

## AGENDA



Oversight Board of the City of Garden Grove  
as Successor Agency to the Garden Grove  
Agency  
for Community Development

Wednesday, October 12, 2016

2:00 PM

Community Meeting Center, 11300 Stanford  
Avenue, Garden Grove, CA 92840

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**Meeting Assistance:** Any person requiring auxiliary aids and services, due to a disability, to address the Oversight Board, should contact the City Clerk's Office 72 hours prior to the meeting to arrange for accommodations. Phone: 714) 741-5040.

**Agenda Item Descriptions:** Are intended to give a brief, general description of the item. The Oversight Board may take legislative action deemed appropriate with respect to the item and is not **limited** to the recommended action indicated in staff reports or the agenda.

**Documents/Writings:** Any revised or additional documents/writings related to an item on the agenda distributed to all or a majority of the Board Members within 72 hours of a meeting, are made available for public inspection at the same time (1) in the City Clerk's Office at 11222 Acacia Parkway, Garden Grove, CA 92840, during normal business hours; (2) on the City's website as an attachment to the Oversight Board meeting agenda; and (3) at the Council Chamber at the time of the meeting.

**Public Comments:** Members of the public desiring to address the Oversight Board are requested to complete a **pink speaker card** indicating their name and address, and identifying the subject matter they wish to address. This card should be given to the Secretary prior to the start of the meeting. General comments are made during "Oral Communications," and should be limited to matters under consideration and/or what the Oversight Board has jurisdiction over. Persons wishing to address the Oversight Board regarding a Public Hearing matter will be called to the podium at the time the matter is being considered.

**Manner of Addressing the Oversight Board:** After being called by the Chair, you may approach the podium, it is requested that you state your name for the record, and proceed to address the Oversight Board. All remarks and questions should be addressed to the Oversight Board as a whole and not to individual Board Members or staff members. Any person making impertinent, slanderous, or profane remarks or who becomes boisterous while addressing the Oversight Board shall be called to order by the Chair. If such conduct continues, the Chair may order the person barred from addressing the Oversight Board any further during that meeting.

**Time Limitation:** Speakers must limit remarks for a total of three (3) minutes. When any group of persons wishes to address the Oversight Board on the same subject matter, the Chair may request a spokesperson be chosen to represent the group, so as to avoid unnecessary repetition. At the Oversight Board's discretion, a limit on the total amount of time for public comments during Oral Communications and/or a further limit on the time allotted to each speaker during Oral Communications may be set.

***PLEASE SILENCE YOUR CELL PHONES DURING THE MEETING.***

AGENDA

Open Session

2:00 PM

ROLL CALL: MEMBER DUNN, MEMBER GUERRERO, MEMBER SANCHEZ, VICE CHAIR JONES, CHAIR DALTON

PLEDGE OF ALLEGIANCE TO THE FLAG

1. ORAL COMMUNICATIONS

2. CONSENT ITEMS

2.a. Receive and file the minutes from the September 14, 2016, meeting.

3. PUBLIC HEARINGS

4. ITEMS FOR CONSIDERATION

4.a. Adoption of a Resolution 1.) Approving a contract for demolition of structures; and 2.) Approving a professional services agreement for removal of hazardous materials at 10151 Garden Grove Boulevard, 12863 and 12865 Brookhurst Street. (*Action Item*)

5. MATTERS FROM THE CHAIR, BOARD MEMBERS AND DIRECTOR

6. ADJOURNMENT

**Oversight Board**

**INTER-DEPARTMENT MEMORANDUM**

To: Scott C. Stiles                      From: Kathy Bailor  
Dept.: Director                      Dept.: City Clerk  
Subject: Receive and file the minutes      Date: 10/12/2016  
          from the September 14,  
          2016, meeting.

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Attached are the minutes from the September 14, 2016, meeting to be received and filed.

**ATTACHMENTS:**

<b>Description</b>	<b>Upload Date</b>	<b>Type</b>	<b>File Name</b>
September 14, 2016, Minutes	10/6/2016	Cover Memo	ob-min_09_14_2016.pdf



**GARDEN GROVE**

MINUTES

Regular Meeting

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OVERSIGHT BOARD OF THE CITY OF GARDEN GROVE AS SUCCESSOR AGENCY  
TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT

Community Meeting Center, Constitution Room  
11300 Stanford Avenue, Garden Grove, CA 92840

September 14, 2016

Open Session

2:03 p.m.

ROLL CALL: Member Dunn, Member Guerrero, Member Sanchez, Vice Chair Jones,  
Chair Dalton

All Members Present.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA  
Led by Lisa Kim, Community and Economic Development Director.

1. ORAL COMMUNICATIONS: None.

2. CONSENT ITEMS:

2.a. Receive and file the minutes from the March 23, 2016, meeting.  
(F: Vault)

Action: Received and filed.

Motion: Dunn      Seconded: Jones

The motion carried by a 5-0 vote as follows:

Ayes: (5)      Dalton, Dunn, Guerrero, Jones, Sanchez

Noes: (0)      None

3. PUBLIC HEARINGS: None.

4. ITEMS FOR CONSIDERATION:

4.a. Adoption of a Resolution approving the Amended Recognized  
Obligation Payment Schedule (ROPS 16-17 B).  
(F: A-46.1.OB)(XR: A-46.1.SA)

MEMBERS: MEMBER DUNN, MEMBER GUERRERO, MEMBER SANCHEZ,  
VICE CHAIR JONES, CHAIR DALTON

Action: Resolution No. 50-16 adopted.

Motion: Dunn Seconded: Guerrero

The motion carried by a 5-0 vote as follows:

Ayes: (5) Dalton, Dunn, Guerrero, Jones, Sanchez

Noes: (0) None

5. MATTERS FROM CHAIR, BOARD MEMBERS, AND DIRECTOR:

Lisa Kim, Community and Economic Development Director, sitting in for Director Stiles, and the newly sworn Member Sanchez were introduced.

6. ADJOURNMENT: 2:11 p.m.

TERESA POMEROY, CMC  
DEPUTY SECRETARY

**Oversight Board**

**INTER-DEPARTMENT MEMORANDUM**

To: Scott C. Stiles From: Kingsley Okereke  
Dept.: Director Dept.: Finance  
Subject: Adoption of a Resolution 1.) Date: 10/12/2016  
Approving a contract for  
demolition of structures; and  
2.) Approving a professional  
services agreement for  
removal of hazardous  
materials at 10151 Garden  
Grove Boulevard, 12863 and  
12865 Brookhurst  
Street. (*Action Item*)

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**OBJECTIVE**

The purpose of this report is to request that the Oversight Board of the Successor Agency to the Garden Grove Agency for Community Development ("Oversight Board") adopt a resolution to 1.) Approve a contract to J&G Industries, Inc., ("Contractor") for Project No. 2562 – Brookhurst Triangle Demolition Project - Phase 1 (the "Project"); and 2.) Approve a professional services agreement with Ocean Blue Environmental Services Inc. ("Ocean Blue") for the emergency removal of asbestos and hazardous materials at the Brookhurst Triangle.

**BACKGROUND**

On November 23, 2010, the Garden Grove Agency for Community Development ("Former Agency") and New Age Brookhurst, LLC ("Developer") entered into a Disposition and Development Agreement establishing the terms and conditions for the development of a mixed-use retail, commercial, and residential development on Successor Agency owned property, commonly referred as the "Brookhurst Triangle," (the "Site"). The Site is located at 10151 Garden Grove Boulevard, 12863 and 12865 Brookhurst Street, Garden Grove.

The Former Agency has since been dissolved and the Successor Agency is responsible for administering the enforceable obligations of the Former Agency. On May 17, 2013, the State of California Department of Finance ("DOF"), provided written confirmation to the Successor Agency that the DDA is a legally binding and enforceable agreement, and is therefore an enforceable obligation pursuant to Health and Safety Code Section 34171(d) (1)(E). In addition, the DOF confirmed the Successor Agency's obligation to demolish all

above ground and below grade structures on the Site. Furthermore, federal and state environmental regulations require the removal of asbestos containing materials within the structures prior to commencing with demolition activities.

In addition, on September 23, 2016, a two-alarm structure fire severely damaged one of the structures that is to be demolished. Southern California Air Quality Management District requires the immediate abatement of the hazardous materials disturbed by the fire within that building. As a result, a separate hazardous materials consultant was engaged to undertake the immediate remediation.

## DISCUSSION

### Project:

Four (4) bids were received and opened by the City Clerk's Office on October 3, 2016, at 2:00 p.m. (see attached Bid Summary Sheet). The lowest responsive bid was submitted by J&G Industries, Inc., with a total price of \$338,878.00. The Contractor is to remove all asbestos materials from the buildings not damaged by the fire as part of the scope of work. This proposal 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.

### Remediation:

Staff is in the process of obtaining a proposal from Ocean Blue to undertake emergency remediation of hazardous materials from the site. Ocean Blue will remove hazardous medical waste from the site in the amount of \$22,000.00. In addition the removal of asbestos material is anticipated to be an additional \$18,000, for a total contract price of approximately \$40,000.00.

## FINANCIAL IMPACT

There is no impact to the General Fund. The costs for Project and Remediation will be funded by the 2016-2017 Recognized Obligation Payment schedule in accordance with the Dissolution Act and will be paid through the Redevelopment Property Tax Trust Fund.

## RECOMMENDATION

Staff recommends that the Oversight Board:

- Adopt the Resolution 1.) Approving a contract for Project No. 2562 – Brookhurst Triangle Demolition Project Phase One in the amount of \$338,878.00 to J&G Industries, Inc.; and 2.) Approving a professional services agreement with Ocean Blue Environmental Services in the amount of \$40,000.00;
- Authorize the Director to execute the contract with J&G Industries, Inc., for demolition of structures at the 10151 Garden Grove Boulevard, 12863 and 12865 Brookhurst Street, Garden Grove, and make minor modifications on behalf of the Successor Agency;

- Authorize the Director to execute the professional services agreement with Ocean Blue Environmental Services, Inc., for emergency remediation of hazardous materials at 10151 Garden Grove Boulevard, 12863 and 12865 Brookhurst Street, Garden Grove, and make minor modifications on behalf of the Successor Agency; and
- Authorize staff to transmit the contract and professional services agreement to the State of California Department of Finance.

By: Carlos Marquez, Sr. Real Property Agent

**ATTACHMENTS:**

<b>Description</b>	<b>Upload Date</b>	<b>Type</b>	<b>File Name</b>
Bid Opening Results	10/5/2016	Cover Memo	Bid_opening_results.pdf
Resolution	10/6/2016	Resolution Letter	OB_Resolution_J_G.docx.doc
Contract	10/5/2016	Cover Memo	J_G_Industries.Brookhurst_Triangle_Demo_Contract.pdf
Ocean Blue Agreement	10/5/2016	Backup Material	Ocean_Blue_Professional_Services_Agreement.final.pdf





OVERSIGHT BOARD

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT APPROVING AND RATIFYING THE APPROVAL OF THE SUCCESSOR AGENCY OF THE 1.) AWARDDING OF A CONTRACT WITH J&G INDUSTRIES, INC., FOR ASBESTOS ABATEMENT AND DEMOLITION SERVICES FOR PROJECT NO. 2562 - BROOKHURST TRIANGLE DEMOLITION PROJECT - PHASE ONE AND 2.) APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH OCEAN BLUE ENVIRONMENTAL SERVICES INC., FOR THE EMERGENCY REMEDIATION OF HAZARDOUS MATERIALS AT THE BROOKHURST TRIANGLE PROJECT SITE AND AUTHORIZING CERTAIN ACTIONS IN CONNECTION THEREWITH

WHEREAS, the Garden Grove Agency for Community Development, ("Former Agency") a redevelopment agency formerly existing under Chapter 2 of the Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*), acquired certain real property located at 10151 Garden Grove Boulevard, 10111 Garden Grove Boulevard, 10071 Garden Grove Boulevard, 10081 Garden Grove Boulevard, 12861 Brookhurst Street, and 12791 Brookhurst Street and also known by Assessor Parcel Numbers: 089-071-25, 089-071-11, 089-071-12, 089-071-13, 089-71-14, 089-071-08, 089-071-07, 089-071-06, 089-071-05, 089-071-24, 089-661-02, 089-661-04, and 089-661-03, located in the City of Garden Grove, (the "Property") for redevelopment purposes;

WHEREAS, the Former Agency and New Age Brookhurst, LLC ("Developer"), entered into a Disposition and Development Agreement ("DDA") on November 23, 2010, establishing the terms and conditions for the disposition of the Property to the Developer and the development of a mixed use retail, commercial, and residential development ("Project") on the Property;

WHEREAS, pursuant to ABX1-26 and the State of California Supreme Court decision in *California Redevelopment Association vs. Matosantos*, redevelopment agencies in California, including the Former Agency, were dissolved as of February 1, 2012; and

WHEREAS, pursuant to the provisions of ABX1-26, including but not limited to Health and Safety Code Section 34173, the City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development ("Successor Agency") is the successor entity to the Agency;

WHEREAS, on May 17, 2013, the State of California Department of Finance ("DOF") provided written confirmation to the Successor Agency that the DDA is an enforceable obligation pursuant to Health and Safety Code Section 34171(d)(1)(E);

WHEREAS, on that written confirmation dated May 17, 2013 provided to the Successor Agency by the DOF approving the DDA as an enforceable obligation, the

DOF acknowledged the Successor Agency's obligation to clear all above ground structures before conveying the Property to the Developer;

WHEREAS, the Successor Agency is required to comply with Federal and State environmental laws and regulations, notwithstanding rules and regulations implemented by the South Coast Air Quality Management District requiring the surveying and eventual abatement of asbestos containing materials prior to demolition activities;

WHEREAS, the Successor Agency desires to utilize the services of J&G Industries, Inc., ("Contractor") to abate asbestos containing material and demolition of structures on the Property pursuant to the DDA;

WHEREAS, in accordance with Federal and State environmental laws and regulations, the Successor Agency is required to undertake emergency remediation of hazardous materials as a result of a two-alarm fire that occurred on the Property;

WHEREAS, the Successor Agency desires to utilize the services of Ocean Blue Environmental Services, Inc., ("Consultant") to undertake the immediate abatement of hazardous materials at the Property as a result of the fire;

WHEREAS, the Successor Agency is authorized to enter into this Agreement pursuant to ABX1-26 and Successor Agency Board Resolution No. 1-12, adopted February 14, 2012.

NOW, THEREFORE, BE IT RESOLVED BY OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT:

Section 1. The foregoing recitals are true and correct and constitute a substantive part of this Resolution.

Section 2. The Oversight Board hereby awards the contract with J&G Industries, Inc., for asbestos abatement and demolition services as part of Project No. 2562 - Brookhurst Triangle Demolition Project - Phase One, in furtherance of Section 205.1(g) of the DDA, together with such augmentation, modification, additions or revisions as the Director and/or the Finance Director or their authorized designees may find necessary to effectuate the services of the Contractor.

Section 3. The Oversight Board hereby approves a professional services agreement with Ocean Blue Environmental Services, Inc., for the removal of hazardous materials from the Property, together with such augmentation, modification, additions, or revisions as the Director and/or Finance Director or their authorized designees may find necessary to effectuate the services of the Consultant.

Section 4. The Chair of the Oversight Board shall sign the passage and adoption of this Resolution and thereupon the same shall take effect and be in force.

Section 5. The Oversight Board Director or his authorized designee on behalf of the Successor Agency shall cause this Resolution, together with the 1.) contract with J&G Industries, Inc., and 2.) professional services agreement with Ocean Blue Environmental Services, Inc., to be transmitted to the Oversight Board.

## CONSTRUCTION AGREEMENT

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THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by the **SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, ("SUCCESSOR AGENCY"), and **J&G INDUSTRIES, 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 Successor Agency Board Authorization dated \_\_\_\_\_, 2016.
2. The CITY desires to utilize the services of CONTRACTOR to furnish material, equipment, and labor for the **Brookhurst Triangle Demolition Project – Phase I, Project No. 2562**, herein referred to as the "Project".
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 SUCCESSOR AGENCY. 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. If the Contract Documents include Plans and/or Specifications, 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 SUCCESSOR AGENCY 's Senior Real Property Agent, without whose decision CONTRACTOR shall not adjust said discrepancy save only at CONTRACTOR'S own risk and expense. The decision of the Senior Real Property Agent 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 SUCCESSOR AGENCY, to construct and complete the Project, in good workmanlike and substantial order.

If CONTRACTOR fails to pay for labor or materials when due, SUCCESSOR AGENCY 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, SUCCESSOR AGENCY may settle them directly and deduct the amount of payments from the Contract price and any amounts due to CONTRACTOR. In the event SUCCESSOR AGENCY receives a stop notice from any laborer or material supplier alleging non-payment by CONTRACTOR, SUCCESSOR AGENCY 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: **Brookhurst Triangle Demolition Project – Phase I, Project No. 2562.**

**5.4 Plans and Specifications.** The work to be done is shown in a set of detailed Specifications entitled: **Brookhurst Triangle Demolition Project – Phase I, Project No. 2562.**

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 (Caltrans and Greenbook 2012 Edition) 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 on date set forth in the "Notice to Proceed" issued by the SUCCESSOR AGENCY and shall diligently prosecute the work to completion within **fifty (50) working days** excluding delays caused or authorized by the SUCCESSOR AGENCY 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.

CONTRACTOR shall have seven **(7) calendar days from the award of the Contract** to execute the Contract and supply SUCCESSOR AGENCY with all of the documents and information required by the Instruction to Bidders and the other Contract Documents, including but not limited to, the necessary bonds and insurance certificates and endorsements. Once the SUCCESSOR AGENCY receives the executed Contract and all of the other properly drafted and executed documents and information, it may issue a Notice to Proceed to the CONTRACTOR. If CONTRACTOR refuses or fails to execute the Contract or refuses or fails to provide the required documents and information within the seven (7) calendar days, the SUCCESSOR AGENCY may then rescind the award of the Contract and then award the Contract to the next lowest responsive and responsible bidder.

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 SUCCESSOR AGENCY, in a

manner that will facilitate the efficient completion of the entire work in accordance with Section 5.5 herein. SUCCESSOR AGENCY 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 SUCCESSOR AGENCY; failure of SUCCESSOR AGENCY to make timely payments to CONTRACTOR; late delivery of materials required by this CONTRACT to be furnished by SUCCESSOR AGENCY; combined action of the workers in no way caused by or resulting from default or collusion on the part of CONTRACTOR; a lockout by SUCCESSOR AGENCY; or any other delays unforeseen by CONTRACTOR and beyond CONTRACTOR'S reasonable control.

SUCCESSOR AGENCY 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 SUCCESSOR AGENCY for such time extension within fifteen (15) calendar days of the commencement of such delay and SUCCESSOR AGENCY finds that the delay is justified. SUCCESSOR AGENCY 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 SUCCESSOR AGENCY 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 the Standard Specifications for Public Works Construction 2012 edition (Greenbook). The SUCCESSOR AGENCY'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 SUCCESSOR AGENCY 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.

SUCCESSOR AGENCY 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 SUCCESSOR AGENCY's Finance Director. The decision of the Finance Director shall be final.

- 5.9 Changes in Project.**

**5.9.1** SUCCESSOR AGENCY 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 of Garden Grove - 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 SUCCESSOR AGENCY that includes a detailed cost breakdown and time impact analysis in sufficient detail to allow the SUCCESSOR AGENCY to analyze the request. Said notice shall be submitted via certified mail within twenty (20) calendar days of the CONTRACTOR's receipt of the written change order. CONTRACTOR's failure to submit the written request for equitable adjustment within the required twenty (20) calendar days shall constitute a waiver of any potential change order or claim for said alleged change. The SUCCESSOR AGENCY 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 SUCCESSOR AGENCY written notice and a request for equitable adjustment that includes a detailed cost breakdown and time impact analysis in sufficient detail to allow the SUCCESSOR AGENCY 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 delivered to the SUCCESSOR AGENCY via certified mail within twenty (20) calendar days of CONTRACTOR's first notice of the issue. CONTRACTOR's failure to submit the notice, which includes the written request for equitable adjustment within the required twenty (20) calendar days shall constitute a waiver of any potential change order or claim for said alleged change. The SUCCESSOR AGENCY shall review CONTRACTOR's request and shall provide a written response within thirty (30) calendar 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 SUCCESSOR AGENCY 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 SUCCESSOR AGENCY 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 SUCCESSOR AGENCY 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 SUCCESSOR AGENCY 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 SUCCESSOR AGENCY setting forth the general nature and monetary extent of such claim. The SUCCESSOR AGENCY 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 all changes, furnish the materials, and perform the work that SUCCESSOR AGENCY may require without nullifying this Contract. CONTRACTOR shall adhere strictly to the Plans and Specifications unless the SUCCESSOR AGENCY therefrom authorizes a change in writing. Under no condition shall CONTRACTOR make any changes to the Project, either in additions or deductions, without the written order of the SUCCESSOR AGENCY and the SUCCESSOR AGENCY shall not pay for any extra charges made by CONTRACTOR that have not been agreed upon in advance in writing by the SUCCESSOR AGENCY. CONTRACTOR shall submit immediately to the SUCCESSOR AGENCY 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 SUCCESSOR AGENCY and the proper cost or credit breakdowns therefor shall be submitted without delay by CONTRACTOR to SUCCESSOR AGENCY.

**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 SUCCESSOR AGENCY will sustain damage which would be extremely difficult and impractical to ascertain. The parties therefore agree that CONTRACTOR will pay to SUCCESSOR AGENCY the sum of five hundred dollars (\$500.00) per day for each calendar day during which completion of the Project is so delayed. CONTRACTOR agrees to pay such liquidated damages and further agrees that SUCCESSOR AGENCY 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.** SUCCESSOR AGENCY 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:

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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-five percent

(95%) 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 SUCCESSOR AGENCY will retain five percent (5%) 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 SUCCESSOR AGENCY's Senior Real Property Agent, 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 SUCCESSOR AGENCY or an approved financial institution in order to have the SUCCESSOR AGENCY release funds retained by the SUCCESSOR AGENCY 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 ten (10) working days after the contract completion date of the Project, CONTRACTOR shall file with the SUCCESSOR AGENCY's Senior Real Property Agent 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. SUCCESSOR AGENCY 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.**

SUCCESSOR AGENCY has ascertained that the prevailing wage requirements of the California Labor Code, including Sections 1770, 1771.5, 1773, 1777.5, and 1776, apply to this Project. CONTRACTOR shall comply with all applicable requirements of Division 2, Part 7, Chapter 1 of the California Labor Code and all applicable federal requirements respecting the payment of prevailing wages. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the prevailing wage rates determined by the Director of the Department of Industrial Relations (DIR) for similar classifications of labor, the CONTRACTOR and its Sucontractors shall pay not less than the higher wage rate. The DIR will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal Wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the CONTRACTOR and Subcontractors, the CONTRACTOR and its Subcontractors shall pay not less than the Federal Minimum wage rate which most closely approximates the duties of the employees in question

- 5.14.2 Forfeiture for Violation.** CONTRACTOR shall, as a penalty to the SUCCESSOR AGENCY, 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 Reserved.**
- 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; provided, however, that this requirement shall not apply if and/or to the extent that the Contract of the general CONTRACTOR, or the contracts of specialty contractors not bidding for work through a general or prime contractor involves less than thirty thousand dollars (\$30,000.00).
- 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 SUCCESSOR AGENCY 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. CONTRACTOR shall comply with all of the provisions of Labor Code Section 1776, and shall submit payroll records to the Labor Commissioner pursuant to Labor Code section 1771.4(a)(3). The CONTRACTOR shall submit copies of certified payroll reports **and cancelled checks** for laborers every week to the SUCCESSOR AGENCY. *If the certified payroll reports are not submitted, the contractor will be notified that compliance is required within five (5) working days or contract work must cease. The SUCCESSOR AGENCY 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, SUCCESSOR AGENCY will correct the deficiencies and deduct the cost from funds due to the contractor. In addition, no progress payment will be made until the copies of certified payroll reports are submitted.*

- 5.14.7 Contractor Registration.** CONTRACTOR and its subcontractors must be registered with the California Department of Industrial Relations pursuant to Labor Code Section 1725.5. This Agreement shall not be effective until CONTRACTOR provides proof of registration to the SUCCESSOR AGENCY.
- 5.14.8 Posting of Job Site Notices.** CONTRACTOR shall comply with the job site notices posting requirements established by the Labor Commissioner pursuant to Title 8, California Code of Regulations Section 16461(e) or other regulation promulgated pursuant to Labor Code Section 1771.4(a)(2).
- 5.14.9 Notice of DIR Compliance Monitoring and Enforcement.** Pursuant to Labor Code Section 1771.4, this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- 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 SUCCESSOR AGENCY.
- 5.16 Insurance.**

**5.16.1 COMMENCEMENT OF WORK.** CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the SUCCESSOR AGENCY. CONTRACTOR shall be responsible to collect and maintain all insurance from all subcontractors. All subcontractors shall obtain and maintain the same insurance as required of CONTRACTOR. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the SUCCESSOR AGENCY of any material change, cancellation, or termination at least thirty (30) days in advance. 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 WORKERS COMPENSATION INSURANCE.** For the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by California law, if applicable for the protection of its employees during the progress of the work. The insurer shall waive its rights of subrogation against the City of Garden Grove, the City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development, and their respective officers, officials, employees, agents, and volunteers and shall issue a certificate to the policy evidencing the same. CONTRACTOR shall provide to

SUCCESSOR AGENCY proof of insurance and endorsement forms that conform to SUCCESSOR AGENCY's requirements, as approved by the SUCCESSOR AGENCY.

**5.16.3 INSURANCE AMOUNTS.** CONTRACTOR shall maintain the following insurance for the duration of this Agreement:

- (a) Commercial general liability, not excluding XCU, in an amount not less than \$5,000,000 per occurrence; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to SUCCESSOR AGENCY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the SUCCESSOR AGENCY.
- (b) Automobile liability, including mobile equipment if applicable, in an amount not less than \$1,000,000 combined single limit; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to SUCCESSOR AGENCY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the SUCCESSOR AGENCY.
- (c) Pollution liability in an amount not less than \$5,000,000; (**claims made and modified occurrence policies are not acceptable**) Insurance companies must be acceptable to SUCCESSOR AGENCY and have a Best's Guide Rating of A-Class VII or better, as approved by the SUCCESSOR AGENCY.
- (d) Excess liability coverage shall be provided for any underlying policy that does not meet the insurance requirements set forth herein; Excess liability coverage shall be Follows Form to the underlying policies. (**claims made and modified occurrence policies are not acceptable**) Insurance companies must be acceptable to SUCCESSOR AGENCY and have a Best's Guide Rating of A-Class VII or better, as approved by the SUCCESSOR AGENCY.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 5.16.3 (a), shall designate the City of Garden Grove, Successor Agency to the Garden Grove Agency for Community Development, and their respective 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 SUCCESSOR AGENCY proof of insurance and endorsement forms that conform to SUCCESSOR AGENCY's requirements, as approved by the SUCCESSOR AGENCY.

An Additional Insured Endorsement for the policy under section 5.16.3 (b), including mobile equipment if applicable, shall designate the City of Garden Grove, Successor Agency to the Garden Grove Agency for Community Development, and their respective officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to SUCCESSOR AGENCY proof of insurance and endorsement forms that conform to SUCCESSOR AGENCY's requirements, as approved by the SUCCESSOR AGENCY.

An Additional Insured Endorsement for the policy under section 5.16.3 (c) shall designate the City of Garden Grove, the Successor Agency to the Garden Grove

Agency for Community Development, and their respective officers, officials, employees, agents, and volunteers as additional insured's for on-going and products-completed operations under the pollution liability policy. CONTRACTOR shall provide to SUCCESSOR AGENCY proof of insurance and endorsement forms that conform to SUCCESSOR AGENCY's requirements, as approved by the SUCCESSOR AGENCY.

In the event any of CONTRACTOR'S underlying policies do not meet policy limits within the insurance requirements, CONTRACTOR shall provide the schedule of underlying policies for a Follows Form excess liability policy, state that the excess policy follows form on the insurance certificate, and an additional insured endorsement for the excess liability policy under 5.16.3(d) designating the City of Garden Grove, the Successor Agency to the Garden Grove Agency for Community Development, and it's respective officers, officials, employees, agents, and volunteers as additional insured's. CONTRACTOR shall provide to SUCCESSOR AGENCY proof of insurance and endorsement forms that conform to SUCCESSOR AGENCY's requirements, as approved by the SUCCESSOR AGENCY.

For any claims related to this Agreement, CONTRACTOR'S insurance coverage shall be primary insurance as respects City of Garden Grove, Successor Agency to the Garden Grove Agency for Community Development and their respective officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City of Garden Grove, the Successor Agency to the Garden Grove Agency for Community Development, and their respective officers, officials, employees, agents, and volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it. CONTRACTOR shall provide to SUCCESSOR AGENCY proof of insurance and endorsement forms that conform to SUCCESSOR AGENCY's requirements, as approved by the SUCCESSOR AGENCY.

All insurance policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City of Garden Grove, the Successor Agency to the Garden Grove Agency for Community Development, and their respective officers, officials, employees, agents, and volunteers. CONTRACTOR shall provide to SUCCESSOR AGENCY proof of insurance and endorsement forms that conform to SUCCESSOR AGENCY's requirements, as approved by the SUCCESSOR AGENCY.

SUCCESSOR AGENCY 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.

If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR

**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 of

Garden Grove, the Successor Agency to the Garden Grove Agency for Community Development, and their 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 active negligence or willful misconduct of CITY and Successor Agency, and will make good to reimburse CITY and Successor Agency for any expenditures, including reasonable attorneys' fees CITY and Successor Agency may incur by reason of such matters, and if requested by CITY and Successor Agency, 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 SUCCESSOR AGENCY 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 SUCCESSOR AGENCY, 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 SUCCESSOR AGENCY 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 SUCCESSOR AGENCY 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 SUCCESSOR AGENCY 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 SUCCESSOR AGENCY'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 SUCCESSOR AGENCY 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 SUCCESSOR AGENCY 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 SUCCESSOR AGENCY 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 SUCCESSOR AGENCY as a party to said action, the SUCCESSOR AGENCY shall be entitled to all attorneys' fees, costs and necessary disbursements arising out of the defense of such action by the SUCCESSOR AGENCY. The SUCCESSOR AGENCY 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 SUCCESSOR AGENCY:

City of Garden Grove  
Finance Department/Real Property Division  
Attention: Carlos Marquez  
11222 Acacia Parkway  
Garden Grove, CA 92842

TO CONTRACTOR:

J&G Industries, Inc.,  
Attention: Jim Cain  
18627 Brookhurst Street #302  
Fountain Valley, CA 92708

**5.22 Agreement Limitations.** CONTRACTOR understands and agrees that the implementation and effectiveness of this Agreement shall be subject to approval by the SUCCESSOR AGENCY Oversight Board and the provisions of ABX1-26 and AB 1484. CONTRACTOR further understands and agrees that any and all liability under this Agreement shall be solely that of the SUCCESSOR AGENCY and not the City of Garden Grove, and, in accordance with Health and Safety Code Section 34173(e), shall be limited in scope and amount to the actual property tax revenues received by, and the value of assets transferred to, the SUCCESSOR AGENCY pursuant to ABX1-26 AND AB 1484 for purposes of payment pursuant to this Agreement.



(SIGNATURES ON THE FOLLOWING PAGE)

**IN WITNESS THEREOF**, these parties have executed this Construction Agreement on the day and year first written above.

"SUCCESSOR AGENCY"  
SUCCESSOR AGENCY TO THE  
GARDEN GROVE AGENCY FOR  
COMMUNITY DEVELOPMENT,  
a public body

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

By: \_\_\_\_\_  
Scott C. Stiles  
Director

ATTEST:

\_\_\_\_\_  
Secretary

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

"CONTRACTOR"

J&G INDUSTRIES, INC.,  
State License No. 571859  
(Expiration Date: 6/27/2017)

By: \_\_\_\_\_

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

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

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Agency General Counsel

Date \_\_\_\_\_

**PROFESSIONAL SERVICES AGREEMENT**  
**OCEAN BLUE ENVIRONMENTAL SERVICES, INC.**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_ 2016, by the **SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, (“SUCCESSOR AGENCY”), and **OCEAN BLUE ENVIRONMENTAL SERVICES, INC.**, a California Corporation (“CONSULTANT”).

**RECITALS**

The following recitals are a substantive part of this Agreement:

1. SUCCESSOR AGENCY desires to utilize Consultant to furnish all labor, materials to remove hazardous materials from SUCCESSOR AGENCY owned property.
2. CONSULTANT services are delineated in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference (the “services” or “work”). Consultant warrants that all services will be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services.
3. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish services.

**AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement:** The term of the agreement shall be for period of **one (1) year from full execution** of the agreement or until completion of the work, whichever occurs first. This Agreement may be terminated by SUCCESSOR AGENCY without cause as provided in Section 3.4 below. In such event, SUCCESSOR AGENCY will compensate CONSULTANT for work performed to date in accordance with the Proposal incorporated herein by reference as Exhibit “A”. CONSULTANT is required to present evidence to support performed work completion.
2. **Services to be Provided:** The services to be performed by CONSULTANT shall consist of tasks as set forth in the Proposal incorporated herein by reference as Exhibit “A.” The Proposal and this Agreement do not guarantee any specific amount of work. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
3. **Compensation.** CONSULTANT shall be compensated as follows:
  - 3.1 **Amount.** Compensation under this agreement shall be the Not To Exceed (NTE) amount of **Forty Thousand Dollars (\$40,000.00)**, payable in arrears.
  - 3.2 **Payment.** For work under this Agreement, payment shall be made per invoice for work completed. For extra work not a part of this Agreement, a written authorization by SUCCESSOR AGENCY will be required, and payment shall be based on a schedule approved in conjunction with such written authorization.

- 3.3 Records of Expenses. CONSULTANT shall keep complete and accurate records of payroll costs, travel and incidental expenses. These records will be made available at reasonable times to SUCCESSOR AGENCY.
- 3.4 Termination. SUCCESSOR AGENCY and CONSULTANT shall each have the right to terminate this Agreement, without cause, by giving thirty-(30) days written notice of termination to the other party. If the Agreement is terminated by SUCCESSOR AGENCY, then the provisions of Section 3.2 would apply to that portion of the work completed.

#### 4. Insurance Requirements

- 4.1 Commencement of Work CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the SUCCESSOR AGENCY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the SUCCESSOR AGENCY of any material change, cancellation, or termination at least thirty (30) days in advance.
- 4.2 Workers Compensation Insurance For the duration of this Agreement, CONSULTANT and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable. The insurer shall waive its rights of subrogation against the SUCCESSOR AGENCY, the City of Garden Grove, and their officers, officials, agents, employees, and volunteers.
- 4.3 Insurance Amounts CONSULTANT shall maintain the following insurance for the duration of this Agreement:
- a) Commercial general liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable); Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-Class VII or better, as approved by the SUCCESSOR AGENCY;
  - b) Automobile liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable) Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the SUCCESSOR AGENCY.
  - c) Professional liability in the amount of \$1,000,000 per occurrence; Insurance companies must be acceptable to SUCCESSOR AGENCY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the SUCCESSOR AGENCY. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

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

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate the SUCCESSOR AGENCY, the City of Garden Grove, and their officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, lease, hired, or borrowed by CONSULTANT. CONSULTANT shall provide to SUCCESSOR AGENCY proof of insurance and endorsement forms that conform to SUCCESSOR AGENCY's requirements, as approved by the SUCCESSOR AGENCY.

For any claims related to this Agreement, CONSULTANT's insurance coverage shall be primary insurance as respects to the SUCCESSOR AGENCY, the City of Garden Grove, and their officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the SUCCESSOR AGENCY, the City of Garden Grove, and their officers, officials, employees, agents, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

*If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.*

5. **Non-Liability of Officials and Employees of the SUCCESSOR AGENCY.** No official or employee of SUCCESSOR AGENCY shall be personally liable to CONSULTANT in the event of any default or breach by SUCCESSOR AGENCY, or for any amount, which may become due to CONSULTANT.
6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of SUCCESSOR AGENCY, and shall obtain no rights to any benefits which accrue to SUCCESSOR AGENCY'S employees.
8. **Compliance With Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government.
9. **Disclosure of Documents.** All documents or other information developed or received by CONSULTANT are confidential and shall not be disclosed without authorization by SUCCESSOR AGENCY, unless disclosure is required by law.
10. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT shall be the property of SUCCESSOR AGENCY. CONSULTANT shall provide SUCCESSOR AGENCY with copies of these items upon demand or upon termination of this Agreement.

11. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
12. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
- (a) Address of CONSULTANT is as follows:
- Ocean Blue Environmental Services Inc.,  
925 West Esther Street  
Long Beach, CA 90813
- (b) Address of SUCCESSOR AGENCY is as follows (with a copy to):
- |   |   |
|---|---|
| Finance Department:<br>Attention: Carlos Marquez<br>City of Garden Grove<br>P.O. Box 3070<br>Garden Grove, CA 92840 | Agency Counsel<br>City of Garden Grove<br>P.O. Box 3070<br>Garden Grove, CA 92840 |
|---|---|
13. **Licenses, Permits and Fees.** At its sole expense, CONSULTANT shall obtain a **Garden Grove Business License**, all permits and licenses as may be required by this Agreement.
14. **Familiarity With Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there, if applicable; and (3) it understands the facilities, difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any latent or unknown conditions materially differing from those inherent in the work or as represented by SUCCESSOR AGENCY, it shall immediately inform SUCCESSOR AGENCY of this and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from SUCCESSOR AGENCY.
15. **Time of Essence.** Time is of the essence in the performance of this Agreement.
16. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability and reputation of CONSULTANT, its principals and employees were a substantial inducement for SUCCESSOR AGENCY to enter into this Agreement. CONSULTANT shall not contract with any other entity to perform the services required without written approval of the SUCCESSOR AGENCY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of SUCCESSOR AGENCY. If CONSULTANT is permitted to subcontract any part of this Agreement, CONSULTANT shall be responsible to SUCCESSOR AGENCY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and SUCCESSOR AGENCY. All persons engaged in the work will be considered employees of CONSULTANT. SUCCESSOR AGENCY will deal directly with and will make all payments to CONSULTANT.

17. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
18. **Indemnification.** To the fullest extent permitted by law, CONTRACTOR shall defend, and hold harmless SUCCESSOR AGENCY, City of Garden Grove, and their elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR in the performance of the Agreement. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless SUCCESSOR AGENCY and City of Garden Grove, is due to the sole negligence, recklessness and/or wrongful conduct of SUCCESSOR AGENCY and City of Garden Grove, or any of its elective or appointive boards, officers, agents, or employees.
19. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by SUCCESSOR AGENCY and CONSULTANT.
20. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the SUCCESSOR AGENCY and CONSULTANT.
21. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.
22. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.
23. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.
24. **Counterparts; Facsimile Signatures.** This Agreement may be executed in counterparts, all of which shall constitute the same Agreement, notwithstanding that all parties to this Agreement are not signatory to the same counterpart. Signature and acknowledgement pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one (1) original document.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS THEREOF**, these parties hereto have caused this Agreement to be executed as of the date set forth opposite the respective signatures.

**“SUCCESSOR AGENCY”  
SUCCESSOR AGENCY TO THE GARDEN  
GROVE AGENCY FOR COMMUNITY  
DEVELOPMENT, a public body**

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Director

**ATTEST**

**"CONSULTANT"  
OCEAN BLUE ENVIRONMENTAL  
SERVICES, INC.,**

\_\_\_\_\_  
Secretary

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

Dated: \_\_\_\_\_, 2016

Dated: \_\_\_\_\_, 2016

**APPROVED AS TO FORM:**

If CONSULTANT/CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to SUCCESSOR AGENCY

\_\_\_\_\_  
Successor Agency Council

Dated: \_\_\_\_\_, 2016



Exhibit "A"