

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew Fertal
Dept.: City Manager
Subject: NEWLAND/YOCKEY STORM DRAIN (LINE B5), WATER AND SEWER IMPROVEMENTS, #7420 RECOMMENDATION TO AWARD CONTRACT

From: Keith G. Jones
Dept.: Public Works
Date: June 23, 2009

OBJECTIVE

To award a contract for the construction of Newland/Yockey Storm Drain (Line B5), Water and Sewer Improvements (#7420).

BACKGROUND

In 1991 Thielmann Engineers prepared the City's Master Plan of Drainage that identified storm drainage deficiencies and strategies to overcome the deficiencies. Line B5 or the Newland/Yockey Storm Drain is the highest priority storm drain identified in Master Plan of Drainage. Phase I of the Yockey/Newland Storm Drain comprises 1700 feet of a two mile long storm drain, that will ultimately provide drainage for approximately four (4) square miles of the City.

DISCUSSION

The Newland/Yockey Storm Drain, Phase I project consists of the construction of a reinforced concrete box and a reinforced concrete pipe storm drain in Newland Street from Westminster Channel (C04) to Lomay Avenue, a residential street one block north of Westminster Ave. The project involves construction consisting of: a connection to the existing reinforced concrete Westminster Channel, approximately 220 linear feet of 5'H x 12'W reinforced concrete box, 1,300 linear feet of 102" diameter reinforced concrete pipe (RCP), placing of varying diameter RCP laterals, storm drain junction structures, manholes and concrete catch basins.

To accomplish the storm drain construction, the work also includes construction of a 14" water line offset in the Westminster Avenue/Newland Street intersection, a relocation of approximately 1,090 linear feet of 8-inch PVC water main, a relocation of 51 linear feet of 10-inch PVC water main and realigning approximately 198 linear feet of 8-inch sewer and 130 linear feet of 10-inch sewer.

The project will also require dewatering, traffic control, trench excavation, backfilling, complete street resurfacing and traffic striping.

NEWLAND/YOCKEY STORM DRAIN (LINE B5),
WATER AND SEWER IMPROVEMENTS, #7420
RECOMMENDATION TO AWARD CONTRACT
June 23, 2009
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Fourteen (14) qualified bids were received and opened in the City Clerk's office at 3:00 p.m. on April 11, 2009. The lowest qualified bidder is Belczak & Son, Inc., with a total bid of \$2,475,717. This bid falls within the current project budget. The licenses and references of the contractor have been reviewed and verified by staff, and all other documentation is in order. The anticipated contract schedule is as follows:

<i>Award contract</i>	<i>June 23, 2009</i>
<i>Begin construction</i>	<i>July 6, 2009</i>
<i>Complete construction</i>	<i>June 9, 2010</i>

FINANCIAL IMPACT

There is no financial impact to the general fund for the Newland/Yockey Storm Drain, Water and Sewer Improvements. The construction cost of \$ 2,475,717 will be funded through Drainage Fees and Gas Tax, Community Development Block Grant (CDBG) funds and a grant from the Environmental Protection Agency (EPA), through federal appropriations.

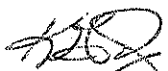
COMMUNITY VISION IMPLEMENTATION


This project is consistent with the community vision for maintaining and enhancing the city's infrastructure assets to maximize their value, longevity and usefulness for the community.

RECOMMENDATION


It is recommended that the City Council:

- Award a contract to Belczak & Son, Incorporated for \$ 2,475,717.
- Authorize the City Manager and City Clerk to execute the agreement on behalf of the City.


KEITH G. JONES
Public Works Director


By: Karnyar Dibaj
Assistant Engineer

Recommended for Approval


Matthew Fertal
City Manager

Attachments: 1: Bid Summary Sheet
 2: Agreement

**CITY OF GARDEN GROVE
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION**

BID SUMMARY SHEET

PROJECT: **NEWLAND/YOCKEY STORM
DRAIN, WATER AND SEWER IMPROVEMENTS,
PROJECT #7420**

BID OPENING
DATE: **April 11, 2009**
TIME: **3:00 PM**

<u>Facility Name</u>	<u>Engineer's Estimate</u>	<u>Contract Amount</u>
Newland/Yockey Storm Drain, Water and Sewer Improvements	\$3,015,323.00	\$ 2,475,717.00

<u>Bidder's Name</u>	<u>Total Bid</u>	<u>%Under /Over Engineers Estimate</u>
1. Belczak & Sons, Inc., Anaheim	\$ 2,475,717.00	- 17.9%
2. Beador Cost. Company, Inc., Corona	\$ 2,875,700.00	- 4.6%
3. Garcia Juares., Brea	\$ 3,275,900.00	+ 8.6%
4. LH Engineering Co. Inc., Anaheim	\$ 3,285,098.00	+ 8.9%
5. Ross A. Guy & Son, Inc., Fallbrook	\$ 3,387,410.00	+ 12.3%
6. Ken Thompson, Inc., Corona	\$ 3,606,768.49	+ 19.6%
7. Mike Bubalo Const. Co., Inc., Baldwin Park	\$ 3,698,935.00	+ 22.7%
8. SRD ENGINEERING, Inc., Anaheim	\$ 3,776,317.00	+ 25.2%
9. Steve Bubalo Construction., Inc., Monrovia	\$ 3,850,871.00	+ 27.7%
10. Andrew Papac & Sons., El Monte	\$ 3,928,558.00	+30.2%
11. Southern California Pipe Line Cosntruction., Tustin	\$ 4,017,008.00	+33.2%
12. Vasilj Inc., Irwindale	\$ 4,387,668.00	+45.5%
13. Mike Prlich & Sons Inc., Baldwin Park	\$ 4,716,646.00	+56.4%
14. BRH-Garuer West, Inc., San Diego	\$ 5,598,325.00	+85.7%

CONSTRUCTION AGREEMENT

THIS AGREEMENT is made this day of June, 2009, by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and Belczak & Sons, Inc, hereinafter referred to as ("CONTRACTOR").

RECITALS:

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove City Council Authorization dated .
2. CITY desires to utilize the services of CONTRACTOR to furnish material, equipment, and labor for the Newland/Yockey Storm Drain, Water and Sewer Improvements Project No. 7420 - Phase I.
3. CONTRACTOR is qualified by virtue of experience, training, education, and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 5.1 General Conditions.** CONTRACTOR certifies and agrees that all the terms, conditions and obligations of the Contract Documents as hereinafter defined, the location of the job site, and the conditions under which the work is to be performed have been thoroughly reviewed, and enters into this Contract based upon CONTRACTOR'S investigation of all such matters and is in no way relying upon any opinions or representations of CITY. It is agreed that this Contract represents the entire agreement. It is further agreed that the Contract Documents including the Notice Inviting Bids, Special Instructions to Bidders, if any, and CONTRACTOR's Proposal, are incorporated in this Contract by reference, with the same force and effect as if the same were set forth at length herein, and that CONTRACTOR and its subcontractors, if any, will be and are bound by any and all of said Contract Documents insofar as they relate in any part or in any way, directly or indirectly, to the work covered by this Contract.

"Project" as used herein defines the entire scope of the work covered by all the Contract Documents. Anything mentioned in the Specifications and not indicated in the Plans, or indicated in the Plans and not mentioned in the Specifications, shall be of like effect as if indicated and mentioned in both. In case of discrepancy in the Plans or Specifications, the matter shall be immediately submitted to CITY's Engineer, without whose decision CONTRACTOR shall not adjust said discrepancy save only at CONTRACTOR'S own risk and expense. The decision of the Engineer shall be final.

- 5.2 Materials and Labor.** CONTRACTOR shall furnish, under the conditions expressed in the Plans and Specifications, at CONTRACTOR'S own expense, all labor and materials necessary, except such as are mentioned in the Specifications to be furnished by the CITY, to construct and complete the project, in good workmanlike and substantial order. If CONTRACTOR fails to pay for labor or materials when due, CITY may settle such claims by making demand upon the surety to this Agreement. In the event of the failure or refusal

of the surety to satisfy said claims, CITY may settle them directly and deduct the amount of payments from the Contract price and any amounts due to CONTRACTOR. In the event CITY receives a stop notice from any laborer or material supplier alleging non-payment by CONTRACTOR, CITY shall be entitled to deduct all of its costs and expenses incurred relating thereto, including but not limited to administrative and legal fees.

5.3 Project. The PROJECT is described as: **Newland/Yockey Storm Drain, Water and Sewer Improvements Project No. 7420 - Phase I.**

5.4 Plans and Specifications. The work to be done is shown in a set of detailed Plans and Specifications entitled: **Newland/Yockey Storm Drain, Water and Improvements Project No. 7420 - Phase I.**

Said Plans and Specifications and any revision, amendments or addenda thereto are attached hereto and incorporated herein as part of this Contract and referred to by reference. The work to be done must also be in accordance with the General Provisions, Standard Specifications and Standard Plans of the CITY, which are also incorporated herein and referred to by, reference.

5.5 Time of Commencement and Completion. CONTRACTOR agrees to commence the Project within **fourteen (14) calendar days from the award of contract and after the end of the school year (Willis Warner Middle School)** or the date set forth in the "Notice to Proceed" issued by the CITY and shall diligently prosecute the work to completion within **Two Hundred forty (240) working days** excluding delays caused or authorized by the CITY as set forth in Sections 5.7, 5.8 and 5.9 hereof.

5.6 Time is of the Essence. Time is of the essence of this Contract. As required by the Contract Documents, CONTRACTOR shall prepare and obtain approval of all shop drawings, details and samples, and do all other things necessary and incidental to the prosecution of CONTRACTOR'S work in conformance with an approved construction progress schedule. CONTRACTOR shall coordinate the work covered by this Contract with that of all other contractors, subcontractors and of the CITY, in a manner that will facilitate the efficient completion of the entire work in accordance with Section 5.5 herein. CITY shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of other subcontractors, and, in general, all matters representing the timely and orderly conduct of the work of CONTRACTOR on the premises.

5.7 Excusable Delays. CONTRACTOR shall be excused for any delay in the prosecution or completion of the Project caused by acts of God; inclement weather; damages caused by fire or other casualty for which CONTRACTOR is not responsible; any act, neglect or default of CITY; failure of CITY to make timely payments to CONTRACTOR; late delivery of materials required by this CONTRACT to be furnished by CITY; combined action of the workers in no way caused by or resulting from default or collusion on the part of CONTRACTOR; a lockout by CITY; or any other delays unforeseen by CONTRACTOR and beyond CONTRACTOR'S reasonable control.

CITY shall extend the time fixed in Section 5.5 herein for completion of the Project by the number of days CONTRACTOR has thus been delayed, provided that CONTRACTOR presents a written request to CITY for such time extension within fifteen (15) days of the

commencement of such delay and CITY finds that the delay is justified. CITY'S decision will be conclusive on the parties to this Contract. Failure to file such request within the time allowed shall be deemed a waiver of the claim by CONTRACTOR.

No claims by CONTRACTOR for additional compensation or damages for delays will be allowed unless CONTRACTOR satisfies CITY that such delays were unavoidable and not the result of any action or inaction of CONTRACTOR and that CONTRACTOR took all available measures to mitigate such damages. Extensions of time and extra compensation as a result of incurring undisclosed utilities would be determined in accordance with Section 9-103A of the California Department of Transportation Standard Specifications dated July 1992. The CITY'S decision will be conclusive on all parties to this Contract.

- 5.8 Extra Work.** The Contract price includes compensation for all work performed by CONTRACTOR, unless CONTRACTOR obtains a written change order signed by a designated representative of CITY specifying the exact nature of the extra work and the amount of extra compensation to be paid all as more particularly set forth in Section 5.9 hereof.

CITY shall extend the time fixed in Section 5.5 for completion of the Project by the number of days reasonably required for CONTRACTOR to perform the extra work, as determined by CITY'S Engineer. The decision of the Engineer shall be final.

5.9 Changes in Project.

- 5.9.1 CITY may at any time, without notice to any surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes:

- a. In the Specifications (including drawings and designs);
- b. In the time, method or manner of performance of the work;
- c. In the CITY-furnished facilities, equipment, materials, services or site; or
- d. Directing acceleration in the performance of the work.

- 5.9.2 A change order shall also be any other written order (including direction, instruction, interpretation or determination) from the CITY which causes any change, provided CONTRACTOR gives the CITY written notice stating the date, circumstances and source of the order and that CONTRACTOR regards the order as a change order.

5.9.3 Except as provided in this Section 5.9, no order, statement or conduct of the CITY or its representatives shall be treated as a change under this Section 5.9 or entitle CONTRACTOR to an equitable adjustment. Said written change order shall be delivered to the City via certified mail.

- 5.9.4 If any change under this Section 5.9 causes an increase or decrease in CONTRACTOR'S actual, direct cost or the time required to perform any part of the work under this Contract, whether or not changed by any order, the CITY shall make an equitable adjustment and modify the Contract in writing. Except for claims

based on defective specifications, no claim for any change under paragraph (5.9.2) above shall be allowed for any costs incurred more than 20 days before the CONTRACTOR gives written notice as required in paragraph (5.9.2). In the case of defective specifications for which the CITY is responsible, the equitable adjustment shall include any increased direct cost CONTRACTOR reasonably incurred in attempting to comply with those defective specifications.

- 5.9.5 If CONTRACTOR intends to assert a claim for an equitable adjustment under this Section 5.9, it must, within thirty (30) days after receipt of a written change order under paragraph (5.9.1) or the furnishing of a written notice under paragraph (5.9.2), submit a written statement to the CITY setting forth the general nature and monetary extent of such claim. The CITY may extend the 30-day period. CONTRACTOR may include the statement of claim in the notice under paragraph (5.9.2) of this Section 5.9.
- 5.9.6 No claim by CONTRACTOR for an equitable adjustment shall be allowed if made after final payment under this Agreement.
- 5.9.7 CONTRACTOR hereby agrees to make any and all changes, furnish the materials and perform the work that CITY may require without nullifying this Contract. CONTRACTOR shall adhere strictly to the Plans and Specifications unless a change there from is authorized in writing by the CITY. Under no condition shall CONTRACTOR make any changes to the Project, either in additions or deductions, without the written order of the CITY and the CITY shall not pay for any extra charges made by CONTRACTOR that have not been agreed upon in advance in writing by the CITY. CONTRACTOR shall submit immediately to the CITY written copies of its firm's cost or credit proposal for change in the work. Disputed work shall be performed as ordered in writing by the CITY and the proper cost or credit breakdowns therefore shall be submitted without delay by CONTRACTOR to CITY.
- 5.10 Liquidated Damages for Delay.** The parties agree that if the total work called for under this Contract, in all parts and requirements, is not completed within the time specified in Section 5.5 herein, plus the allowance made for delays or extensions authorized under Sections 5.7, 5.8 and 5.9 herein, the CITY will sustain damage which would be extremely difficult and impractical to ascertain. The parties therefore agree that CONTRACTOR will pay to CITY the sum of five hundred dollars (\$500.00) per day for each and every calendar day during which completion of the Project is so delayed. CONTRACTOR agrees to pay such liquidated damages and further agrees that CITY may offset the amount of liquidated damages from any monies due or that may become due CONTRACTOR under the Contract.

- 5.11 Contract Price and Method of Payment.** CITY agrees to pay and the CONTRACTOR agrees to accept as full consideration for the faithful performance of this Contract, subject to any subsequent additions or deductions as provided in approved change orders, the sum of Two Million Four Hundred Seventy Five Thousand Seven Hundred Seventeen Dollars and 00/100 (\$ 2,475,717.00) as itemized in the bid proposal.

Progress payments shall be made to the CONTRACTOR per month for each successive month as the work progresses. The CONTRACTOR shall be paid such sum as will bring the total payments received since the commencement of the work up to ninety percent (90%) of the value of the work completed, less all previous payments, provided that the CONTRACTOR submits the request for payment prior to the end of the day required to meet the payment schedule. The CITY will retain ten percent (10%) of the amount of each such progress estimate and material cost until 30 days after the recordation of the Notice of Completion.

Payments shall be made on demands drawn in the manner required by law, accompanied by a certificate signed by the CITY'S Engineer, stating that the work for which payment is demanded has been performed in accordance with the terms of the Contract. Partial payments of the Contract price shall not be considered as an acceptance of any part of the work.

- 5.12 Substitution of Securities in Lieu of Retention of Funds.** Pursuant to California Public Works Contract Code § 22300, the CONTRACTOR will be entitled to post approved securities with the CITY or an approved financial institution in order to have the CITY release funds retained by the CITY to ensure performance of the Contract. CONTRACTOR shall be required to execute an addendum to this Contract together with escrow instructions and any other documents in order to effect this substitution.

- 5.13 Completion.** Within 10 days after the contract completion date of the Project, CONTRACTOR shall file with the CITY'S Engineer its affidavit stating that all workers and persons employed, all firms supplying materials, and all subcontractors upon the Project have been paid in full, and that there are no claims outstanding against the Project for either labor or material, except those certain items, if any, to be set forth in an affidavit covering disputed claims, or items in connection with Stop Notices which have been filed under the provisions of the statutes of the State of California. CITY may require affidavits or certificates of payment and/or releases from any subcontractor, laborer or material supplier.

5.14 Contractor's Employees Compensation

- 5.14.1 General Prevailing Rate.** CITY has ascertained from the State of California Director of Industrial Relations, the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime work in the locality in which the work is to be performed for each craft or type of work needed to execute this Contract, and copies of the same are on file in the Office of the City Engineer. The CONTRACTOR agrees that not less than said prevailing rates shall be paid to workers employed on this public works contract as required by Labor Code Section 1774 of the State of California.

- 5.14.2 **Forfeiture for Violation.** CONTRACTOR shall, as a penalty to the CITY, forfeit one hundred dollars (\$100.00) for each calendar day or portion thereof for each worker paid (either by the CONTRACTOR or any subcontractor under it) less than the prevailing rate of per diem wages as set by the Director of Industrial Relations, in accordance with Sections 1770-1780 of the California Labor Code for the work provided for in this Contract, all in accordance with Section 1775 of the Labor Code of the State of California.
- 5.14.3 **Travel and Subsistence Pay.** Section 1773.8 of the Labor Code of the State of California, regarding the payment of travel and subsistence payments, is applicable to this Contract and CONTRACTOR shall comply therewith.
- 5.14.4 **Apprentices.** Section 1777.5, 1777.6 and 1777.7 of the Labor Code of the State of California, regarding the employment of apprentices is applicable to this Contract and the CONTRACTOR shall comply therewith if the prime contract involves thirty thousand dollars (\$30,000.00) or more or twenty (20) working days, or more; or if contracts of specialty contractors not bidding for work through the general or prime contractor are two thousand dollars (\$2,000.00) or more for five (5) working days or more.
- 5.14.5 **Workday.** In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and CONTRACTOR shall not require more than eight (8) hours of labor in a day from any person employed by him hereunder except as provided in paragraph (5.14.2) above. CONTRACTOR shall conform to Article 3, Chapter 1, Part 7 (Sections 1810 et seq.) of the Labor Code of the State of California and shall forfeit to the CITY as a penalty, the sum of twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by CONTRACTOR or any subcontractor for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in any one week in violation of said Article. CONTRACTOR shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by CONTRACTOR in connection with the Project.
- 5.14.6 **Record of Wages: Inspection.** CONTRACTOR agrees to maintain accurate payroll records showing the name, address, social security number, work classification, straight-time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by it in connection with the Project and agrees to require that each of its subcontractors does the same. The applicable contractor or subcontractor or its agent having authority over such matters shall certify all payroll records as accurate. CONTRACTOR further agrees that its payroll records and those of its subcontractors shall be available to the employee or employee's representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards and shall comply with all of the provisions of Labor Code Section 1776, in general. The contractor shall submit copies of certified payroll reports and cancelled checks for labors, every two weeks to the Engineer. Certified payroll and cancelled checks submittals are due one month after start of construction and ever two weeks thereafter. *If the certified payroll and cancelled checks are not submitted, the contractor will be notified that compliance is required within five (5) working days or contract work must cease. The City will not be*

responsible for any delay or acceleration charges or any incurred costs or damages as a result of the work stoppage due to contractor's failure to comply. Work shall be cease in an orderly, safe fashion with all vehicle access restored, should this not accrue, City will correct the deficiencies and deduct the cost from funds due to the contractor. In addition, no progress payment shall be made until the copies of certified payroll reports and cancelled checks are submitted.

5.15 Surety Bonds. CONTRACTOR shall, upon entering into performance of this Agreement, furnish bonds in the amount of one hundred percent (100%) of the Contract price bid, to guarantee the faithful performance of the work, and the other in the amount of one hundred percent (100%) of the Contract price bid to guarantee payment of all claims for labor and materials furnished. This Contract shall not become effective until such bonds are supplied to and approved by the CITY.

5.16 Insurance.

5.16.1 CONTRACTOR is also aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or undertake self insurance in accordance with the provisions of that Code and will comply with such provisions before commencing the performance of the work of this Contract.

5.16.2 CONTRACTOR and all subcontractors will carry workers' compensation insurance for the protection of its employees during the progress of the work. The insurer shall waive its rights of subrogation against CITY, its Officers, Officials, Agents, Volunteers, Employees, and Consultants and shall issue an endorsement to the policy evidencing same.

5.16.3 CONTRACTOR shall at all times carry, on all operations hereunder, bodily injury, including death, and property damage liability insurance, including automotive operations bodily injury and property damage coverage; and builders' all risk insurance. All insurance coverage shall be in amounts specified by CITY in the Insurance Requirements and shall be evidenced by the issuance of a certificate in a form prescribed by the CITY and shall be underwritten by insurance companies satisfactory to CITY for all operations, subcontract work, contractual obligations, product or completed operations, all owned vehicles and non owned vehicles. Said insurance coverage obtained by the CONTRACTOR, excepting workers' compensation coverage, shall name both City of Westminster and CITY, its Officers, Officials, Agents, Volunteers, Employees, Engineers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their Directors, Officers, Agents and Employees, as determined by the CITY, as additional insured on said policies.

5.16.4 Before CONTRACTOR performs any work at, or prepares or delivers materials to, the site of construction, CONTRACTOR shall furnish certificates of insurance and endorsements evidencing the foregoing insurance coverages and such certificates shall provide the name and policy number of each carrier and policy and that the insurance is in force and will not be canceled without thirty (30) days written notice to CITY. CONTRACTOR shall maintain all of the foregoing insurance coverages in force until the work under this Contract is fully completed. The requirement for carrying the foregoing insurance shall not derogate from the provisions for

indemnification of CITY by CONTRACTOR under Section 5.17 of this Contract. Notwithstanding nor diminishing the obligations of CONTRACTOR with respect to the foregoing, CONTRACTOR shall subscribe for and maintain in full force and effect during the life of this Contract, the following insurance in amounts not less than the amounts specified and issued by a companies acceptable to City and having a Best's Guide Rating of A Class VII or better:

Workers Compensation	In accordance with the Workers' Compensation Act of the State of California
Commercial General Liability written on a full occurrence basis	\$5,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable)
Automobile Liability, including non-owned and hired vehicles	Combined single limit of \$5,000,000 per occurrence for bodily injury, death and property damage

An Additional Insured Endorsement, ongoing and completed operations, for the policy under section 4.3 (a) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to city's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall by excess of the CONTRACTOR's insurance and shall not contribute with it.

CITY or its representatives shall at all times have the right to inspect and receive the original or a certified copy of all said policies of insurance, including certificates. CONTRACTOR shall pay the premiums on the insurance herein above required.

- 5.16.5 Prior to the commencement of construction, CITY shall require the CONTRACTOR to provide City of Westminster with evidence that CONTRACTOR has provided to CITY, any and all warranties, insurance coverage, and indemnities and any other rights under the construction contract, as provided by law, and as provided in this Contract.

5.17 Risk and Indemnification. All work covered by this Contract done at the site of construction or in preparing or delivering materials to the site shall be at the risk of CONTRACTOR alone. CONTRACTOR agrees to save, indemnify and keep City of Garden Grove, its Officers, Agents, Employees, Engineers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their directors, Officers, Agents and Employees harmless against any and all liability, claims, judgments, costs and demands, including demands arising from injuries or death of persons (CONTRACTOR'S employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by CONTRACTOR, save and except claims or litigation arising through the sole negligence or sole willful misconduct of CITY and will make good effort to reimburse CITY for any expenditures, including reasonable attorneys' fees CITY may incur by reason of such matters, and if requested by CITY, will defend any such suits at the sole cost and expense of CONTRACTOR.

5.18 Termination.

- 5.18.1 This Contract may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONTRACTOR is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Termination of contract shall conform to Section 8 of the California, Department of Transportation Standard Specifications.
- 5.18.2 If termination for default or convenience is effected by the CITY, an equitable adjustment in the price provided for in this Contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the CONTRACTOR at the time of termination may be adjusted to cover any additional costs to the CITY because of the CONTRACTOR'S default. The equitable adjustment for any termination shall provide for payment to the CONTRACTOR for services rendered and expenses incurred in accordance with Section 8 of the California, Department of Transportation Standard Specifications.
- 5.18.3 Upon receipt of a termination action under paragraph (5.18.1) or (5.18.2) above, the CONTRACTOR shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the CITY all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONTRACTOR in performing this Contract whether completed or in process.
- 5.18.4 Upon termination under paragraphs (5.18.1) and (5.18.2) above, the CITY may take over the work and may award another party an agreement to complete the work under this Contract.

5.19 Warranty. The CONTRACTOR agrees to perform all work under this Contract in accordance with the CITY'S designs, drawings and specifications.

The CONTRACTOR guarantees for a period of one (1) year from the date of the notice of completion of the work that the completed work is free from all defects due to faulty materials, equipment or workmanship and that he shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs or any damage to other parts of the system resulting from such defects. The CITY shall promptly give notice to the CONTRACTOR of observed defects. In the event that the CONTRACTOR fails to make adjustments, repairs, corrections or other work made necessary by such defects, the CITY may do so and charge the CONTRACTOR the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

The CONTRACTOR'S obligations under this clause are in addition to the CONTRACTOR'S other express or implied assurances of this Contract or state law and in no way diminish any other rights that the CITY may have against the CONTRACTOR for faulty materials, equipment or work.

5.20 Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, each party shall be responsible for their own attorneys' fees, costs and necessary expenses. If any action is brought against the CONTRACTOR or any subcontractor to enforce a Stop Notice or Notice to Withhold, which named the CITY as a party to said action, the CITY shall be entitled to reasonable attorneys' fees, costs and necessary disbursements arising out of the defense of such action by the CITY. The CITY shall be entitled to deduct its costs for any Stop Notice filed, whether court action is involved or not.

SECTION 5 - AGREEMENT (Continued)

5.21 Notices. Any notice required or permitted under this Contract may be given by ordinary mail at the address set forth below. Any party whose address changes shall notify the other party in writing.

To CITY:

Mark Uphus, Senior Civil Engineer
City of Garden Grove
Public Works Department
11222 Acacia Parkway
Garden Grove, CA 92842
(714) 741-5191
(714) 741-5578 Fax

To CONTRACTOR:

Tim S. Belczak
3510 E. Enterprise Drive
Anaheim, Ca 92807
(714) 998-5920 Phone
(714) 632-6643 Fax

SIGNATURE ON NEXT PAGE

IN WITNESS THEREOF, these parties have executed this Construction Agreement on the day and year shown below.

Date: _____

"CITY"
CITY OF GARDEN GROVE

By: _____
Mathew J. Fertal
City Manager

ATTEST:

City Clerk

Date: _____

"CONTRACTOR"

CONTRACTOR'S State License No. 291101A
(Expiration Date: 5-31-10)

By: _____
A. S. Reyzeh

Title: _____
President

Date: _____
04/13/09

APPROVED AS TO FORM:

Omar Hernandez for
Garden Grove City Attorney

Date 4-9-09

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal are required.