

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Matthew J. Fertal	From:	William E. Murray	
Dept.:	City Manager	Dept.:	Public Works	
Subject:	AWARD OF CONTRACT TO ARNAZ ENGINEERING CONTRACTORS, INC. TO FURNISH AND INSTALL A PUMP AND RELATED EQUIPMENT AT WELL NO. 31, PROJECT NO. 7393		Date:	October 11, 2011

OBJECTIVE

To recommend that the Garden Grove City Council award a contract for Project No. 7393 - Well No. 31 Equipping Project to Arnaz Engineering Contractors, Inc..

BACKGROUND

The City has completed drilling Well No. 31 at its Lampson Reservoir. Well No. 31 is intended to supplement production from an older Well No. 23 also located at the Lampson reservoir site. Well No. 31 will eventually replace Well No. 23.

This project consists of furnishing and installing a pump, electrical equipment, piping/appurtenances, SCADA programming, and other improvements necessary to operate the new Well No. 31. Additional improvements are to be made within the pump house that will include the replacement of constant speed drives to variable frequency drives on the larger two electrical booster pumps.

ANALYSIS

Pursuant to Garden Grove Municipal Code Section 2.50.100, twelve (12) bids were received and opened by the City Clerk's Office in City Hall at 3:00 p.m. on September 15, 2011 (see Bid Summary Sheet). The low bidder was Arnaz Engineering Contractors, Incorporated with a total bid of \$1,671,470. This bid is 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.

RECOMMENDATION TO AWARD CONTRACT TO
ARNAZ ENGINEERING CONTRACTORS, INC. TO
FURNISH AND INSTALL A PUMP AND RELATED
EQUIPMENT AT WELL 31, PROJECT #7393
October 11, 2011
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The anticipated contract schedule is as follows:

<i>Award Contract</i>	<i>October 11, 2011</i>
<i>Begin Construction</i>	<i>November 15, 2011</i>
<i>Complete Construction</i>	<i>August 30, 2012</i>

FINANCIAL IMPACT

This project will be financed with Water Funds. This project will have no impact on the General Fund.

RECOMMENDATION

It is recommended that the City Council:

- Award contract to Arnaz Engineering Contractors in the amount of \$1,671,470.
- Reject all other bids.
- Authorize the City Manager to execute the agreement, including minor modifications as needed, on behalf of the City.


WILLIAM E. MURRAY, P.E.
Public Works Director/City Engineer


By: David E. Entsminger
Water Services Manager

Recommended for Approval


Matthew Ferial
City Manager

Attachments: 1) Bid Summary Sheet
 2) Project Location Map
 3) Construction Agreement

**CITY OF GARDEN GROVE
PUBLIC WORKS DEPARTMENT
WATER SERVICES DIVISION**

BID SUMMARY SHEET

PROJECT: Well 31 Equipping
Project #7393

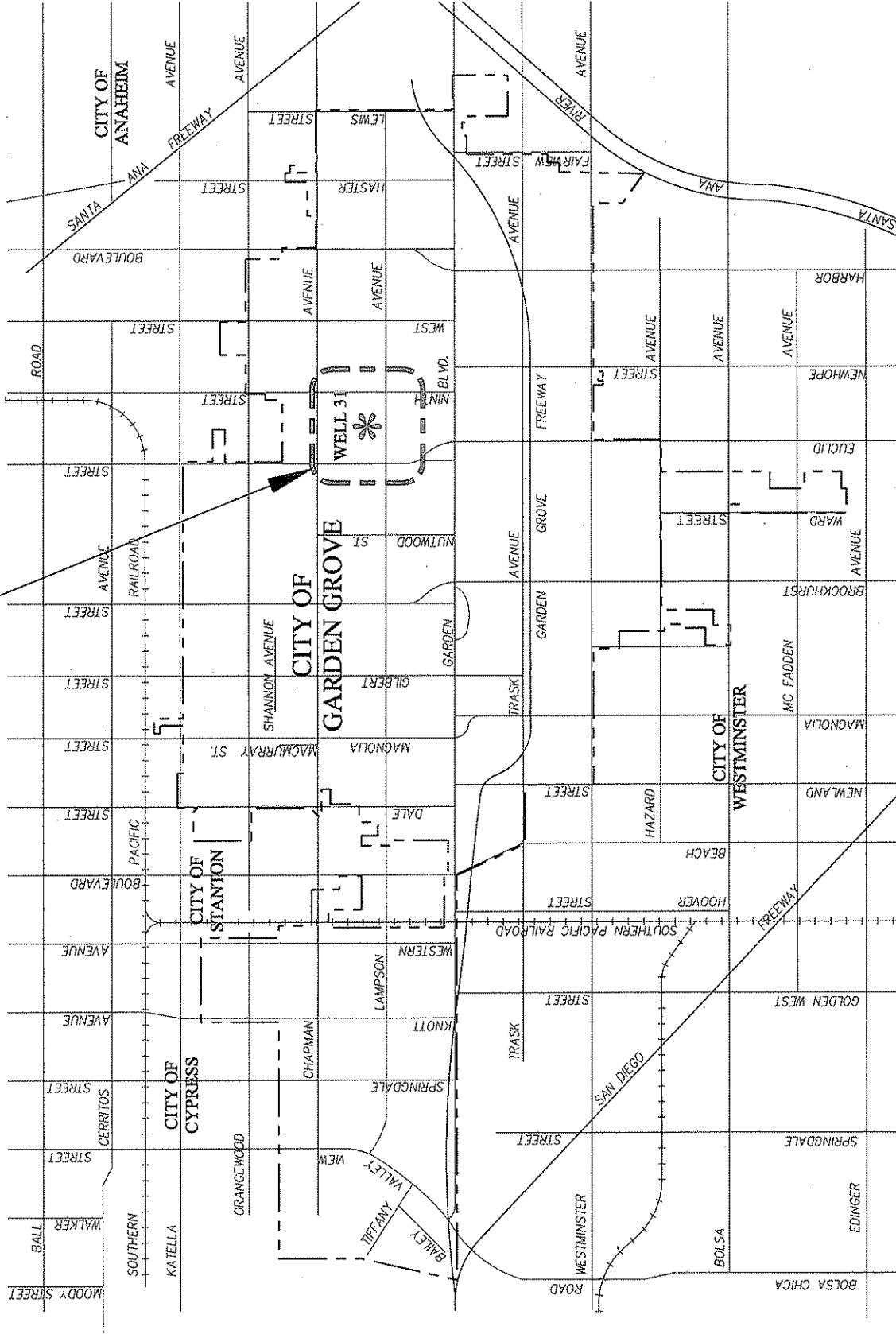
BID OPENING
DATE: **September 15, 2011**
TIME: **3:00 PM**

<u>Facility Name</u>	<u>Engineer's Estimate</u>	<u>Contract Amount</u>
Well 31 Equipping, Project #7393	\$1,750,000	\$1,671,470

<u>Bidder's Name</u>	<u>Total Bid</u>	<u>%Under /Over Engineers Estimate</u>
1. Arnaz Engineering Contractors	\$ 1,671,470	- 4.5%
2. Bestek Engineering, Inc.	\$ 1,703,403	- 2.7%
3. Schuler Engineering Corporation	\$ 1,843,020	+5.3%
4. Pacific Hydrotech Corporation	\$ 1,847,310	+5.6%
5. Pascal & Ludwig Constructors	\$ 1,876,537	+7.2%
6. Metro Builders & Engineers Group	\$ 1,887,018	+7.8%
7. Environmental Construction, Inc.	\$ 1,993,445	+13.9%
8. Cora Constructors, Inc.	\$ 2,039,800	+16.6%
9. R.C. Foster Corporation	\$ 2,050,225	+17.2%
10. Tamang Electric, Inc.	\$ 2,053,880	+17.4%
11. Norman A. Olson Construction, Inc.	\$ 2,064,150	+18.0%
12. 4-Con Engineering, Inc.	\$ 2,115,250	+20.9%

PROJECT LOCATION

ATTACHMENT NO. 2



PROJECT LOCATION MAP

CHECKED BY: D.E.E.	SCALE: N.T.S.	PROJECT NO. 7393	DRAWING NO.
PREPARED BY: M.C.	CITY OF GARDEN GROVE PROJECT NO. 7393 THE EQUIPPING OF WELL NO. 31 AND CONSTRUCTION OF IMPROVEMENTS AT LAMPSON RESERVOIR BOOSTER STATION		
DRAWN BY: M.C.			



City of Garden Grove
Department Of Public Works



**SPECIFICATION No. 701
FOR THE EQUIPPING OF WELL NO. 31 AND CONSTRUCTION OF
IMPROVEMENTS AT THE LAMPSON RESERVOIR BOOSTER STATION**

PROJECT NO. 7393

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SECTION 5 - AGREEMENT

CONSTRUCTION AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2011, by the **CITY OF GARDEN GROVE ("CITY")**, and Arnaz Engineering Contractors, Incorporated, hereinafter referred to as ("**CONTRACTOR**")

RECITALS:

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to City of Garden Grove Authorization dated **October 11, 2011**.
2. CITY desires to utilize the services of CONTRACTOR to furnish material, equipment, and labor for the **Specification No. 701 for the Equipping of Well No. 31 and Construction of Improvements at the Lampson Reservoir Booster Station – Project No. 7393**
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, Plans, Specifications, 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.

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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. 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: **Specification No. 701 for the Equipping of Well No. 31 and Construction of Improvements at the Lampson Reservoir Booster Station – Project No. 7393**

5.4 Plans and Specifications. The work to be done is shown in a set of detailed Plans and Specifications entitled: **Specification No. 701 for the Equipping of Well No. 31 and Construction of Improvements at the Lampson Reservoir Booster Station – Project No. 7393**

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 shall have **twenty-one (21) calendar days from the award of the Contract** to execute the Contract and supply the CITY with all the documents and information required by the Instructions to Bidders and the other Contract Documents, including but not limited to, the necessary bonds and insurance certificates and endorsements. Once the CITY receives the executed contract and all of the other properly drafted and executed documents and information the CITY shall review the documents and information to ensure they comply in all aspects to the requirements of the Contract Documents. If any of the documents or information do not comply the CITY shall so notify the CONTRACTOR who shall have three (3) business days to correct said deficiencies. Once all deficiencies are corrected, or if no deficiencies are present the CITY may issue a Notice to Proceed to the CONTRACTOR. If CONTRACTOR refuses or fails to provide the required documents and information within the twenty-one (21) calendar days or fails to correct any deficiencies therein within the required time, the CITY may then rescind the award of the Contract and then award the Contract to the next lowest responsive and responsible bidder.

Upon receipt of the Notice to Proceed, CONTRACTOR agrees to submit shop drawings **within fourteen (14) calendar days**. If CONTRACTOR fails to submit the required shop drawings within fourteen (14) calendar days the CONTRACTOR acknowledges that the CITY shall have the right to terminate this Contract for CONTRACTOR's default pursuant to Section 5.18.2. Shop drawings shall include appropriate backup documentation, including, but not limited to, purchase orders and delivery dates from vendors substantiating that CONTRACTOR can comply with the Project Schedule. Further, upon receipt of the Notice to Proceed, the CONTRACTOR shall diligently prosecute the work to completion within **two**

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hundred and eighty (280) calendar 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 of negligence or default of 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 in an amount equal to the time lost on the critical path due to delays beyond the control of the CONTRACTOR, provided that CONTRACTOR presents a written request to CITY for such time extension within forty-eight (48) hours 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, and that the delay negatively effected the project's critical path through a critical path analysis. Extensions of time will not be granted for non-controlling delays unless it can be shown through a critical path analysis that the delay will negatively affect the time of completion for the work. Extensions of time and extra compensation as a result of incurring undisclosed utilities will be determined in accordance with SPECIAL PROVISIONS and Section 3-3 of the Standard Specifications for Public Works Construction 2009 Edition (GREEN BOOK) 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.

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Extensions of time will not be granted for performing extra work unless it can be shown through a critical path analysis that the extra work will negatively affect the progress of the work. The CITY shall extend the time fixed in Section 5.5 for completion of the Project by the number of days the critical path is negatively affected as a result of the CONTRACTOR performing the extra work, as determined by City Engineer based on the critical path analysis. The decision of the City 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.

If CONTRACTOR believes that the written order issued as part of this Section 5.9.1 has caused an increase in costs or time, the CONTRACTOR shall submit a written request for equitable adjustment to the CITY that includes a detailed cost breakdown and time impact analysis in sufficient detail to allow the CITY to analyze the request. Said notice shall be submitted via certified mail within twenty (20) days of the CONTRACTOR'S receipt of the written order. CONTRACTOR'S failure to submit the written request for equitable adjustment within the required twenty (20) days shall constitute a waiver of any potential change order or claim for said alleged change. The CITY shall review CONTRACTOR'S request and shall provide a written response within thirty (30) days of receipt of the request either approving or denying the request.

5.9.2 A change may also be any other conflict, difficulty or issue which the CONTRACTOR believes caused any change to the CONTRACTOR'S costs or project schedule, provided CONTRACTOR gives the CITY written notice and a request for equitable adjustment that includes a detailed cost breakdown and time impact analysis in sufficient detail to allow the CITY to analyze the request. The notice shall also state the date the CONTRACTOR became aware of the issue, circumstances and source of the issue and that CONTRACTOR regards the issue as a change order. Said written notice shall be submitted to the CITY in writing within forty-eight (48) of CONTRACTOR'S first notice of the issue. The CONTRACTOR shall not proceed with any activity he believes will result in a change to the CONTRACTOR's cost or project schedule prior to the CITY receiving the above described written notice and rendering a decision and/or providing written direction to the CONTRACTOR to proceed with the work. CONTRACTOR'S failure to submit the notice, which includes the written request for equitable adjustment within the required forty-eight (48) hours shall constitute a waiver of any potential change order or claim for said alleged change. The CITY shall review CONTRACTOR'S request and shall provide a written response within thirty (30) days of receipt of the request either approving or denying the request.

5.9.3 Except as provided in this Section 5.9, no order, statement or conduct of the CITY

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or its representatives shall be treated as a change under this Section 5.9 or entitle CONTRACTOR to an equitable adjustment.

- 5.9.4** Except for claims based on defective specifications, no claim for any change under paragraph 5.9.1 or 5.9.2 above shall be allowed for any work performed more than 20 days before the CONTRACTOR gives written notice as required in paragraphs 5.9.1 and 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 denial of a request for equitable adjustment under paragraphs 5.9.1 and 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'S failure to submit the notice of a claim, within the required thirty (30) days shall constitute a waiver of the claim by the CONTRACTOR.
- 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 related to the delay in having use of the proposed facility to be constructed, which would be extremely difficult and impractical to ascertain. The parties therefore agree that CONTRACTOR will pay compensatory funds to the CITY in the sum of **Nine Hundred Thirty Seven Dollars (\$937.00) per day** for each and every calendar day during which completion of the Project is so delayed and that such an amount is reasonable compensation for damages related to the breach. The basis for establishing the Liquidated Damages is as follows:

Liquidated Damages = (15% x Total Engineer's Estimate) / Calendar Days

$$15\% \times \$1,750,000 / 280 = \$937.00$$

In addition, the CITY reserves the right to charge the CONTRACTOR and deduct

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from payments for the work the actual cost to the CITY of engineering, inspection, superintendence or any other overhead expense, which are directly chargeable to the Contract and which accrue during the period of such delay. The 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 beginning at the commencement of the liquidated damages. The Contractor and his sureties shall be liable for any excess cost.

- 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 One Million Six Hundred Seventy One Thousand Four Hundred Seventy and No/100 Dollars (\$ 1,671,470.00) as itemized in the bid proposal.

Progress payments shall be made to the CONTRACTOR on a monthly basis 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.

CONTRACTOR shall be required to submit an acceptable updated construction schedule with each progress payment request. Payment requests submitted without an acceptable updated schedule shall not be reviewed or processed by the CITY.

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

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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.

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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 every 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 ceased in an orderly, safe fashion with all vehicle access restored. Should this not occur, 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, pursuant to Section 5.5, furnish a performance bond, on the CITY's bond form in the amount of one hundred percent (100%) of the Contract price, to guarantee the faithful performance of the work, and a payment bond, on the CITY's bond form in the amount of one hundred percent(100%) of the Contract price, to guarantee payment of all claims for labor and materials furnished. Bonds submitted on any form other than the CITY's forms will be rejected. The required bonds shall be from a surety licensed to do business in the State of California and with a current A.M. Best's rating of **A-, VII**. This Contract shall not become effective until such bonds are supplied by the CONTRACTOR 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 shall 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 the CITY, its officers, agents and employees and shall issue a certificate to the policy evidencing same.

5.16.3 CONTRACTOR shall at all times carry, on all operations hereunder, bodily

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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 the CITY in the Insurance Requirements and shall be evidenced by the issuance of a certificate and additional insured endorsement in forms prescribed by the CITY and shall be underwritten by insurance companies satisfactory to the 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 the CITY, 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, as determined by the CITY, as additional insured on said policies. Additional insured status shall be evidenced in the form of an Additional insured Endorsement (CG 20 10 1185). A sample is included in the appendix of the specifications for reference.

For any claims related to this Project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the CITY, its Officers, Agents, Employees, Engineers, and Consultants. Any insurance or self-insurance maintained by the CITY, its Officers, Agents, Employees, Engineers, and Consultants shall be excess of the CONTRACTOR's insurance and not contribute with it.

5.16.4 Pursuant to the requirements of Section 5.5, CONTRACTOR shall furnish:

- Certificates of insurance evidencing the foregoing insurance coverage and such certificates shall provide the name and policy number of each carrier and policy.
- Additional insured endorsements evidencing CITY, its Officers, Agents, Employees, Engineers, and Consultants, are additional insured on CONTRACTOR's general liability and auto policies and an additional insured endorsement giving the CITY thirty (30) days written notice of cancellation of such policies.

CONTRACTOR shall maintain all of the foregoing insurance coverage 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 company admitted and licensed in California and having a Best's Guide Rating of A-Class VII or better (claims made and modified occurrence policies are not acceptable):

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Workers' Compensation	As required by the State of California.
Employer's Liability	\$1,000,000 per accident for bodily injury or disease.
Commercial General Liability (including operations, products and completed operations)	\$5,000,000 per occurrence for bodily injury, personal injury and property damage.
Automobile Liability, including non-owned and hired vehicles	\$1,000,000 per accident for bodily injury and property damage.
Course of Construction	Completed value of the project with no coinsurance penalty provisions.

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 hereinabove required.

- 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 the CITY, 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 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.
- 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.
- 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

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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 shall bear its own attorneys' fees, costs and necessary disbursements. Notwithstanding the foregoing, 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.

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:

TO CONTRACTOR:

City of Garden Grove	Arnaz Engineering Contractors, Inc.
Attention: David E. Entsminger, P.E.	Attention: Ali Yazdanshenas, President
Garden Grove, CA 92843	1035 N. Armando Street, Suite X
(714) 741-5395	Anaheim, Ca. 92806
(714) 638-9906 Fax	(949) 488-0412 / (714) 666-1765

5.22 **Project Schedules.** CONTRACTOR shall, as detailed further in the General Conditions, be required to submit the following schedule documents to the CITY:

5.22.1 **Initial Schedule** – CONTRACTOR shall submit its initial schedule as provide for in Article 32 of the General Conditions.

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- 5.22.2 Schedule Updates** – CONTRACTOR shall submit an updated schedule at the end of each billing period prior to payment of any progress payment.
- 5.22.3 Two-Week Look Ahead Schedules** – CONTRACTOR shall on a bi-weekly basis, or as otherwise required by the CITY, submit a complete and accurate two-week look ahead schedule.
- 5.22.4** For any schedule (initial, updated, and/or look ahead) to be deemed "submitted" it must be acceptable in form and substance to the CITY.
- 5.23 No Waiver of Conditions**. CONTRACTOR agrees that waiver by CITY of any one or more of the conditions of performance under this Contract shall not be construed as waiver of any other condition of performance under this Contract.
- 5.24 Corporate Authority**. The persons executing this Contract on behalf of the parties hereto warrant that they are duly authorized to execute this Contract on behalf of said parties and that by executing this Contract; the parties hereto are formally bound to the provisions of this Contract.
- 5.25 Modification**. This Contract constitutes the entire agreement between the parties. This Contract may be modified only by subsequent mutual written agreement executed by the parties.
- 5.26 Waiver**. All waivers of the provisions of this Contract must be in writing and must be executed by appropriate authorities of the parties.
- 5.27 California Law and Venue**. This Contract shall be construed in accordance with the laws of the State of California. The proper venue of any action arising out of this Contract shall be Orange County, California.
- 5.28 Interpretation**. This Contract shall be interpreted as though drafted by both parties.
- 5.29 Preservation of Contract**. Should any paragraph, clause or provision of this Contract be found to be invalid or unenforceable, such decision shall affect only the paragraph, clause, or provision construed and interpreted and all remaining provisions shall remain valid and enforceable.
- 5.30 Mutual Agreement**. The parties hereto do mutually covenant and agree to full and faithful performance of their respective obligations under this Contract.

SIGNATURE ON NEXT PAGE

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

Date: _____

"CITY"
CITY OF GARDEN GROVE

By: _____

Matthew J. Fertal
City Manager

ATTEST:

City Clerk

Date: _____

"CONTRACTOR"

Arnaz Engineering Contractors, Inc.

CONTRACTOR'S State License No. 755332
(Expiration Date: 10-31-2011)

By: Ali Yazdanshenas

Title: President

Date: 9-21-2011

APPROVED AS TO FORM:

[Signature]
City Attorney

Date 9/27/11

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

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FAITHFUL PERFORMANCE BOND

Bond No. _____

Premium. _____

NOTICE: TO WHOM IT MAY CONCERN: that we, _____,

as Principal, and _____,

as Surety, are held and firmly bound unto the City of Garden Grove, (CITY) in the sum of _____ Dollars (\$ _____)

lawful money of the United States, for the payment of which we bind our heirs, our executors, administrators, assigns, successors, and ourselves jointly and severally.

That the Surety's office is located at _____, telephone no. _____; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone no. are as follows:

License No.: _____

Address: _____

Telephone No.: _____

That the following clause must be completed if, in fact, a non-resident agent for the Surety is a party to the transaction:

Name of non-resident agent: _____

Non-resident agent's office address: _____

Telephone No.: _____

THE CONDITION OF THIS OBLIGATION IS SUCH, that:

1. The Principal and the CITY have entered into a contract entitled _____ which is attached hereto, dated the _____ day of _____, 2011, for the purpose of: _____.
2. If the Principal shall well and truly perform, or cause to be performed, each and all of the requirements and obligations of the contract, which is incorporated herein by reference, to be performed by the Principal, as set forth in the contract, then this bond shall be null and void; otherwise, it shall remain in full force and effect. In the event that suit is instituted to recover on this bond, the Surety will pay reasonable attorneys' fees.
3. Further, the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the contract documents or of work performed shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alteration, or modification of the contract documents, or of work to be performed.

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FAITHFUL PERFORMANCE BOND (Continues)

Executed this ____ day of _____, 20__

Principal

Principal

By: _____

Surety

By: _____

Attorney-in-Fact

California Resident Agent

By: _____

Non-resident Agent - Attorney-in-Fact

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On this ____ day of _____, 2011, before me, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Witnessed by my hand and official seal.

IN WITNESS WHEREOF, I have herewith set my hand and affixed my Official Seal, the day and year in this certificate first above written.

(Acknowledgment by Non-resident Agent as Attorney-in-Fact must be attached.)

Notary Public in and for said County and State
My Commission expires: _____

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LABOR AND MATERIAL BOND

Bond No. _____

Premium _____

NOTICE: TO WHOM IT MAY CONCERN: that we, _____,

_____ as Principal, and _____ as Surety, are held and firmly bound unto the City of Garden Grove ("CITY") in the sum of _____ Dollars (\$ _____), lawful money of the United States, for the payment of the sum, we bind heirs, our executors, administrators, assigns, successors, and ourselves jointly and severally.

That the Surety's office is located at _____, telephone no. _____; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone no. are as follows:

License No.: _____

Address: _____

Telephone No.: _____

That the following clause must be completed if, in fact, a non-resident agent for the Surety is a party to the transaction:

Name of non-resident agent: _____

Non-resident agent's office address: _____

Telephone No.: _____

THE CONDITION OF THIS OBLIGATION IS SUCH, that:

1. The Principal and the CITY have entered into a contract entitled: _____ which is attached hereto, dated _____ day of _____, 2011, for the purpose of: _____.
2. If the Principal, its heirs, executors, administrators, successors, or assigns, or subcontractors, shall fail to pay for any materials, provisions, provender, or other supplies or teams, implements, or machinery used in, upon, for, or about, the performance of the improvement, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to work or labor, and provided that the claimant shall have complied with the provision of the code, the Surety or Sureties will pay for same in the amount not exceeding the sum specified in this bond; otherwise, the above obligation shall be void. In case suit is brought upon this bond, the Surety will pay reasonable attorneys' fees.
3. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the contract documents, or of work performed, shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alteration, or modification of the contract documents, or of work to be performed.
4. This bond shall inure to the benefit of any and all persons, companies, and corporations entitled to the claims under Civil Code 3181 et seq., so as to give a right of action to them or their assignees in any suit brought upon this bond.

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LABOR AND MATERIAL BOND (Continues)

Executed this ____ day of _____, 2011.

Principal

Principal

By: _____
Surety

By: _____
Attorney-in-Fact

California Resident Agent

By: _____
Non-resident Agent - Attorney-in-Fact

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On this ____ day of _____, 2011, before me, a Notary Public in and for said County residing therein, duly commissioned and sworn, personally appeared: _____ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Witnessed by my hand and official seal.

(Acknowledgment by Non-resident Agent as Attorney-in-Fact must be attached.)

Notary Public in and for said County and State
My Commission expires: _____

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ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between _____
whose address is _____,
hereinafter called "Owner", _____,
whose address is _____,
hereinafter called "CONTRACTOR", _____,
and _____, whose address
is _____,
hereinafter called "escrow agent."

For the consideration hereinafter set forth, the Owner, CONTRACTOR, and escrow agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, the CONTRACTOR has the option to deposit securities with the escrow agent as a substitute for retention earnings required to be withheld by the Owner pursuant to the construction contract entered into between the Owner and CONTRACTOR for in the amount of _____ dated _____ (hereafter referred to as the "contract"). Alternatively, on written request of the CONTRACTOR, the Owner shall make payments of the retention earnings directly to the escrow agent. When the CONTRACTOR deposits the securities as a substitute for the contract earnings, the escrow agent shall notify the Owner within ten days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the contract between the Owner and CONTRACTOR. Securities shall be held in the name of the _____, and shall designate the CONTRACTOR as the beneficial Owner.

(2) The Owner shall make progress payments to the CONTRACTOR for those funds which otherwise would be withheld from progress payments pursuant to the contract provision, provided that the escrow agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the escrow agent, the escrow agent shall hold them for the benefit of the CONTRACTOR until such time as the escrow created under this contract is terminated. The CONTRACTOR may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the escrow agent directly.

(4) The CONTRACTOR shall be responsible for paying all fees for the expenses incurred by the escrow agent in administering the escrow account. These expenses and payment terms shall be determined by the CONTRACTOR and escrow agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest on the interest shall be the sole account of CONTRACTOR and shall be subject to withdrawal by CONTRACTOR at any time and from time to time without notice to the Owner.

(6) The CONTRACTOR shall have the right to withdraw all or any part of the principal in the escrow account only by written notice to the escrow agent accompanied by written authorization from the Owner to the escrow agent that the Owner consents to

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the withdrawal of the amount sought to be withdrawn by CONTRACTOR.

(7) The Owner shall have a right to draw upon the securities in the event of default by the CONTRACTOR. Upon seven days' written notice to the escrow agent from the Owner of the default, the escrow agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the contract is final and complete, and that the CONTRACTOR has complied with all requirements and procedures applicable to the contract, the escrow agent shall release to the CONTRACTOR all securities and interest on deposit less escrow fees and charges of the escrow account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payment of fees and charges.

(9) The escrow agent shall rely on the written notifications from the Owner and the CONTRACTOR pursuant to Sections (1) to (8), inclusive, of this agreement and the Owner and CONTRACTOR shall hold the escrow agent harmless from the escrow agent's release, conversion, and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of the CONTRACTOR in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of the Owner:

On behalf of the CONTRACTOR:

On behalf of the Owner:
Title

On behalf of the CONTRACTOR:
Title

Name

Name

Signature

Signature

Address

Address

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On behalf of the escrow agent:

Title

Title

Name

Name

Signature

Signature

Address

Address

At the time the escrow account is opened, the Owner and CONTRACTOR shall deliver to the escrow agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner/CONTRACTOR _____

Dated: _____

Title/Title _____

Approved as to Form _____

City Attorney