City of
Santa Monica®

# CONSTRUCTION CONTRACT

by and between

City of Santa Monica

and

**<Name of Contractor>**

**<Project Name>**
**<Project Number>**

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# CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT entered into on **Date of Contract** ("Execution Date") by and between the CITY OF SANTA MONICA, a California municipal corporation ("City"), and **Name of Contractor** ("Contractor"), is made with reference to the following:

## R E C I T A L S:

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.

B. Contractor is a **Type of Entity (i.e. Corporation, Partnership etc.)** duly organized and in good standing in the State of **State**, License Number **#####**. Contractor represents that it is duly licensed by the State of California and has the background, knowledge, experience and expertise to perform the obligations set forth in this Construction Contract.

C. On **Date of NIB**, City issued a Notice Inviting Bids to contractors for the **Project Name**. A copy of City's Notice Inviting Bids is attached hereto as Exhibit 1 and incorporated by reference. In response to City's Notice Inviting Bids, Contractor submitted its Bid. A copy of Contractor's Bid is attached hereto as Exhibit 2 and incorporated herein by reference. Also attached hereto and incorporated by reference are the General Conditions (Exhibit 3), Special Provisions and/or Technical Specifications (Exhibit 4), Payment and Performance Bonds (Exhibit 5), Insurance Forms (Exhibit 6), Living Wage Certification (Exhibit 7), Oaks Initiative Disclosure (Exhibit 8), Arizona Business Disclosure (Exhibit 9), and Additional Contract Requirements, if applicable (Exhibit 10).

D. City and Contractor desire to enter into this Construction Contract for the **Project Name**, and other services as identified in the Bid Documents for the **Project Name** upon the following terms and conditions.

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

## SECTION 1 INCORPORATION OF RECITALS AND DEFINITIONS.

**1.1 Recitals.**
All of the recitals are incorporated herein by reference.

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

## SECTION 2 THE PROJECT.

The Project is the construction of the **Project Name**. ("Project").

**SECTION 3** **THE CONTRACT DOCUMENTS.**

The Contract Documents consist of the following collection of documents:

(i) Notice Inviting Pre-Qualification Statements, Pre-Qualification Statement, and Pre-Qualification Checklist (if applicable).
(ii) Executed Construction Contract between City and Contractor.
(iii) Notice Inviting Bids.
(iv) Instructions to Bidders
(v) Bidding Addenda.
(vi) Contractor's Bid.
(vii) General Conditions.
(viii) Special Provisions and Technical Specifications.
(ix) Performance and Payment Bonds.
(x) Insurance Forms.
(xi) Plans and Drawings.
(xii) Reports listed in the Bidding Documents.
(xiii) Supplements, Attachments, and Exhibits attached to the above items.
(xiv) Modifications.
(xv) Change Orders.
(xvi) Field Orders.

**SECTION 4** **THE WORK.**

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

**SECTION 5** **PROJECT TEAM.**

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

**SECTION 6** **TIME OF COMPLETION.**

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

**6.2 Commencement of Work.**
Contractor shall commence the Work on the date specified in City's Notice to Proceed.

**6.3 Contract Time.**
Contractor shall diligently prosecute the Work to Substantial Completion within ## Days after the date specified in City's Notice to Proceed.

**6.4 Liquidated Damages.**

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

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

**6.4.2 Daily Amount.**
City and Contractor have reasonably endeavored, but failed, to ascertain the precise amount relationship to the actual damage that City will incur if Contractor fails to achieve Substantial Completion of the entire Work within the Contract Time. Therefore, the parties agree that in addition to all other damages to which City may be entitled other than delay damages, in the event Contractor shall fail to achieve Substantial Completion of the entire Work within the Contract Time, Contractor shall pay City as liquidated damages the amount of $**00.00** per day for each Day occurring after the expiration of the Contract Time until Contractor achieves Substantial Completion of the entire Work. The liquidated damages amount is not a penalty but considered to be a reasonable estimate of the amount of damages City will suffer.

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

**6.4.4 Exclusive Remedy.**
City and Contractor acknowledge and agree that this liquidated damages provision shall be City's only remedy for delay damages caused by Contractor's failure to achieve Substantial Completion of the entire Work within the Contract Time.

**6.4.5 Damages upon Abandonment.**
In the event that Contractor either abandons the Work or is terminated for default in accordance with the provisions of Section 16 of this Construction Contract, City shall have the right, in its sole discretion exercised by written notice issued either before or after Substantial Completion, to elect to either assert or waive its right to liquidated damages under this Paragraph 6.4.

**.1** If City elects to assert its right to liquidated damages, then the liquidated damages shall be calculated from expiration of the Contract Time to the date that Substantial Completion of the Work is achieved by City or its replacement contractor employed to complete Contractor's performance.

**.2** If City elects to waive its right to liquidated damages, then Contractor shall be liable to City, in lieu of the liquidated damages provided for in this Paragraph 6.4, for all actual Losses proximately resulting from Contractor's failure to complete the Work within the Contract Time.

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

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

**6.6 Additional Compensation to Contractor.**
The Contract Sum shall be increased by the amount of $**00.00** for each day of extension to the Contract Time that is permitted under the terms of the General Conditions solely due to Compensable Delay occurring prior to Substantial Completion, but only to the extent that such Compensable Delay is not concurrent with a Non-Compensable Delay. Regardless of the cause of the Delay (including, without limitation, acts or omissions of City or its consultants, errors, conflicts or omissions in the Contract Documents, or Changes to the Work), Contractor agrees to accept the compensation provided for in this Paragraph as its sole and exclusive right, remedy and recovery arising from or related to any Delay, interruption, hindrance, compression, acceleration, disruption or the impact or ripple effect of Delays on the Work, that may occur in connection with Contractor's performance of Work on the Project and for any resulting foreseen or unforeseen:

(i) Overhead expenses such as, but not limited to, additional supervision, administration, extended or extraordinary overhead (direct or home office), insurance or bond costs and

(ii) Productivity expenses such as additional loss of productivity, inefficiency, and escalation of costs of labor, wage, material or equipment.

## SECTION 7 COMPENSATION TO CONTRACTOR.

**7.1 Contract Sum.**
Contractor shall be compensated for satisfactory completion of the Work in compliance with the Contract Documents the Contract Sum of **Written Amount** Dollars ($**00.00**).

**7.2 Full Compensation.**
The Contract Sum shall be full compensation for all Work provided by Contractor and, except as otherwise expressly permitted by the terms of the Contract Documents, shall cover all Losses arising out of the nature of the Work or from the acts of the elements or any unforeseen difficulties or obstructions which may arise or be encountered in performance of the Work until its Acceptance by City, all risks connected with the Work, and any and all expenses incurred due to suspension or discontinuance of the Work. The Contract Sum may only be adjusted for Change Orders issued, executed and satisfactorily performed in accordance with the requirements of the Contract Documents.

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

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

(i) The sum of Allowable Costs as defined in Paragraph 7.2.5 of the General Conditions to be added (for Extra Work) or credited (for Deleted Work) and

(ii) An additional sum (for Extra Work) or deductive credit (for Deleted Work) based on Contractor Markup and Subcontractor/Sub-subcontractor Markups allowable pursuant to this Section 7.3.

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

**7.3.1 Self-Performed Work.**

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

**7.3.2 Subcontractors.**

15% of the Allowable Costs for that portion of the Extra Work or Deleted Work to be performed by a first Tier Subcontractor with its own forces, plus 2.5% thereon for Contractor Markup.

**7.3.3 Sub-subcontractors.**

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

## SECTION 8 STANDARD OF CARE.

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

## SECTION 9 INDEMNIFICATION.

**9.1 Hold Harmless.**

To the fullest extent allowed by law, Contractor hereby agrees to defend, indemnify, and hold harmless City, its City Council, boards and commissions, officers, agents, employees, representatives and volunteers (hereinafter collectively referred to as "Indemnitees"), through legal counsel acceptable to City, from and against any and all Losses arising directly or indirectly from, or in any manner relating to any of, the following:

(i) Performance or nonperformance of the Work by Contractor or its Subcontractors or Sub-subcontractors, of any Tier;

(ii) Performance or nonperformance by Contractor or its Subcontractors or Sub-subcontractors, of any Tier, of any of the obligations under the Contract Documents;

(iii) The construction activities of Contractor or its Subcontractors or Sub-subcontractors, of any Tier, either on the Site or on other properties;

(iv) The payment or nonpayment by Contractor of any of its Subcontractors or Sub-subcontractors, of any Tier, for Work performed on or off the Site for the Project; and

(v) Any personal injury, property damage or economic loss to third persons associated with the performance or nonperformance by Contractor or its Subcontractors or Sub-subcontractors, of any Tier, of the Work.

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

**9.2 Survival.**

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

## SECTION 10 COMPLIANCE WITH APPLICABLE CODE REQUIREMENTS.

Contractor agrees to be subject to and comply with all applicable federal, state and municipal laws, codes, ordinances and regulations governing the Work, including, but not limited to:

(i) The applicable provisions of the California Labor Code;

(ii) Chapter 7.28, Prevailing Wage and Apprenticeship Law, of the Santa Monica Municipal Code;

(iii) Chapter 4.65, Living Wage Ordinance, of the Santa Monica Municipal Code; and

(iv) Oaks Initiative requirements.

## SECTION 11 INSURANCE AND BONDS.

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

## SECTION 12 PROHIBITION AGAINST TRANSFERS.

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

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

## SECTION 13 NOTICES.

**13.1 Method of Notice.**

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

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

**13.2 Notice Recipients.**

All notices, demands or requests (including, without limitation, Claims) from Contractor to City shall include the Project name and the number of this Construction Contract and shall be addressed to City at:

City of Santa Monica, Architecture Services
1437 4th Street, Suite 300
Santa Monica, California 90401
Attention: Miriam Mulder, City Architect
Re: **Project Name**, **Contract Number**(CCS)

with copies to:

Re: **Project Name**, **Contract Number**(CCS)

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

Santa Monica City Attorney Office
1685 Main Street, Third Floor
Santa Monica, California 90401
Attention: Marsha Jones Moutrie, City Attorney
Re: **Project Name**, **Contract Number**(CCS)

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

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

Re: **Project Name**, **Contract Number**(CCS)

**13.3 Change of Address.**

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

## SECTION 14 DISPUTE RESOLUTION.

### 14.1 Resolution of Contract Disputes.

Contract Disputes shall be resolved by the parties in accordance with the provisions of this Section 14, in lieu of any and all rights under the law that either party have its rights adjudged by a trial court or jury. All Contract Disputes shall be subject to the Contract Dispute Resolution Process set forth in this Section 14, which shall be the exclusive recourse of Contractor and City for such Contract Disputes.

### 14.2 Resolution of Other Disputes.

#### 14.2.1 Non-Contract Disputes.

Contract Disputes shall not include any of the following:

(i) Penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency;

(ii) Third party tort claims for personal injury, property damage or death relating to any Work performed by Contractor or its Subcontractors or Sub-subcontractors of any Tier;

(iii) False claims liability under California Government Code Section 12650, et. seq.;

(iv) Defects in the Work first discovered by City after Final Payment by City to Contractor;

(v) Stop notices; or

(vi) The right of City to specific performance or injunctive relief to compel performance of any provision of the Contract Documents.

#### 14.2.2 Litigation, City Election.

Matters that do not constitute Contract Disputes shall be resolved by way of an action filed in the Superior Court of the State of California, County of Los Angeles, West District, and shall not be subject to the Contract Dispute Resolution Process. However, the City reserves the right, in its sole and absolute discretion, to treat such disputes as Contract Disputes. Upon written notice by City of its election as provided in the preceding sentence, such dispute shall be submitted by the parties and finally decided pursuant to the Contract Dispute Resolution Process in the manner as required for Contract Disputes, including, without limitation, City's right under Paragraph 14.4.2 to defer resolution and final determination until after Final Completion of the Work.

### 14.3 Submission of Contract Dispute.

#### 14.3.1 By Contractor.

Contractor's right to commence the Contract Dispute Resolution Process shall arise upon City's written response denying all or part of a Claim pursuant to Paragraph 4.2.9 or 4.2.10 of the General Conditions. Contractor shall submit a written Statement of Contract Dispute (as set forth below) to City within seven (7) Days after City rejects all or a portion of Contractor's Claim. Failure by Contractor to submit its Statement of Contract Dispute in a timely manner shall result in the decision by City on the Claim becoming final and binding. Contractor's Statement of Contract Dispute submitted by Contractor shall be signed under penalty of perjury and shall state with specificity the events or circumstances giving rise to the Contract Dispute, the dates of their occurrence and the asserted effect on the Contract Sum and the Contract Time. Such Statement of Contract Dispute shall include adequate supporting data to substantiate the disputed Claim that is the basis of the Contract Dispute. Adequate supporting data for a Contract Dispute relating to an adjustment of the Contract Time shall include both of the following:

(i) All of the scheduling data required to be submitted by Contractor under the Contract Documents to obtain extensions of time and adjustments to the Contract Time and

(ii) A detailed, event-by-event description of the impact of each event on completion of Work.

Adequate supporting data to a Statement of Contract Dispute submitted by involving an adjustment of the Contract Sum shall include both of the following:

(i) A detailed cost breakdown and

(ii) Supporting cost data in such form and including such information and other supporting data as required under the Contract Documents for submission of Change Order Requests and Claims.

**14.3.2 By City.**

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

**14.4 Contract Dispute Resolution Process.**

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

**14.4.1 Direct Negotiations.**

Designated representatives of City and Contractor shall meet as soon as possible (but not later than ten (10) Days after receipt of the Statement of Contract Dispute) in a good faith effort to negotiate a resolution to the Contract Dispute. Each party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the Claims or defenses being asserted by such party in the negotiations, and with full authority to resolve such Contract Dispute then and there, subject only to City's right and obligation to obtain administrative and/or City Council approval of any agreed settlement or resolution. If the Contract Dispute involves the assertion of a right or claim by a Subcontractor or Sub-subcontractor, of any Tier, against Contractor that is in turn being asserted by Contractor against City ("Pass-Through Claim"), then such Subcontractor or Sub-Subcontractor shall also have a representative attend such negotiations, with the same authority and knowledge as described above. Upon completion of the meeting, if the Contract Dispute is not resolved, the parties may either continue the negotiations or either party may declare negotiations ended. All discussions that occur during such negotiations and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

**14.4.2 Deferral of Contract Disputes.**

Following the completion of the negotiations required by Paragraph 14.4.1, all unresolved Contract Disputes shall be deferred pending Final Completion of the Project, subject to City's right, in its sole and absolute discretion, to require that the Contract Dispute Resolution Process proceed prior to Final Completion. In the event that City does not elect to proceed with the Contract Dispute Resolution Process prior to Final Completion, all Contract Disputes that have been deferred until Final Completion shall be consolidated within a reasonable time after Final Completion and thereafter pursued to resolution pursuant to this Contract Dispute Resolution Process. Nothing contained in this Section 14 shall be interpreted as limiting the parties' right to continue informal negotiations of Contract Disputes that have deferred the Final Completion; provided, however, that such informal negotiations shall not be interpreted as altering the provisions of the Agreement deferring final determination and resolution of unresolved Contract Disputes until after Final Completion.

**14.4.3 Mediation.**

If the Contract Dispute remains unresolved after negotiations pursuant to Paragraph 14.4.1, the parties agree to submit the Contract Dispute to non-binding mediation before a mutually acceptable third party mediator.

**.1** **Qualifications of Mediator.** The parties shall endeavor to select a mediator who is a retired judge or an attorney with at least five (5) years of experience in public works construction contract law and in mediating public works construction disputes. In addition, the mediator shall have at least twenty (20) hours of formal training in mediation skills.

**.2** **Submission to Mediation and Selection of Mediator.** The party initiating mediation of a Contract Dispute shall provide written notice to the other party of its decision to mediate. In the event the parties are unable to agree upon a mediator within fifteen (15) Days after the receipt of such written notice, then the parties shall submit the matter to the American Arbitration Association (AAA) at its Los Angeles Regional Office for selection of a mediator in accordance with the AAA Construction Industry Mediation Rules.

**.3** **Mediation Process.** The location of the mediation shall be at the offices of City. The costs of mediation shall be shared equally by both parties. The mediator shall provide an independent assessment on the merits of the Contract Dispute and recommendations for resolution. All discussions that occur during the mediation and all documents prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

**14.4.4 Binding Arbitration.**

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

**.1** **Arbitration Initiation.** The arbitration shall be initiated by filing a complaint in arbitration in accordance with the regulations promulgated pursuant to California Public Contract Code Section 10240.5.

**.2** **Qualifications of the Arbitrator.** The arbitrator shall be selected based by mutual agreement of the parties. The arbitrator shall be a retired judge or an attorney with at least five (5) years of experience with public works construction contract law and in arbitrating public works construction disputes. In addition, the arbitrator shall have at least twenty (20) hours of formal training in arbitration skills. In the event the parties cannot agree upon a mutually acceptable arbitrator, then the provisions of California Public Contract Code Section 10240.3 shall be followed in selecting an arbitrator possessing the qualifications required herein.

**.3** **Hearing Days and Location.** Arbitration hearings shall be held at the offices of City and shall, except for good cause shown to and determined by the arbitrator, be conducted on consecutive business days, without interruption or continuance.

**.4** **Hearing Delays.** Arbitration hearings shall not be delayed except upon good cause shown.

**.5** **Recording Hearings.** All hearings to receive evidence shall be recorded by a certified stenographic reporter, with the costs thereof borne equally by City and Contractor and allocated by the arbitrator in the final award.

**.6** **Limitation of Depositions.** Discovery shall be permitted in accordance with the provisions of section 10240.11 of the Public Contract Code; provided, however, that depositions shall be limited to both of the following:

(i) Ten (10) percipient witnesses for City and ten (10) percipient witnesses for Contractor and
(ii) Expert witnesses.

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

**.7** **Authority of the Arbitrator.** The arbitrator shall have the authority to hear dispositive motions and issue interim orders and interim or executory awards.

**.8** **Waiver of Jury Trial.** Contractor and City each voluntarily waives its right to a jury trial with respect to any Contract Dispute that is subject to binding arbitration in accordance with the provisions of this Paragraph 14.4.4. Contractor shall include this provision for waiver of jury trial, waiving the right to jury trial in any action involving City as a party in its contracts with its Subcontractors who provide any portion of the Work.

**14.5 Non-Waiver.**

Participation in the Contract Dispute Resolution Process shall not constitute a waiver, release or compromise of any defense of City, including, without limitation, any defense based on the assertion that the rights or Claims of Contractor that are the basis of a Contract Dispute were previously waived by Contractor due to failure to comply with the Contract Documents, including, without limitation, Contractor's failure to comply with any time periods for providing notice of requests for adjustments of the Contract Sum or Contract Time or for submission of Claims or supporting documentation of Claims.

## SECTION 15 DEFAULT.

**15.1 Notice of Default.**

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

**15.2 Opportunity to Cure Default.**

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

## SECTION 16 CITY'S RIGHTS AND REMEDIES.

**16.1 Remedies Upon Default.**

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

**16.1.1 Delete Certain Services.**

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

**16.1.2 Perform and Withhold.**

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

**16.1.3 Suspend The Construction Contract.**

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

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

City may terminate all or any part of this Construction Contract for default in accordance with Paragraph 16.4 below, reserving to itself all rights to Losses related thereto.

**16.1.5 Invoke the Performance Bond.**

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

**16.1.6 Additional Provisions.**

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

**16.2 Delays by Sureties.**

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

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

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

**16.3 Damages to City.**

**16.3.1 For Contractor's Default.**

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

**16.3.2 Compensation for Losses.**

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

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

Without limitation to any of City's other rights or remedies at law or in equity, and reserving to itself all rights to Losses related thereto, City shall have the right to terminate this

Construction Contract, in whole or in part, upon the failure of Contractor to promptly cure any default as required by Section 15. City's election to terminate the Construction Contract for default shall be communicated by giving Contractor a written notice of termination in the manner specified for the giving of notices in the Construction Contract. Any notice of termination given to Contractor by City shall be effective immediately, unless otherwise provided therein.

**16.5 Suspension by City for Convenience.**

City may, at any time and from time to time, without cause, order Contractor, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, as City may determine, with such period of suspension to be computed from the date of the written order. Such order shall be specifically identified as a Suspension Order by City. Upon receipt of a Suspension Order, Contractor shall, at City's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of Work stoppage. Within the suspension period, City shall either cancel the Suspension Order or delete the Work covered by such Suspension Order by issuing a Change Order. If a Suspension Order is canceled or expires, Contractor shall resume and continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. The provisions of this Paragraph 16.5 shall not apply if a Suspension Order is not issued by City. A Suspension Order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents

**16.6 Termination Without Cause.**

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

**16.6.1 Compensation.**

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

**.1** **For Work Performed.** The amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor.

**.2** **For Close-out Costs.** Reasonable costs of Contractor and its Subcontractors and Sub-subcontractors for:

(i) Demobilizing and

(ii) Administering the close-out of its participation in the Project (including, without limitation, all billing and accounting functions, not including attorney or expert fees) for a period of no longer than thirty (30) Days after receipt of the notice of termination in an amount not to exceed the daily sum payable to Contractor for Compensable Delays in Paragraph 6.6 of this Construction Contract.

**.3** **For Fabricated Items.** Previously unpaid cost of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work.

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

**16.7 Contractor's Duties Upon Termination.**
Upon receipt of a notice of termination for default or for convenience, Contractor shall, unless the notice directs otherwise, do the following:

(i) Immediately discontinue the Work to the extent specified in the notice;

(ii) Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued;

(iii) Provide to City a description, in writing no later than fifteen (15) days after receipt of the notice of termination, of all subcontracts, purchase orders and contracts that are outstanding, including, without limitation, the terms of the original price, any changes, payments, balance owing, the status of the portion of the Work covered and a copy of the subcontract, purchase order or contract and any written changes, amendments or modifications thereto, together with such other information as City may determine necessary in order to decide whether to accept assignment of or request Contractor to terminate the subcontract, purchase order or contract;

(iv) Promptly assign to City those subcontracts, purchase orders or contracts, or portions thereof, that City elects to accept by assignment and cancel, on the most favorable terms reasonably possible, all subcontracts, purchase orders or contracts, or portions thereof, that City does not elect to accept by assignment; and

(v) Thereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.

## SECTION 17 CONTRACTOR'S RIGHTS AND REMEDIES.

**17.1 Contractor's Remedies.**
Contractor may terminate this Construction Contract for cause only upon the occurrence of one of the following:

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

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

**17.2 Damages to Contractor.**

In the event of termination for cause by Contractor, City shall pay Contractor the sums provided for in Paragraph16.6 above. Contractor agrees to accept such sums as its sole and exclusive compensation and agrees to waive any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect and incidental damages, of any kind.

## SECTION 18 ACCOUNTING RECORDS.

**18.1 Financial Management and City Access.**

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

**18.2 Compliance with City Requests.**

Contractor's compliance with any request by City pursuant to this Section18 shall be a condition precedent to filing or maintenance of any legal action or proceeding by Contractor against City and to Contractor's right to receive further payments under the Contract Documents. Any failure by Contractor to provide access to its business records for inspection or copying by City shall be specifically enforceable by issuance of a writ or a provisional or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony.

## SECTION 19 INDEPENDENT PARTIES.

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

## SECTION 20 NUISANCE.

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

## SECTION 21 PERMITS AND LICENSES.

Contractor, at its sole expense, shall obtain and maintain during the term of this Construction Contract, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services hereunder, including, but not limited to, a Santa Monica business license.

The City will provide the Contractor and its Subcontractors with a total **## of parking permits and/or spaces (please specify location of the spaces)** for the duration of the Project.

**SECTION 22** **WAIVER.**

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

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

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

**SECTION 24** **GOVERNING LAW.**

This Construction Contract shall be construed in accordance with and governed by the laws of the State of California.

**SECTION 25** **COMPLETE AGREEMENT.**

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

**SECTION 26** **SURVIVAL OF CONTRACT.**

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

**SECTION 27** **ADDITIONAL CONTRACT REQUIREMENTS.**

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

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

☐ Community Development Block Grant (CDBG)

☐ Federal Emergency Management Agency (FEMA)

☐ Housing and Urban Development (HUD)

☐ Metropolitan Transportation Authority (MTA)

☐ Other: _____

Therefore, City shall require Contractor to comply with the special fund(s) requirements (Exhibit 10), as they may be amended from time to time, in addition to all other requirements imposed by City.

**SECTION 28** **SANTA MONICA LIVING WAGE ORDINANCE.**

**This contract (☐ is or ☐ is not) subject to the City of Santa Monica's Living Wage Ordinance.**

The City of Santa Monica's Living Wage Ordinance, Santa Monica Municipal Code Chapter 4.65 ("Living Wage Ordinance"), requires the payment of Minimum Wage for work done on any Contract over a certain threshold to any worker who does not actually work as a manager, supervisor or confidential employee, and who is not required to possess an occupational license. The established Minimum Wage includes an annual adjustment each July 1st by an amount corresponding to the previous calendar year's change in the Consumer Price Index for Urban Wage Earners and Clerical Workers in Los Angeles, Riverside and Orange Counties.

If this Contract is subject to such Living Wage Ordinance, then the contractor shall comply with all of its provisions. Failure to comply with the provisions of the Living Wage Ordinance shall be grounds for termination of this Contract. Questions concerning the Living Wage Ordinance may be directed to the City Finance Department at (310) 458-8281.

**SECTION 29** **SANTA MONICA OAKS INITIATIVE NOTICE.**

**This contract (☐ is or ☐ is not) subject to the City of Santa Monica's Oaks Initiative.**

Santa Monica's voters adopted a City Charter amendment commonly known as the Oaks Initiative. It prohibits a public official from receiving specified personal benefits from a person or entity after the official votes, or otherwise takes official action, to award a "public benefit" to that person or entity. Examples of a "public benefit" include public contracts to provide goods or services worth more than $25,000 or a land use approval worth more than $25,000.

If this Contract is subject to such Oaks Initiative, then the Contractor shall comply with all of its provisions and disclosures. Failure to comply with the provisions of the Oaks Initiative shall be grounds for termination of this Contract. Questions concerning the Living Wage Ordinance may be directed to the City Finance Department at (310) 458-8281.

**SECTION 30** **GOVERNMENTAL POWERS.**

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

**SECTION 31** **SEVERABILITY.**

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

**SECTION 32** **EXHIBITS.**

Exhibit 1 – Notice Inviting Bids.
Exhibit 2 – Contractor's Bid.
Exhibit 3 – General Conditions.
Exhibit 4 – Special Provisions and/or Technical Specifications.
Exhibit 5 – Payment and Performance Bonds.
Exhibit 6 – Insurance Forms.
Exhibit 7 – Living Wage Certification.
Exhibit 8 – Oaks Initiative Disclosure.
Exhibit 9 – Arizona Business Disclosure.
Exhibit 10 – Additional Contract Requirements (if applicable)

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

CITY OF SANTA MONICA,
a municipal corporation

By: _____
Rod Gould
City Manager

APPROVED AS TO FORM:

By: _____
MARSHA JONES MOUTRIE
City Attorney

ATTEST:

By: _____
MARIA STEWART
City Clerk

CONTRACTOR:
**Name of Contractor,**
**a (corporation, partnership etc)**

By _____

Title _____