

**CONSTRUCTION AGREEMENT**  
**BETWEEN THE CITY OF LONG BEACH AND**

NAME  
STREET AND P.O. BOX ADDRESS  
CITY, STATE, ZIP  
TELEPHONE NO.  
FAX NO.

**THIS CONSTRUCTION AGREEMENT** ("Agreement") is made effective \_\_\_\_\_, 20\_\_ ("Effective Date"), by and between the CITY OF LONG BEACH, a municipal corporation of the state of California acting by and through its Board of Harbor Commissioners ("City"), and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Contractor"). The City and the Contractor may be referred to collectively as the "Parties."

**RECITALS:**

1. Pursuant to the "Notice Inviting Bids for the \_\_\_\_\_" Project as described in Specification HD-S\_\_\_\_\_, and Addenda Nos. \_\_\_ through \_\_\_ (the "Work"), Bids were received, publicly opened and declared on the date specified in the Notice Inviting Bids.

2. On \_\_\_\_\_, the Board of Harbor Commissioners conditionally awarded the contract to Contractor and authorized the Chief Executive Officer to enter into a written agreement with Contractor for furnishing the materials and doing the Work of the Project.

3. City and Contractor mutually agree as set forth in this Agreement.

**ARTICLE 1 – CONTRACT DOCUMENTS AND INTERPRETATION**

1.1 Definitions. The meanings of all capitalized terms used in the Contract Documents and not otherwise defined in this Agreement are contained in the General Conditions.

1.2 Contract Documents. The Contract Documents shall consist of this Agreement, including all exhibits and attachments, the Specification referenced in Recital

1 1 above, and the documents set forth in [Special Condition 19] in the order of precedence  
2 set forth in [Special Condition 19].

3 1.3 Reference Documents. Any Reference Documents identified in the  
4 Special Conditions are not considered Contract Documents and are provided to the  
5 Contractor for informational purposes.

6 1.4 Integration, Interpretation and Amendment. This Agreement  
7 together with all other Contract Documents constitutes the entire Contract between the  
8 Parties. All prior oral or written representations and statements are of no further force  
9 and effect and are merged herein. The Contract is intended to require a complete and  
10 finished piece of Work, and anything necessary to complete the Work properly and in  
11 accordance with Applicable Law, shall be performed by Contractor, whether or not set out  
12 specifically in the Contract Documents. If there is any inconsistency between other  
13 Contract Documents and this Agreement, the provisions of this Agreement shall control.  
14 This Agreement may be amended only by written amendment.

## 15 **ARTICLE 2 – SCOPE OF WORK**

16 2.1 Scope of Work. Within the Contract Time and for the stated Contract  
17 Price, subject to adjustments thereto, the Contractor shall perform and provide all  
18 materials, equipment, labor, transportation, delivery, installation, supervision, overhead,  
19 profit, licenses, permits, fees, bonds, insurance, taxes and all other costs and expenses  
20 incidental to the performance of the Work to complete the Work in strict conformity with  
21 the Contract Documents.

## 22 **ARTICLE 3 – TIME FOR PERFORMANCE**

23 3.1 Date of Commencement. The date of commencement of the Work  
24 shall be established in a written Notice to Proceed issued by the City. If City's issuance  
25 of a Notice to Proceed is delayed due to Contractor's failure to return a fully-executed  
26 Agreement, and acceptable insurance, bonds or other required documents within thirty  
27 (30) Calendar Days after the Board's conditional award of contract the Board may rescind  
28 the conditional award to Contractor.

1                   3.2 Contract Time. Contractor agrees to perform the Work in a diligent  
2 manner and to issue an Affidavit of Final Completion within \_\_\_\_ Calendar Days from  
3 Notice to Proceed as provided in Paragraph [SC-6.1] of the Special Conditions (the  
4 “Contract Time”). The Contract Time may be extended only with the written authorization  
5 of the City. Time is of the essence for this Agreement. By submitting a bid and executing  
6 this Agreement, Contractor confirms that the Contract Time is a reasonable period for  
7 completing the Work.

8                   3.3 Liquidated Damages for Contractor Delays.

9                   3.3.1 Contractor and City have agreed to liquidated damages with  
10 respect to Contractor’s failure to achieve Final Completion of the Work within the  
11 Contract Time [and other Milestones and such other deadlines described or  
12 referenced in Paragraph SC-6.3 of the Special Conditions] established in the  
13 Special Conditions. The Parties intend for the liquidated damages described  
14 herein in the amounts established in the Special Conditions to constitute liquidated  
15 damages as such term is used in Government Code Section 53069.85  
16 (“Liquidated Damages”). Contractor acknowledges and agrees that the Liquidated  
17 Damages are intended to compensate City solely for Contractor’s failure to meet  
18 the deadline[s] for Final Completion [and any other established Milestones and as  
19 otherwise described or referenced in Paragraph SC-6.3 of the Special Conditions]  
20 and shall not excuse Contractor from liability from any other breach, including any  
21 failure of the Work to conform to the requirements of the Contract Documents.

22                   3.3.2 Contractor acknowledges and agrees that such Liquidated  
23 Damages have been set based on an evaluation by City of damages that it will  
24 incur in the event of late completion. Contractor and City agree that the amount of  
25 such Liquidated Damages are impossible to ascertain with certainty as of the date  
26 of execution of this Agreement and that the Parties have agreed to such  
27 Liquidated Damages to fix Contractor’s costs and to avoid later disputes over  
28 which items are properly chargeable to Contractor. It is understood and agreed by

Contractor that any Liquidated Damages payable pursuant to this Agreement are not a penalty and that such amounts are not manifestly unreasonable under the circumstances existing as of the date of execution of this Agreement.

3.3.3 It is further mutually agreed that City shall have the right to deduct Liquidated Damages against progress payments or retainage and that the City may issue a Unilateral Change Order, if necessary, to reduce the Contract Price accordingly. In the event the remaining unpaid balance of Contract Price is insufficient to cover the full amount of Liquidated Damages, Contractor shall pay the difference to City upon City's demand.

#### **ARTICLE 4 – CONTRACT PRICE AND PAYMENTS**

4.1 Contract Price and Basis for Payment. In consideration for the Contractor's full, complete, timely and faithful performance of the Work required by the Contract Documents, City shall pay Contractor for the actual quantity of Work performed in accordance with the Lump Sum Bid Item prices [, Allowances] and Unit Prices in the Schedule of Bid Items submitted with the Bid, which is attached hereto as Exhibit A provided, however, that the total compensation to Contractor shall not exceed the City's maximum cumulative payment obligation of \$\_\_\_\_\_ for the estimated quantities established in the Schedule of Bid Items, subject to additions or deductions as provided in the Contract Documents. It is understood and agreed that the quantities set forth in Exhibit A for which Unit Prices are fixed are estimates only and that City will pay and Contractor will accept, as full payment for these items of Work, the Unit Prices set forth in Exhibit A multiplied by the actual number of Units performed, constructed or completed as determined by the Engineer. [It is further understood and agreed that the Allowances will be paid only if the specified contingency occurs and only in the actual amount incurred.] Except as otherwise provided in the Contract Documents, this Contract Price will fully compensate Contractor for the completion of the Work required by the Contract Documents.

4.2 Payment Procedures. Based upon Applications for Payments

submitted by the Contractor to the Engineer and upon the Engineer's estimates, City shall make payments to the Contractor in accordance with GC Article 9 of the General Conditions, subject to Modifications, if any, in the Special Conditions.

## **ARTICLE 5 – INSURANCE**

5.1 Condition to Commencement. The Contractor shall not commence Work under the Contract until it has submitted documentation that it has obtained all insurance required by the Contract Documents from a company or companies acceptable to City nor shall the Contractor allow any Subcontractor to commence Work on a subcontract until all insurance required of its Subcontractor has been obtained. As provided in Paragraph 3.1 above, City shall not issue a Notice to Proceed until all required insurance documentation has been received and approved by the City.

5.2 Minimum Coverage and Limits. Contractor shall maintain the insurance coverage described in the Special Conditions throughout the term of the Agreement and such further time as required by Paragraph SC-13 of the Special Conditions, and upon request Contractor shall show City evidence of such coverage, which may include visual inspection of all policies, copies of the declarations page, forms schedule, and endorsements signed by an authorized representative of the underwriting company.

## **ARTICLE 6 – BONDS**

6.1 Bonds. Executed concurrently herewith are a Performance Bond and a Payment Bond, each duly executed by the Contractor as Principal and a responsible California admitted surety insurer as Surety, which Bonds constitute a part of the Contract as though fully set forth herein and which are subject to the requirements of the Instructions to Bidders and Paragraph 11.2 of the General Conditions.

## **ARTICLE 7 – MISCELLANEOUS**

### 7.1 Notices.

7.1.1 All notices, requests, demands, or other communication under the Contract will be in writing. Notice will be sufficiently given for all purposes as

1 follows:

2 1. Personal delivery. When personally delivered to the recipient:  
3 notice is effective on delivery.

4 2. First Class mail. When mailed first class to the last address of  
5 the recipient known to the party giving notice: notice is effective three mail delivery  
6 days after deposit in a United States Postal Service office or mailbox.

7 3. Certified mail. When mailed certified mail, return receipt  
8 requested: notice is effective on receipt, if delivery is confirmed by a return receipt.

9 4. Overnight delivery. When delivered by an overnight delivery  
10 service, charges prepaid or charged to the sender's account: notice is effective on  
11 delivery, if delivery is confirmed by the delivery service.

12 5. Addresses for purpose of giving notice are as follows:

13 CONTRACTOR: The address indicated on the first page  
14 of this Agreement.

15 CITY: Chief Executive Officer  
16 Long Beach Harbor Department  
17 P.O. Box 570  
Long Beach, CA 90801

18 7.1.2 Any correctly addressed notice that is refused, unclaimed, or  
19 undeliverable because of an act or omission of the party to be notified, will be  
20 deemed effective as of the first date the notice was refused, unclaimed or deemed  
21 undeliverable by the postal authorities, messenger or overnight delivery service.

22 7.1.3 Either party may change its address by giving the other party  
23 notice of the change in any manner permitted by the Contract.

24 7.2 Relationship of Parties.

25 7.2.1 Independent Contractor. Nothing contained in the Contract  
26 shall be construed as creating the relationship of employer and employee, master  
27 and servant, or principal and agent between the Parties hereto. Contractor is an  
28 independent contractor and shall have no right or authority to assume or create

any obligation, expressed or implied, on behalf of City.

7.2.2 City Inspections. The work contemplated hereunder shall be subject to the general inspection and oversight of the Chief Harbor Engineer, acting for and on behalf of the Board of Harbor Commissioners. Said general inspection and oversight shall not relieve Contractor of any responsibilities assigned Contractor hereunder.

7.3 Business License. The Contractor must obtain a City business license prior to the start of Work under the Contract, unless Contractor is qualified for an exemption.

7.4 Other Licenses and Permits. Contractor warrants that it has all professional, contracting and other permits and licenses required to undertake the Work contemplated by the Contract.

7.5 Conflict of Interest.

7.5.1 No officer or employee of the City may have any financial interest, direct or indirect, in the Contract, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.

7.5.2 No person may offer, give, or agree to give any officer or employee or former officer or employee of City, nor may any officer or employee solicit, demand, accept, or agree to accept from any other person, a gratuity or an offer of employment in connection with the Contract.

7.6 Workers Compensation Certification by Contractor. In accordance with California Labor Code § 1860, 1861 and 3700, every Contractor will be required to secure the payment of compensation to its employees. By signing below Contractor certifies that:

"I am aware of the provisions of Section 3700 of the Labor Code,

1 which require every employer to be insured against liability for  
2 workers' compensation or to undertake self-insurance in  
3 accordance with the provisions of that code, and I will comply with  
4 such provisions before commencing the performance of the Work  
5 of this Agreement."

6 7.7 Execution. This Agreement may be executed in one or more  
7 counterparts, each of which shall constitute an original and all of which when taken  
8 together shall constitute one agreement. The words "execution," "signed," "signature,"  
9 and words of like import in this Agreement shall include images of manually executed  
10 signatures transmitted by facsimile or other electronic format (including, without limitation,  
11 "pdf," "tif" or "jpg") and other electronic signatures (including, without limitation,  
12 DocuSign). The use of electronic signatures herein, or in any amendments to this  
13 Agreement, and any electronic records related to this Agreement (including, without  
14 limitation, any contract or other record created, generated, sent, communicated, received,  
15 or stored by electronic means), shall be of the same legal effect, validity and  
16 enforceability as a manually executed signature or use of a paper-based record-keeping  
17 system to the fullest extent permitted by applicable law, including the Federal Electronic  
18 Signatures in Global and National Commerce Act, the California Uniform Electronic  
19 Transaction Act, the New York State Electronic Signatures and Records Act and any  
20 other applicable law, including, without limitation, any state law based on the Uniform  
21 Electronic Transactions Act or the Uniform Commercial Code. Each party hereto hereby  
22 agrees that such electronically signed and/or electronically transmitted signatures shall  
23 be conclusive proof, admissible in judicial proceedings, of such party's execution of this  
24 Agreement. [This paragraph ☐ does not apply to the [Bonds required and] [Grant  
25 Deed, Easement] identified in paragraph ☐ of this Agreement, the execution and  
26 notarization of which shall be done manually.]

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7.8 Contractor's License Notice. Contractors are required by law to be licensed and regulated by the Contractors' State License Board, which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

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

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

CONTRACTOR

California Contractor's License No.: \_\_\_\_\_

CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

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

Mario Cordero  
Chief Executive Officer  
Long Beach Harbor Department

CITY

The foregoing document is hereby approved as to form.

DAWN MCINTOSH, City Attorney

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

Principal Deputy/Deputy

[ATTACH BONDS]