhibit G – Additional Contract Requirements.

D. District and Contractor desire to enter into this Construction Contract for Oceano Drainage Utility Relocation Project, and other services as identified in the Bid Documents for the upon the following terms and conditions.

NOW THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed by and between the undersigned parties as follows:

## SECTION 1                    INCORPORATION OF RECITALS AND DEFINITIONS.

### 1.1        **Recitals.**

All of the recitals are incorporated herein by reference.

### 1.2        **Definitions.**

Capitalized terms shall have the meanings set forth in this Construction Contract and/or in the General Conditions. If there is a conflict between the definitions in this Construction Contract and in the General Conditions, the definitions in this Construction Contract shall prevail.

---

**SECTION 2            THE PROJECT.**

The Project is the construction of the Oceano Drainage Utility Relocation Project ("Project").

**SECTION 3            THE CONTRACT DOCUMENTS.**

The Contract Documents consist of the following collection of documents:

- (i) Notice Inviting Pre-Qualification Statements, Pre-Qualification Statement, and Pre-Qualification Checklist (if applicable). (Not applicable for this Project).
- (ii) Executed Construction Contract between District and Contractor.
- (iii) Notice Inviting Bids.
- (iv) Instructions to Bidders.
- (v) Bidding Addenda.
- (vi) Contractor's Bid.
- (vii) General Conditions.
- (viii) Special Provisions and Technical Specifications.
- (ix) Performance and Payment Bonds.
- (x) Insurance Forms.
- (xi) Plans and Drawings.
- (xii) Reports listed in the Bidding Documents.
- (xiii) Supplements, Attachments, and Exhibits attached to the above items.
- (xiv) Modifications.
- (xv) Change Orders.
- (xvi) Field Orders.
- (xvii) Other documents as so designated by written agreement of the Parties.

**SECTION 4            THE WORK.**

The Work includes all labor, materials, equipment, services, permits, licenses and taxes, and all other things necessary for Contractor to perform its obligations and complete the Project, including, without limitation, any Changes requested by District, in accordance with the Contract Documents and all Applicable Code Requirements.

**SECTION 5            PROJECT TEAM.**

In addition to Contractor, District has retained, or may retain, consultants and contractors to provide professional and technical consultation for the design and construction of the Project. The Project requires that Contractor operate efficiently, effectively and cooperatively with District as well as all other members of the Project Team.

---

**SECTION 6 TIME OF COMPLETION.****6.1 Time Is of the Essence.**

Time is of the essence with respect to all time limits set forth in the Contract Documents.

**6.2 Commencement of Work.**

Contractor shall commence the Work on the date specified in District's Notice to Proceed.

**6.3 Contract Time.**

Contractor shall diligently prosecute the Work to Substantial Completion 40 Calendar Days after the date specified in District's Notice to Proceed.

**6.4 Liquidated Damages.****6.4.1 Entitlement.**

District and Contractor acknowledge and agree that if Contractor fails to fully and satisfactorily complete the Work within the Contract Time, District will suffer, as a result of Contractor's failure, substantial damages which are both extremely difficult and impracticable to ascertain. Such damages may include, but are not limited to:

- (i) Loss of public confidence in District and its contractors and consultants.
- (ii) Loss of public use of public facilities.
- (iii) Extended disruption to public.

**6.4.2 Daily Amount.**

District and Contractor have reasonably endeavored, but failed, to ascertain the precise amount in relation to the actual damage that District will incur if Contractor fails to achieve Substantial Completion of the entire Work within the Contract Time. Therefore, the parties agree that in addition to all other damages to which District may be entitled, in the event Contractor shall fail to achieve Substantial Completion of the entire Work within the Contract Time, Contractor shall pay District as liquidated damages the amount of \$3,500 per day for each Day occurring after the expiration of the Contract Time until Contractor achieves Substantial Completion of the entire Work. The liquidated damages amount is not a penalty but considered to be a reasonable estimate of the amount of damages District will suffer.

**6.4.3 Apportionment.**

Such liquidated damages shall be subject to apportionment for delays to Substantial Completion for which Contractor is entitled to receive an extension of time under the Contract Documents. Such apportionment shall not be affected by the fact that liquidated damages may not be capable of apportionment for other periods of time during which there have occurred delays concurrently caused by both District and Contractor. It being the Contractor's obligation to have the entire Work Substantially Completed within the Contract Time, it is agreed that such liquidated damages shall not be apportioned for portions of the Work completed prior to expiration of the Contract Time.

**6.4.4 Damages upon Abandonment.**

In the event that Contractor either abandons the Work or is terminated for default in accordance with the provisions of Section 15 of this Construction Contract, District shall have the right to liquidated damages pursuant to Paragraph 6.4 in addition to all actual Losses proximately resulting from Contractor's failure to complete the Work within the Contract Time.

**6.4.5 Other Remedies.**

The parties further acknowledge and agree that District is entitled to any and all available legal and equitable remedies District may have where District's Losses are caused by any reason other than Contractor's failure to achieve Substantial Completion of the entire Work within the Contract Time.

**6.5 Adjustments to Contract Time.**

The Contract Time may only be adjusted for time extensions approved by District and agreed to by Change Order executed by District and Contractor in accordance with the requirements of the Contract Documents.

**6.6 Additional Compensation to Contractor.**

The Contract Sum shall be increased by the amount of \$1,050 for each day of extension to the Contract Time that is permitted under the terms of the General Conditions solely due to Compensable Delay occurring prior to Substantial Completion, but only to the extent that such Compensable Delay is not concurrent with a Non-Compensable Delay.

Regardless of the cause of the Delay (including, without limitation, acts or omissions of District or its consultants, errors, conflicts or omissions in the Contract Documents, or Changes to the Work), Contractor agrees to accept the compensation provided for in this Paragraph as its sole and exclusive right, remedy and recovery arising from or related to any Delay, interruption, hindrance, compression, acceleration, disruption or the impact or ripple effect of Delays on the Work, that may occur in connection with Contractor's performance of Work on the Project and for any resulting foreseen or unforeseen:

- (i) Overhead expenses such as, but not limited to, additional supervision, administration, extended or extraordinary overhead (direct or home office), insurance or bond costs; and
- (ii) Productivity expenses such as additional loss of productivity, inefficiency, and escalation of costs of labor, wage, material or equipment.

**SECTION 7 COMPENSATION TO CONTRACTOR.****7.1 Contract Sum.**

Contractor shall be compensated for satisfactory completion of the Work in compliance with the Contract Documents the Contract Sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

**7.2 Full Compensation.**

The Contract Sum shall be full compensation for all Work provided by Contractor and, except as otherwise expressly permitted by the terms of the Contract Documents, shall cover all Losses arising out of the nature of the Work or from the acts of the elements or any unforeseen difficulties or obstructions which may arise or be encountered in performance of the Work until its Acceptance by District, all risks connected with the Work,

and any and all expenses incurred due to suspension or discontinuance of the Work. The Contract Sum may only be adjusted for Change Orders issued, executed and satisfactorily performed in accordance with the requirements of the Contract Documents.

### **7.3 Compensation for Extra or Deleted Work.**

The Contract Sum shall be adjusted (either by addition or credit) for Changes in the Work involving Extra Work or Deleted Work on the basis of both of the following:

- (i) The sum of Allowable Costs as defined in Paragraph 7.2.5 of the General Conditions to be added (for Extra Work) or credited (for Deleted Work); and
- (ii) An additional sum (for Extra Work) or deductive credit (for Deleted Work) based on Contractor Markup and Subcontractor/Sub-subcontractor Markups allowable pursuant to this Section 7.3.

Contractor Markup and Subcontractor/Sub-subcontractor Markups set forth herein are the full amount of compensation to be added for Extra Work or to be subtracted for Deleted Work that is attributable to overhead (direct and indirect) and profit of Contractor and of its Subcontractors and Sub-subcontractors, of every Tier. Contractor Markup and Subcontractor/Sub-subcontractor Markups, which shall not be compounded, shall be computed as follows:

#### **7.3.1 Self-Performed Work.**

Fifteen percent (15%) of the Allowable Costs for that portion of the Extra Work or Deleted Work to be performed by Contractor with its own forces.

#### **7.3.2 Subcontractors.**

Fifteen percent (15%) of the Allowable Costs for that portion of the Extra Work or Deleted Work to be performed by a first Tier Subcontractor with its own forces, plus two and one-half percent (2.5%) thereon for Contractor Markup.

#### **7.3.3 Sub-subcontractors.**

Fifteen percent (15%) of the Allowable Costs of that portion of the Work to be performed by Sub- subcontractors of the second and lower Tier with their own forces, plus two and one-half percent (2.5%) thereon for the Subcontractor, plus two and one-half percent (2.5%) on the combined total thereof for Contractor Markup.

## **SECTION 8 STANDARD OF CARE.**

Contractor agrees that the Work shall be performed by qualified, experienced and well-supervised personnel. All services performed in connection with this Construction Contract shall be performed in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope and complexity of the Project.

## **SECTION 9 INDEMNIFICATION.**

### **9.1 Hold Harmless.**

To the fullest extent allowed by law, Contractor hereby agrees to defend, indemnify, and hold harmless District, its District Board of Directors, officers, agents, employees,

representatives and volunteers (hereinafter collectively referred to as "Indemnitees"), through legal counsel acceptable to District, from and against any and all Losses, claims, causes of action arising directly or indirectly from, or in any manner relating to any of, the following:

- (i) Performance or nonperformance of the Work by Contractor or its Subcontractors or Sub-subcontractors, of any Tier;
- (ii) Performance or nonperformance by Contractor or its Subcontractors or Sub-subcontractors, of any Tier, of any of the obligations under the Contract Documents;
- (iii) The construction activities of Contractor or its Subcontractors or Sub-subcontractors, of any Tier, either on the Site or on other properties;
- (iv) The payment or nonpayment by Contractor of any of its Subcontractors or Sub-subcontractors, of any Tier, for Work performed on or off the Site for the Project; and
- (v) Any personal injury, including but not limited to bodily injury or death, arising out of or relating to the performance or non-performance of the Work.
- (vi) Any injury, property damage or economic loss to third parties associated with the performance or nonperformance by Contractor or its Subcontractors or Sub-subcontractors, of any Tier, of the Work.

However, nothing contained herein shall be construed as obligating Contractor to indemnify any Indemnitee for Losses resulting from the sole or active negligence or willful misconduct of the Indemnitee. Contractor shall pay District for any costs incurred in enforcing this provision. Nothing in the Contract Documents shall be construed to give rise to any implied right of indemnity in favor of Contractor against District or any other Indemnitee.

## **9.2 Survival.**

The provisions of Section 9 shall survive the termination of this Construction Contract.

## **SECTION 10 COMPLIANCE WITH APPLICABLE CODE REQUIREMENTS.**

This Project constitutes "public works" within the meaning of California Labor Code section 1720 and is subject to the prevailing wage laws. Contractor agrees to be subject to and comply with all applicable federal, state and municipal laws, codes, ordinances and regulations governing the Work, including, but not limited to applicable provisions of the California Labor Code.

## **SECTION 11 INSURANCE AND BONDS.**

Prior to the commencement of any Work, Contractor shall provide District with evidence that it has obtained insurance and Performance and Payment Bonds satisfying all requirements in Article 11 of the General Conditions. Failure to do so shall be deemed a material breach of this Construction Contract.

## **SECTION 12 PROHIBITION AGAINST TRANSFERS.**

District is entering into this Construction Contract based upon the stated experience and qualifications set forth in Contractor's Bid. Accordingly, Contractor shall not assign, hypothecate or transfer this Construction Contract or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of District. Any assignment, hypothecation

or transfer without said consent shall be null and void.

For purposes of applying the provisions of this Section, the sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor or of any general partner or joint venturer or syndicate member of Contractor, if a partnership or joint venture or syndicate or co-tenancy exists, which shall result in changing the control of Contractor, shall be construed as an assignment of this Construction Contract. Control means more than fifty percent (50%) of the voting power of the corporation or other entity.

**SECTION 13            NOTICES.**

**13.1 Method of Notice.**

Except as provided in Section 13.2 below, all notices, demands, requests or approvals to be given under this Construction Contract shall be given in writing and conclusively shall be deemed served on the earlier of the following:

- (i) On the date delivered, if delivered personally;
- (ii) On the third business day after the deposit thereof in the United States mail, postage prepaid, and addressed as hereinafter provided;
- (iii) On the date sent, if sent by facsimile transmission; or
- (iv) On the date it is accepted or rejected, if sent by certified mail.

**13.2 Notice Recipients.**

All notices, demands or requests (including, without limitation, Claims) from Contractor to District at:

Oceano Community Services District  
1655 Front Street  
Oceano, CA 93455  
Attn: General Manager

In addition, copies of all Claims by Contractor under this Construction Contract shall be provided to the following:

Jeffery A. Minnery  
P.O. Box 3835  
San Luis Obispo, CA 93403-3835

All Claims shall be delivered personally or sent by certified mail.

All notices, demands, requests or approvals from District to Contractor shall be addressed to:

\_\_\_\_\_  
Re: \_\_\_\_\_, \_\_\_\_\_ (CCS)



**13.3 Change of Address.**

In the event of any change of address, the moving party is obligated to notify the other party of the change of address in writing. Each party may, by written notice only, add, delete or replace any listed individuals.

**SECTION 14 DISPUTE RESOLUTION.****14.1 Resolution of Contract Disputes.**

Contractor Claims (as defined by Public Contract Code Section 9204(c)) and General Conditions Section 1.1.18 shall be resolved by the parties in accordance with General Conditions Section 4.2 and applicable law. The procedures set forth in General Conditions Section 4.2 shall be the exclusive recourse of Contractor for such claims.

**14.2 Resolution of Other Disputes.****14.2.1 Other Disputes.**

The definition of Contractor Claims shall not include any of the following:

- (i) Penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency (other than relief from damages or penalties for delay assessed by a public entity under a contract for a public works project);
- (ii) Third party tort claims for personal injury, property damage or death relating to any Work performed by Contractor or its Subcontractors or Sub-subcontractors of any Tier;
- (iii) False claims liability under California Government Code Section 12650, et. seq.;
- (iv) Defects in the Work first discovered by District after Final Payment by District to Contractor; or
- (vi) The right of District to specific performance or injunctive relief to compel performance of any provision of the Contract Documents or for other District claims against the Contractor.

**14.2.2 Litigation, District Election.**

Matters that do not constitute Contractor Claims shall be resolved by way of an action filed in the Superior Court of the State of California, County of San Luis Obispo, and shall not be subject to the Contract Dispute Resolution Process. However, the District reserves the right, in its sole and absolute discretion, to treat such disputes as Contract Disputes.

Upon written notice by District of its election as provided in the preceding sentence, such dispute shall be submitted by the parties and finally decided pursuant to the Contract Dispute Resolution Process in the manner as required for Contract Disputes, including, without limitation, District's right under Paragraph 14.4.2 to defer resolution and final determination until after Final Completion of the Work.

**14.3 Submission of Contractor Claim.****14.3.1 By Contractor.**

Contractor shall submit a written Contractor Claim in accordance with Section 4.2 of the General Conditions.

**14.3.2 By District.**

District's right to commence the Contract Dispute Resolution Process shall arise at any time following District's actual discovery of the circumstances giving rise to the Contract Dispute. Nothing contained herein shall preclude District from asserting Contract Disputes in response to a Claim asserted by Contractor. A Statement of Contract Dispute submitted by District shall state the events or circumstances giving rise to the Contract Dispute, the dates of their occurrence and the damages or other relief claimed by District as a result of such events.

**14.4 Contract Dispute Resolution Process.**

The parties shall utilize each of the following steps in the Contract Dispute Resolution Process in the sequence they appear below. Each party shall participate fully and in good faith in each step in the Contract Dispute Resolution Process, which good faith effort shall be a condition precedent to the right of each party to proceed to the next step in the process.

**14.4.1 Response by District.**

The time periods for the District's response are set forth in General Conditions Section 4.2.6; however, any failure to respond shall be governed by General Condition Section 4.2.9.

**14.4.2 Meet and Confer Conference.**

If the claimant disputes the District's written response, or if the District fails to respond to a claim issued within the time prescribed in General Conditions Section 4.2, the claimant may demand in writing an informal conference to meet and confer for settlement of the issue in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the District shall schedule a meet and confer conference within 30 days for settlement of the dispute.

**14.4.3 Mediation.**

(i) Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the District shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the District and the claimant sharing the associated costs equally.

The District and the claimant shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(ii) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board,

in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(iii) Unless otherwise agreed to by the District and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

#### **14.4.4 Binding Arbitration.**

If the Contract Dispute is not resolved by mediation, then the party wishing to further pursue resolution or determination of the Contract Dispute shall submit the Contract Dispute for final and binding arbitration pursuant to the provisions of California Public Contract Code Sections 10240, et seq. The award of the arbitrator therein shall be final and may be entered as a judgment by any court of competent jurisdiction. Such arbitration shall be conducted in accordance with the following:

- .1 Arbitration Initiation.** The arbitration shall be initiated by filing a complaint in arbitration in accordance with the regulations promulgated pursuant to California Public Contract Code Section 10240.5.
- .2 Qualifications of the Arbitrator.** The arbitrator shall be selected based by mutual agreement of the parties. The arbitrator shall be a retired judge or an attorney with at least five (5) years of experience with public works construction contract law and in arbitrating public works construction disputes. In addition, the arbitrator shall have at least twenty (20) hours of formal training in arbitration skills. In the event the parties cannot agree upon a mutually acceptable arbitrator, then the provisions of California Public Contract Code Section 10240.3 shall be followed in selecting an arbitrator possessing the qualifications required herein.
- .3 Hearing Days and Location.** Arbitration hearings shall be held at the offices of District and shall, except for good cause shown to and determined by the arbitrator, be conducted on consecutive business days, without interruption or continuance.
- .4 Hearing Delays.** Arbitration hearings shall not be delayed except upon good cause shown.
- .5 Recording Hearings.** All hearings to receive evidence shall be recorded by a certified stenographic reporter, with the costs thereof borne equally by District and Contractor and allocated by the arbitrator in the final award.
- .6 Limitation of Depositions.** Discovery shall be permitted in accordance with the provisions of section 10240.11 of the Public Contract Code; provided, however, that depositions shall be limited to both of the following:
  - (i) Ten (10) percipient witnesses for District and ten (10) percipient witnesses for Contractor; and
  - (ii) Expert witnesses.

Upon a showing of good cause, the arbitrator may increase the number of permitted depositions. An individual who is both percipient and expert shall, for purposes of applying the foregoing numerical limitation only, be deemed an expert. Expert reports shall be exchanged prior to receipt of evidence, in accordance with the direction of the arbitrator, and expert reports (including initial and rebuttal reports) not so submitted shall not be admissible as evidence

- .7 Authority of the Arbitrator.** The arbitrator shall have the authority to hear dispositive motions and issue interim orders and interim or executory awards.
- .8 Waiver of Jury Trial.** Contractor and District each voluntarily waives its right to a jury trial with respect to any Contract Dispute that is subject to binding arbitration in accordance with the provisions of this Paragraph 14.4.4. Contractor shall include this provision for waiver of jury trial, waiving the right to jury trial in any action involving District as a party in its contracts with its Subcontractors who provide any portion of the Work.

#### **14.5 Non-Waiver.**

There shall be no waiver of the rights granted pursuant to the Dispute Resolution Process, unless specifically set forth in Public Contract Code Section 9204((f)(1) or (2). Specifically, participation in the Contract Dispute Resolution Process shall not constitute a waiver, release or compromise of any defense of District, including, without limitation, any defense based on the assertion that the rights or Claims of Contractor that are the basis of a Contract Dispute were previously waived by Contractor due to failure to comply with the Contract Documents, including, without limitation, Contractor's failure to comply with any time periods for providing notice of requests for adjustments of the Contract Sum or Contract Time or for submission of Claims or supporting documentation of Claims.

## **SECTION 15            DEFAULT.**

### **15.1 Notice of Default.**

In the event that District determines, in its sole discretion, that Contractor has failed or refused to perform any of the obligations set forth in the Contract Documents, or is in breach of any provision of the Contract Documents, District may give written notice of default to Contractor in the manner specified for the giving of notices in the Construction Contract.

### **15.2 Opportunity to Cure Default.**

Except for emergencies, Contractor shall cure any default in performance of its obligations under the Contract Documents within two (2) Days after receipt of written notice. However, if the breach cannot be reasonably cured within such time, Contractor will commence to cure the breach within two (2) Days and will diligently and continuously prosecute such cure to completion within a reasonable time, which shall in no event be later than ten (10) Days after receipt of such written notice.

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**SECTION 16 DISTRICT'S RIGHTS AND REMEDIES.****16.1 Remedies Upon Default.**

In the event that Contractor fails to cure any default of this Construction Contract within the time period set forth above in Section 15, then District may pursue any remedies available under law or equity, including, without limitation, the following:

**16.1.1 Delete Certain Services.**

District may, without terminating the Construction Contract, delete certain portions of the Work, reserving to itself all rights to Losses related thereto.

**16.1.2 Perform and Withhold.**

District may, without terminating the Construction Contract, engage others to perform the Work or portion of the Work that has not been performed by Contractor and withhold the cost thereof to District from future payments to Contractor, reserving to itself all rights to Losses related thereto.

**16.1.3 Suspend the Construction Contract.**

District may, without terminating the Construction Contract and reserving to itself all rights to Losses related thereto, suspend all or any portion of this Construction Contract for as long a period of time as District determines, in its sole discretion, appropriate, in which event District shall have no obligation to adjust the Contract Sum or Contract Time, and shall have no liability to Contractor for damages if District directs Contractor to resume Work.

**16.1.4 Terminate the Construction Contract for Default.**

District may terminate all or any part of this Construction Contract for default in accordance with Paragraph 16.4 below, reserving to itself all rights to Losses related thereto and any other damages proximately caused or resulting from the Default.

**16.1.5 Invoke the Performance Bond.**

District may, with or without terminating the Construction Contract and reserving to itself all rights to Losses related thereto, exercise its rights under the Performance Bond.

**16.1.6 Additional Provisions.**

All of District's rights and remedies under this Construction Contract are cumulative, and shall be in addition to those rights and remedies available in law or in equity. Designation in the Contract Documents of certain breaches as material shall not be construed as implying that other breaches not so designated are not material nor shall such designations be construed as limiting District's right to terminate the Construction Contract, or the exercise of its other rights or remedies for default, to only material breaches. District's determination of whether there has been noncompliance with the Construction Contract so as to warrant exercise by District of its rights and remedies for default under the Construction Contract, shall be binding on all parties. No termination or action taken by District after such termination shall prejudice any other rights or remedies

of District provided by law or equity or by the Contract Documents upon such termination; and District may proceed against Contractor to recover all liquidated damages and Losses suffered by District.

## **16.2 Delays by Sureties.**

Without limitation to any of District's other rights or remedies under the law, District has the right to suspend the performance by Contractor's sureties in the event of any of the following:

- (i) Failure of the sureties to begin Work within a reasonable time in such manner as to insure full compliance with the Construction Contract within the Contract Time;
- (ii) Abandonment of the Work;
- (iii) If at any time District is of the opinion the Work is unnecessarily or unreasonably delayed;
- (iv) Willful violation of any terms of the Construction Contract;
- (v) Failure to perform according to the Contract Documents; or
- (vi) Failure to follow instructions of District for its completion within the Contract Time.

District will serve notice of such failure upon the sureties and in the event the sureties neglect or refuse to cure the breach within the time specified in such notice, District shall have the power to suspend the performance or any part thereof of the sureties.

## **16.3 Damages to District.**

### **16.3.1 For Contractor's Default.**

District will be entitled to recovery of all Losses under law or equity in the event of Contractor's default under the Contract Documents.

### **16.3.2 Compensation for Losses.**

In the event that District's Losses arise from Contractor's default under the Contract Documents, District shall be entitled to withhold monies otherwise payable to Contractor until Final Completion of the Project. If District incurs Losses due to Contractor's default, then the amount of Losses shall be deducted from the amounts withheld. Should the amount withheld exceed the amount deducted, the balance will be paid to Contractor or its designee upon Final Completion of the Project. If the Losses incurred by District exceed the amount withheld, Contractor shall be liable to District for the difference and shall promptly remit same to District.

## **16.4 Termination of the Construction Contract for Default.**

Without limitation to any of District's other rights or remedies at law or in equity, and reserving to itself all rights to Losses related thereto, District shall have the right to terminate this Construction Contract, in whole or in part, upon the failure of Contractor to promptly cure any default as required by Section 15. District's election to terminate the Construction Contract for default shall be communicated by giving Contractor a written notice of termination in the manner specified for the giving of notices in the Construction Contract. Any notice of termination given to Contractor by District shall be effective immediately, unless otherwise provided therein.

## **16.5 Suspension by District for Convenience.**

District may, at any time and from time to time, without cause, order Contractor, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to an aggregate of fifty percent (50%) of the Contract Time, as District may determine, with

such period of suspension to be computed from the date of the written order. Such order shall be specifically identified as a Suspension Order by District. Upon receipt of a Suspension Order, Contractor shall, at District's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of Work stoppage. Within the period of the above noted aggregate time, or such extension to that period as is agreed upon by Contractor and District, District shall either cancel the Suspension Order or delete the Work covered by such Suspension Order by issuing a Change Order. If a Suspension Order is canceled or expires, Contractor shall resume and continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. The provisions of this Paragraph 16.5 shall not apply if a Suspension Order is not issued by District. A Suspension Order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents.

## **16.6 Termination Without Cause.**

District shall have the option, at its sole discretion and without cause, of terminating this Construction Contract in part or in whole by giving thirty (30) Days written notice to Contractor. Contractor agrees to accept such sums as allowed under this Paragraph 16.6 as its sole and exclusive compensation and waives any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect or incidental damages of any kind.

### **16.6.1 Compensation.**

Following such termination and within forty-five (45) Days after receipt of a billing from Contractor seeking payment of sums authorized by this Paragraph 16.6, District shall pay to Contractor as its sole compensation for performance of the Work the following:

- .1 For Work Performed.** The amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor.
- .2 For Close-out Costs.** Reasonable costs of Contractor and its Subcontractors and Sub-subcontractors for:
  - (i) Demobilizing and
  - (ii) Administering the close-out of its participation in the Project (including, without limitation, all billing and accounting functions, not including attorney or expert fees) for a period of no longer than thirty (30) Days after receipt of the notice of termination in an amount not to exceed the daily sum payable to Contractor for Compensable Delays in Paragraph 6.6 of this Construction Contract.
- .3 For Fabricated Items.** Previously unpaid cost of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work.

### **16.6.2 Subcontractors.**

Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts permitting termination for convenience by Contractor on terms that are consistent with this Construction Contract and that afford no greater rights of recovery against Contractor than are afforded to Contractor under this Section 16.6.

**16.7 Contractor's Duties Upon Termination.**

Upon receipt of a notice of termination for default or for convenience, Contractor shall, unless the notice directs otherwise, do the following:

- (i) Immediately discontinue the Work to the extent specified in the notice;
- (ii) Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued;
- (iii) Provide to District a description, in writing no later than fifteen (15) days after receipt of the notice of termination, of all subcontracts, purchase orders and contracts that are outstanding, including, without limitation, the terms of the original price, any changes, payments, balance owing, the status of the portion of the Work covered and a copy of the subcontract, purchase order or contract and any written changes, amendments or modifications thereto, together with such other information as District may determine necessary in order to decide whether to accept assignment of or request Contractor to terminate the subcontract, purchase order or contract;
- (iv) Promptly assign to District those subcontracts, purchase orders or contracts, or portions thereof, that District elects to accept by assignment and cancel, on the most favorable terms reasonably possible, all subcontracts, purchase orders or contracts, or portions thereof, that District does not elect to accept by assignment; and
- (v) Thereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.

**SECTION 17 CONTRACTOR'S RIGHTS AND REMEDIES.****17.1 Contractor's Remedies.**

Contractor may terminate this Construction Contract for cause only upon the occurrence of one of the following:

**17.1.1 For Work Stoppage.**

The Work is stopped for sixty (60) consecutive Days, through no act or fault of Contractor, any Subcontractor, or any employee or agent of Contractor or any Subcontractor, due to issuance of an order of a court or other public authority other than District having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.

**17.1.2 For District's Non-Payment.**

If District does not make payment, of sums that are not in good faith disputed by District, and does not cure such default within ninety (90) Days after receipt of notice from Contractor, then upon an additional thirty (30) Days' notice to District, Contractor may terminate the Construction Contract.

**17.2 Damages to Contractor.**

In the event of termination for cause by Contractor, District shall pay Contractor the sums provided for in Paragraph 16.6 above. Contractor agrees to accept such sums as its sole and exclusive compensation and agrees to waive any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect and incidental



damages, of any kind.

## **SECTION 18            ACCOUNTING RECORDS.**

### **18.1    Financial Management and District Access.**

Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Construction Contract in accordance with generally accepted accounting principles and practices consistently applied. District and District's accountants shall be afforded access at all times during normal business hours, to inspect, audit and copy Contractor's records, books, estimates, take-offs, cost reports, ledgers, schedules, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and Contractor shall preserve these for a period of three (3) years after the later of (i) final payment or (ii) final resolution of all Contract Disputes and other disputes or for such longer period as may be required by law.

### **18.2    Compliance with District Requests.**

Contractor's compliance with any request by District pursuant to this Section 18 shall be a condition precedent to filing or maintenance of any legal action or proceeding by Contractor against District and to Contractor's right to receive further payments under the Contract Documents. Any failure by Contractor to provide access to its business records for inspection or copying by District shall be specifically enforceable by issuance of a writ or a provisional or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony.

## **SECTION 19            INDEPENDENT PARTIES.**

Both parties to this Construction Contract will be acting in an independent capacity and not as agents, employees, partners, or joint venturers of one another. District, its officers or employees shall have no control over the conduct of Contractor or its respective agents, employees, subconsultants, or subcontractors, except as herein set forth.

## **SECTION 20            NUISANCE.**

Contractor shall not maintain, commit, nor permit the maintenance or commission of any nuisance in connection with the performance of services under this Construction Contract.

## **SECTION 21            PERMITS AND LICENSES.**

Contractor, at its sole expense, shall obtain and maintain during the term of this Construction Contract, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services hereunder.

**SECTION 22 WAIVER.**

A waiver by District of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

**SECTION 23 CONFLICTS WITH THE CONSTRUCTION CONTRACT.**

District and Contractor agree that if there is any conflict between the terms of this Construction Contract and the other Contract Documents, this Construction Contract shall control.

**SECTION 24 GOVERNING LAW AND VENUE.**

This Construction Contract shall be construed in accordance with and governed by the laws of the State of California. Any and all legal proceedings, including but not limited to mediations, arbitrations, and/or Civil Actions shall be commenced and maintained in the County of San Luis Obispo.

**SECTION 25 COMPLETE AGREEMENT.**

This Construction Contract represents the full and complete understanding of every kind or nature between the parties with respect to the services set forth in this Construction Contract, and all preliminary negotiations and contracts of whatever kind or nature are merged herein. No verbal agreed or implied covenant shall be held to vary the provisions of this Construction Contract. Any modification of this Construction Contract will be effective only upon written execution signed by both District and Contractor and approved as to form by District Legal Counsel.

**SECTION 26 SURVIVAL OF CONTRACT.**

The provisions of the Construction Contract which by their nature survive termination of the Construction Contract or Final Completion, including, without limitation, all warranties, indemnities, payment obligations, and District's right to audit Contractor's books and records, shall remain in full force and effect after Final Completion or any termination of the Construction Contract.

**SECTION 27 ADDITIONAL CONTRACT REQUIREMENTS.**

**This contract (~~does or~~ does not) have special fund(s) involved requiring additional contract requirements, therefore this section (~~does or~~ does not) apply.**

This Contract includes the following source of fund(s) or the District intends to apply to the following source of fund(s) for reimbursement of the expenses associated with the work set forth in this Contract:

Not Applicable

Therefore, District shall require Contractor to comply with the special fund(s) requirements (Exhibit "G"), as they may be amended from time to time, in addition to all other requirements imposed by District.

**SECTION 28 PUBLIC WORKS CONTRACTOR REGISTRATION PROGRAM- SB 854**

In accordance with State of California Senate Bill No. 854 (SB 854):

- No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

As of April 1, 2015, contractors and subcontractors must furnish electronic certified payroll records to the Labor Commissioner (State of California, Division of Labor Standards Enforcement).

Please see the DIR website for complete details and actions. It is the responsibility of the contractor to ensure all DIR requirements and regulations are met and stay current. For more information on Senate Bill No. 854, see <http://www.dir.ca.gov/Public-Works/SB854.html>.

**SECTION 29 GOVERNMENTAL POWERS.**

Nothing in this Agreement shall be deemed directly or indirectly to restrict or to impair in any manner or respect whatsoever any of District's governmental powers or rights or the exercise thereof by District, with respect to the Work or Project.

**SECTION 30 SEVERABILITY.**

In case a provision of this Construction Contract is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

**SECTION 31 EXHIBITS.**

Exhibit A – Notice Inviting Bids. Exhibit B – Contractor's Bid.

Exhibit C – General Conditions.

Exhibit D – Project Plans, Special Provisions, Technical Specifications and County of San Luis Obispo Revised Standard Specifications (Dated 04-20-2108).

Exhibit E – Performance and Payment Bonds.

Exhibit F – Insurance Requirements.

Exhibit G – Additional Contract Requirements.

IN WITNESS WHEREOF, the parties have caused this Construction Contract to be executed the date and year first above written.

**OCEANO COMMUNITY SERVICES DISTRICT**

BY: \_\_\_\_\_  
OCSD President

DATE: \_\_\_\_/\_\_\_\_/ 20XX

Approved as to FORM:

BY: \_\_\_\_\_  
OCSD Legal Counsel

DATE: \_\_\_\_/\_\_\_\_/ 20XX

**ABC COMPANY, INC.**

BY: \_\_\_\_\_

DATE: \_\_\_\_/\_\_\_\_/ 20XX