



## AGENDA REPORT

**Meeting Date:** April 5, 2016

**Item Number:** D-14

**To:** Honorable Mayor & City Council

**From:** Chad Lynn, Assistant Director of Public Works Services *CL* *for Chad Lynn*  
Logan Phillippo, Management Analyst *LP*

**Subject:** THREE AS-NEEDED GENERAL CONSTRUCTION AGREEMENTS RELATING TO THE MAINTENANCE OF CITY FACILITIES

A. AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND BBS CONSTRUCTION, INC. FOR AS-NEEDED GENERAL CONSTRUCTION SERVICES RELATING TO THE MAINTENANCE OF CITY FACILITIES

B. AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND KORADE & ASSOCIATE BUILDERS, INC. DBA COMMERCIAL WEST FOR AS-NEEDED GENERAL CONSTRUCTION SERVICES RELATING TO THE MAINTENANCE OF CITY FACILITIES

C. AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND KRB CONSTRUCTION FOR AS-NEEDED GENERAL CONSTRUCTION SERVICES RELATING TO THE MAINTENANCE OF CITY FACILITIES

**Attachment:**

1. BBS Construction, Inc. Agreement
2. Korade and Associate Builders, Inc. Agreement
3. KRB Construction Agreement

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### RECOMMENDATION

Staff recommends that the City Council move to approve:

- An agreement between the City of Beverly Hills and BBS Construction, Inc. for as-needed general construction services in the Not-To-Exceed amount of \$150,000; and

- An agreement between the City of Beverly Hills and Korade & Associate Builders, Inc. dba Commercial West for as-needed general construction services in the Not-To-Exceed amount of \$150,000; and
- An agreement between the City of Beverly Hills and KRB Construction for as-needed general construction services in the Not-To-Exceed amount of \$150,000.

## **INTRODUCTION**

The City of Beverly Hills owns and/or maintains sixty-one buildings which total over three million square feet of City facilities and tenant properties. The Public Works Services Department, Facilities Maintenance Division maintains these buildings using a combination of City staff and service providers through ongoing maintenance agreements and capital projects.

Throughout each year, the City provides ongoing preventative and responsive maintenance services. There are additional unplanned and unpredictable maintenance and repair needs which require immediate response and special expertise to ensure the safety and protection of people and property and to ensure the continuity of operations which require these facilities remain occupied and operational. In an effort to meet these needs, staff recommends the City enter into ongoing as-needed service agreements with multiple service providers. The selection of multiple contractors allows the flexibility to provide ongoing planned services while preserving the ability to obtain competitive proposals for unplanned maintenance and repair projects.

Work contracted out under these agreements will conform to the rules and requirements set forth in each applicable employee bargaining unit's Memorandum of Understanding (MOU). For example, the Municipal Employees' Association (MEA) MOU requires that work contracted out is (1) not currently performed by MEA members or (2) currently performed by MEA members, but cannot be performed by MEA members due to volume of such work or the timing in which it needs to be completed. As outlined in the MOU, the Association members and City will meet to determine an accurate scope of the work for which the City needs to contract out.

These agreements will not replace the informal and formal bidding/proposal process related to Public Projects or Capital Improvement Projects, which include any single project that exceeds \$45,000 or \$50,000 respectively. Public and Capital Improvement Projects will continue to be conducted through the processes as outlined in State law and Beverly Hills Municipal Code. These projects will continue to include:

- Competitive bidding/proposals and award
- Stand-alone agreements, separate from these agreements
- Stand-alone Purchase Orders

Future agreements and Purchase Orders with these contractors that exceed \$50,000 will remain subject to review and approval by the City Council. This limitation excludes activities in response to a declared emergency. Agreements, Purchase Orders or expenditures over \$50,000 that arise out of a declared emergency are required to be reported to the City Council at the next public meeting.

## **DISCUSSION**

Staff is proposing agreements with three service providers that have historically provided services to the City. These three service providers are as follows:

- BBS Construction, Inc.
- Korade & Associate Builders, Inc. DBA Commercial West
- KRB Construction

Staff reached out to a consultant to solicit requests for information and quotations. Multiple criteria were considered before recommending service providers for the award of an agreement including responsiveness to the Scope of Work, industry experience, experience with City infrastructure and insurance coverage.

When a specific need arises for maintenance or repair services, the City will request Individual Project Proposals from one or more of the contractors under agreement, which will provide a cost for the maintenance project along with a Not-To-Exceed amount including all labor and expenses. The service provider will be selected to complete the project based on overall cost, response time to inquiries, schedule of the work, potential impacts, experience with similar projects and ability to perform the work. An Individual Project Order (IPO) and Purchase Order will be issued by the City before any work is initiated.

The terms of each agreement include:

- Termination with five (5) days' notice
- A requirement to obtain a written IPO, approved by the City prior to engaging in any work and prior to the City incurring any costs
- An IPO limit of \$45,000
- An initial term of one (1) year with two (2) additional one (1) year terms to be executed at the discretion of the City for a total term not to exceed three (3) years
- A total Not-To-Exceed amount of \$150,000 over the entire term of the agreement
- Insurance and indemnification provisions as approved by the City's Risk Manager

## **FISCAL IMPACT**

Funding for projects associated with these agreements will be provided each fiscal year as part of the program budget(s) for Facilities Maintenance, Tenant Support, Parking Services and other associated budget programs wherein services are provided. This includes both General Fund and associated Enterprise Funds, such as the Parking Services Fund. No additional funding is required at this time for approval or to enter into these proposed agreements.

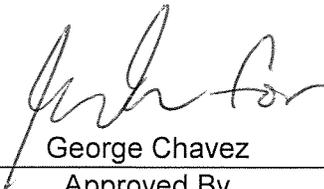
Each of the proposed agreements provides for a Not-To-Exceed consideration in the amount of \$150,000 over the total term of the agreement. Based on the actual work needed over the term of the agreement, this total Not-To-Exceed value may not be required or actually expended for any or all vendors.

Once Individual Project Proposals for a particular as-needed service are obtained and evaluated, one contractor will be selected based on pricing, availability and other

Meeting Date: April 5, 2016

potential service impacts. An IPO will be issued for this work and an associated Purchase Order will be issued or updated accordingly.

A Purchase Order that exceeds \$50,000 will require City Council approval at a future meeting, even with the approved agreements as provided herein.



George Chavez

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Approved By

# **Attachment 1**

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS  
AND BBS CONSTRUCTION, INC. FOR AS-NEEDED GENERAL  
CONSTRUCTION SERVICES RELATING TO THE  
MAINTENANCE OF CITY FACILITIES

**COVER PAGE**

|                                    |   |
|------------------------------------|---|
| NAME OF CONTRACTOR:                | BBS Construction, Inc.  |
| CONTRACTOR'S ADDRESS:              | 216 S. Citrus Street, #361<br>West Covina, CA 91791<br>Attention: Sonia Bilaver, President  |
| CITY'S ADDRESS:                    | City of Beverly Hills<br>455 N. Rexford Drive<br>Beverly Hills, CA 90210<br>Attention: George Chavez, Assistant City Manager/Director<br>of Public Works Services |
| TERM OF CONTRACT:                  | April 1, 2016 to April 1, 2017, unless extended pursuant to<br>Section 2  |
| CONTRACT AMOUNT:                   | Not to exceed \$150,000, as more fully described in Appendix<br>A   |
| CONTRACTOR'S LICENSE<br>NUMBER     | 839266  |
| REQUIRED LICENSE<br>CLASSIFICATION | General   |

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS  
AND BBS CONSTRUCTION, INC. FOR AS-NEEDED  
GENERAL CONSTRUCTION SERVICES RELATING TO THE  
MAINTENANCE OF CITY FACILITIES

THIS CONTRACT (the "Contract"), made and entered into this 1st day of April, 2016 by and between the CITY OF BEVERLY HILLS, a municipal corporation, hereinafter referred to as "City", and

**BBS Construction, Inc.**  
**216 S. Citrus Street, #316**  
**West Covina, CA 91791**

hereinafter referred to as "Contractor";

W I T N E S S E T H

In this consideration of their covenants, the parties hereto agree as follows:

Section 1. PAYMENT.

A. In consideration of the Work as defined herein, City agrees to pay Contractor for the satisfactory performance by Contractor of all work required under this Contract and Contractor agrees to accept as full consideration of all work required under this Contract the Contract Amount set forth on the Cover Page of this Contract as bid for the work, payable as provided in Appendix A "Payment Procedures," which is attached hereto and incorporated herein by this reference.

B. Any individual project may not exceed Forty-Five Thousand Dollars (\$45,000) unless it is determined by the City Manager that an emergency exists as defined in Public Contract Code sections 22035 & 22050 or in a legally declared emergency the City Council delegates to the City Manager or the Director of Emergency Services the authority to order any action pursuant to Public Contract Code sections 22035 & 22050 (Beverly Hills Municipal Code section. 3-3-303).

Section 2. PERFORMANCE PERIOD. Contractor shall commence and complete Work in the time required on the Cover Page.

A. If the Work is not completed in full within the time specified in this Contract, the City shall have the right to grant or deny an extension of time for completion, as may seem best to serve the interest of the City.

B. In addition to Standard Specifications Section 6-6.1, the Contractor shall not be assessed with liquidated damages during any delay in the completion of the Work caused by unforeseen events, provided that the Contractor shall, within ten (10) days from the beginning of such delay, notify the City in writing of the cause of the delay. The City will ascertain the facts and the extent of the delay, and the City's findings thereon shall be final and conclusive.

Section 3. WORK TO BE PERFORMED.

A. **Scope of Work.** Contractor shall furnish at Contractor's own expense all labor, materials, supplies, equipment, tools, parts, implements, transportation and other items of expense necessary for, or appurtenant to, the installation, construction and completion in a workmanlike manner of the Work identified on the Cover Page and indicated in the quote provided by Contractor, which is attached hereto as Appendix B and incorporated herein by this reference (the "Work") and in accordance with the terms and conditions of this Contract and the plans and specifications for this Work, which are incorporated by this reference.

B. The current City Standard Drawings and Specifications (the "City Specifications") are incorporated herein by reference, and Contractor shall install all work pursuant to those standard drawings and specifications. Additionally, the Work shall be done in accordance with the provisions of the 2012 edition of "Standard Specifications for Public Works Construction" (commonly known as "the Greenbook"), including the 2013, and all future 2014 Supplements, prepared and promulgated by the Southern California Chapter of the American Public Works Association and the Associated General Contractors of California, which specifications are hereinafter collectively referred to as the "Standard Specifications" and are incorporated herein by this reference. This Contract, the City Specifications and the Standard Specifications are to be read harmoniously when possible. In the event of a conflict, the provisions of the City Specifications shall apply and shall supersede provisions of the Standard Specifications. In the event of a conflict between this Contract and either of the other two documents, the more stringent provision shall apply.

Section 4. SPECIAL CONDITIONS

A. Storage will be limited to the Work area.

B. Contractor shall provide all temporary structures, measures, apparatus and services required to prosecute the Work of this bid package.

C. **Utilities.** All utility service and building system connections or required interruptions shall be coordinated in advance with the City.

1. The Contractor shall verify the location of all underground utilities and services before proceeding with excavation work, requesting in advance the services of inspectors from the utility companies in order to ascertain said locations. Damage to underground utilities resulting from neglect on the part of the Contractor shall be corrected and paid for by the Contractor.

2. The Contractor shall notify all owners of public utilities 48 hours in advance of excavating around any of their substructures, and shall also provide the same notice to Underground Service Alert of Southern California. Upon request, the City Engineer will furnish the Contractor a list of the various offices and numbers to call.

D. **Trash Removal.** Rubbish, debris, waste, dust or surplus materials shall not be allowed to accumulate and shall be removed continuously and disposed of by the Contractor as the work progresses. Specific rubbish removal companies are allowed to operate within the City,

a list of these companies may be obtained by calling Public Works Services Customer Service at (310) 285-2467.

**E. Drawings, Warranties and Service Manuals.** Contractor shall submit all as-built drawings, warranties and service manuals upon completion of the work.

**F. Materials And Workmanship.**

1. The City shall have the right to inspect any material used. Material furnished shall be new, complete, ready-for-use and of the latest model, shall not have been used in demonstration or other services and shall have all the usual equipment as shown by its manufacturer's current specifications and catalogs, unless otherwise specified. Equipment, supplies or services that fail to comply with the Contract requirements regarding design, material or workmanship may be rejected at the option of the City. Any materials rejected shall be removed from Work premises at the Contractor's sole expense.

2. All work must be approved by the City. For unsatisfactory work not corrected, the City may, at its option, withhold payment for the unsatisfactory work, deduct the amount from the invoiced amount, have the work corrected by another contractor at Contractor's cost and expense, or perform the corrective work with City personnel and deduct all costs so incurred by the City from moneys owed to the Contractor.

**G. License And Permits.** Except as provided in this Subsection, the Contractor shall obtain and pay for all permits and licenses required by federal, state or local law, rule or regulation and pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the work. Costs for obtaining City permits required under this Contract will be waived. NOTE: All requirements for obtaining permits (including City permits) remain in effect and are not waived; only the costs of City permits are waived. For information concerning business licenses required under the Beverly Hills Municipal Code, contact the Beverly Hills Finance Department.

**H. Changes to the Work.**

1. When the Contractor considers that any change order in writing by the City involves extra work, the Contractor shall immediately notify the City in writing as to when and where extra work is to be performed and shall make a claim for compensation therefor each month not later than the first day of the month following that in which the work claimed as extra work was performed. If the changes do, in the opinion of the City, change the amount of work, the Contract Amount shall be adjusted as "extra work".

2. New and unforeseen work will be classed as extra work only when said work is not covered and cannot be paid for under any of the various items or combination of items for which a bid price appears on the proposal form. The Contractor shall not do any extra work except upon written order from the City Engineer. Compensation for such extra work shall be previously agreed upon in writing between the Contractor and the City Engineer.

3. Extra work, when ordered and accepted pursuant to paragraph 1 of this Subsection, shall be paid for under a written work order in accordance with the terms therein

provided. Payment for extra work will be made at the unit price or lump sum previously agreed upon between the Contractor and prepared by the City Engineer. All extra work shall be adjusted daily upon report sheets prepared by the City Engineer, furnished to the Contractor, and signed by both parties, and said daily reports shall be considered thereafter the true record of extra work done.

Section 5. TERMINATION OF WORK.

A. **For Cause.** Upon notice to Contractor, City may terminate the Work or any part thereof immediately for cause, without any prior notification to Contractor.

B. **Without Cause.** City may terminate the Work or any part thereof upon five (5) days prior notice to Contractor.

C. **Payment.** Upon termination of the Contract in whole or in part, City shall pay Contractor, subject to all provisions of the Contract for retention of funds, for all Work completed to the City's satisfaction prior to the date of termination.

Section 6. BONDS AND INSURANCE. Prior to the execution of this Contract, Contractor shall file with the City the bonds and certificates of insurance specified herein.

A. **Bonds.** Contractor shall adhere to the payment bonding requirements listed in Standard Specifications Section 2-4 for each public works projects ordered at \$25,000 or more. Additionally, the required bond shall be filed in the forms attached hereto as Appendix C and incorporated herein by this reference. There must be on file with the City Clerk of the City or submitted with the bond, a copy, duly certified by the proper authority and attested by the seal of the corporation, of the transcript or record of appointment entitling or authorizing the person or persons purporting to execute an undertaking or bond for and on behalf of such corporation to act in the premises.

B. **Insurance and Workers' Compensation.** Contractor shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Contractor, his agents, representatives, employees or subcontractors, pursuant to this Contract. Insurance, together with an endorsement, shall be of the type, in the amounts and subject to the provisions described below.

1. As required in Standard Specifications Section 7-3.2, the Contractor must obtain **commercial general liability** coverage at least as broad as Insurance Services Office Commercial General Liability occurrence coverage ("occurrence" form CG0001, Ed. 11/88) with a limit of not less than \$2,000,000 per occurrence. If the insurance includes a general aggregate limit, that limit shall apply separately to this contract or it shall be at least twice the required per occurrence limit.

2. As required in Standard Specifications Section 7-3.4, the Contractor must obtain **business automobile liability** insurance at least as broad as Insurance Services office form CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 "any auto" and endorsement CA 0029 (Ed. 12/88) with a limit not less than \$1,000,000 per accident.

3. **Workers' Compensation** In addition to the requirements in Standard Specifications Section 7-3.3, workers' compensation insurance shall be as required by the State of California and employers liability insurance with a limit not less than \$1,000,000 per accident.

4. **Evidence of Coverage:**

(a) In addition to the requirements in Standard Specifications Section 7-3.1, prior to commencement of work under this Contract, Contractor shall file certificates of insurance, in the forms attached hereto as Appendices D and E and incorporated herein by this reference, or on forms approved in writing by the City's Risk Manager, and with original endorsements evidencing coverage in compliance with this Contract.

(b) Contractor shall provide to City, on request, a complete copy, including all endorsements and riders, of any insurance policy.

(c) During the term of this Contract, Contractor shall maintain current valid proof of insurance coverage with City at all times. Proof of renewals shall be filed prior to expiration of any required coverage and shall be provided on the City's standard proof of insurance form.

(d) Failure to submit any required evidences of insurance within the required time period shall be cause for termination for default.

(e) In the event Contractor does not maintain current, valid evidence of insurance at the required minimum amounts or more on file with City throughout the duration of the Contract, City may, at its option, withhold payment of any moneys owed to Contractor, or which it subsequently owes to Contractor, until proper proof is filed.

(f) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or canceled and shall not be reduced in coverage or limits except after 30 days prior written notice provided to the City. Upon prior request of the carrier, the notice period may be reduced to 10 days in the event of non-payment of premium.

(g) All liability coverages shall name the City, its City Council and every officer, agent and employee of City as additional insureds with respect to work under this Contract.

(h) Contractor's insurance and any insurance provided in compliance with these specifications shall be primary with respect to any insurance or self-insurance programs covering the City, its City Council and any officer, agent or employee of City.

(i) Where available, the insurer shall agree to waive all rights of subrogation against the City, its City Council and every officer, agent and employee of City. Any deductibles or self-insured retentions shall be declared to and must be approved by City. At the option of the City, either the insurer shall reduce or eliminate the deductibles or self-insured retentions as respects the City, or the Contractor shall procure a bond guaranteeing payment of losses and expenses.

(j) In the event that Contractor does not provide continuous insurance coverage, the City shall have the right, but not the obligation, to obtain the required insurance coverage at Contractor's cost, and the City may deduct all such costs from moneys the City owes to the Contractor or from moneys which it subsequently owes to the Contractor, or Contractor shall owe the City this amount.

Section 7. LEGAL RELATIONS AND RESPONSIBILITY TO THE CITY

A. **Laws To Be Observed.** The Contractor shall be knowledgeable of all existing and pending State and federal laws and all municipal ordinances and regulations of the City, which in any manner affect those employed in the Work or the material used in the Work, or which in any way affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. The Contractor shall particularly observe all ordinances of the City in relation to the obstruction of streets or conduct of the work, keeping open passageways and protecting the same where they are exposed or dangerous to traffic.

B. **Social Security Requirements.** The Contractor shall furnish to the City satisfactory evidence that he/she and all subcontractors are complying with all requirements of the Federal and State Social Security legislation. The Contractor, at any time on request, shall satisfy the City that the Social Security and Withholding Tax are being properly reported and paid.

C. **Labor Laws and Prevailing Wages.** This Work is a "public work," and thus, the Contractor shall pay to all employees, and shall cause all subcontractors to pay to all employees, in accordance with the determination of the Director of the Department of Industrial Relations ("DIR") regarding the prevailing rate of per diem wages. Contractor shall execute simultaneously with the execution of this Contract the Statement Acknowledging Obligation to Comply with California Labor Law, which is attached hereto as Appendix F and incorporated herein by this reference.

D. **Registration Of Contractors.** Only a Contractor licensed in accordance with the provisions of Chapter 9, Division 3 of the Business and Professions Code shall be permitted to enter into a contract with the City for any public improvement. The Contractor shall at all times possess a valid California Contractor's license in the class required on the Cover Page of this Contract.

E. **Registration with the Department of Industrial Relations.** CONTRACTOR and its subcontractors shall be currently registered and qualified to perform the work required by this Agreement (Labor Code Section 1725.5).

F. **Debarment or Suspension.** Contractor and all subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or 1777.7. If Contractor or any subcontractor becomes debarred or suspended throughout the duration of the Work, Contractor shall immediately notify City.

G. **Patents.** The Contractor shall assume all responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices, or processes used on or incorporated in the Work, and shall defend, indemnify, and hold harmless the City, and each of

its officers, agents, and employees from and against any and all liabilities, demands, claims, damages, losses, costs, and expenses, of whatsoever kind or nature, arising from such use.

H. **Indemnity.** The following indemnity provisions shall supersede the indemnity in Section 7-3 of the Standard Specifications.

1. **Contractor's Duty.** To the maximum extent permitted by law, Contractor hereby agrees, at its sole cost and expense, to defend with competent defense counsel approved by the City Attorney, protect, indemnify, and hold harmless the City, its elected and appointed officials, officers, employees, volunteers, attorneys, agents (including those City agents serving as independent contractors in the role of City representative), successors, and assigns (collectively "Indemnitees") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, charges, obligations, damages, causes of action, proceedings, suits, losses, stop payment notices, judgments, fines, liens, penalties, liabilities, costs and expenses of every kind and nature whatsoever, in any manner arising out of, incident to, related to, in connection with or resulting from any act, failure to act, error or omission of Contractor or any of its officers, agents, attorneys, servants, employees, subcontractors, material suppliers or any of their officers, agents, servants or employees, arising out of, incident to, related to, in connection with or resulting from any term, provision, image, plan, covenant, or condition in the Contract Documents, including without limitation, the payment of all consequential damages, attorneys' fees, experts' fees, and other related costs and expenses (individually, a "Claim," or collectively, "Claims"). Contractor shall promptly pay and satisfy any judgment, award or decree that may be rendered against Indemnitees in any such Claim. Contractor shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor or Indemnitees. This indemnity shall apply to all Claims regardless of whether any insurance policies are applicable or whether the Claim was caused in part or contributed to by an Indemnitees.

2. **Civil Code Exception.** Nothing in this Section 6(G) shall be construed to encompass Indemnitees' sole negligence or willful misconduct to the limited extent that the underlying Contract is subject to Civil Code Section 2782(a) or the City's active negligence to the limited extent that the underlying Contract is subject to Civil Code Section 2782(b), provided such sole negligence, willful misconduct or active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction.

3. **Nonwaiver of Rights.** Indemnitees do not and shall not waive any rights that they may possess against Contractor because the acceptance by City or the deposit with City of any insurance policy or certificate required pursuant to this Contract. This indemnity provision is effective regardless of any prior, concurrent, or subsequent active or passive negligence by Indemnitees and shall operate to fully indemnify Indemnitees against any such negligence.

4. **Waiver of Right of Subrogation.** Contractor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees while acting within the scope of their duties from all Claims arising out of or incident to the activities or operations performed by or on behalf of the Contractor, or lack

or omission thereof, regardless of any prior, concurrent or subsequent active or passive negligence by Indemnitees.

5. **Survival.** The provisions of this Section 6(G) shall survive the term and termination of the Contract, are intended to be as broad and inclusive as is permitted by the law of the State, and are in addition to any other rights or remedies that Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against a Contractor shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision.

I. **Dispute Resolution Meetings.** In the event of any damage or injury caused by Contractor or its subcontractors in the performance of the Contract, the Contractor shall attend dispute resolution meetings with the City and interested parties as required by the City.

J. **Resolution of Claims And Disputes.** Public Contract Code Sections 20104 *et seq.* apply to this Contract and are incorporated herein by this reference. In any arbitration to resolve a dispute relating to or arising out of this Contract, the arbitrator's award shall be supported by law and substantial evidence. The arbitrator shall file a written decision with the court and serve a copy of it on each of the parties. The written decision shall contain a summary of the evidence, reasons underlying the decision, and unless the parties otherwise agree, findings of fact and conclusions of law.

K. **Assignment of Unfair Business Practices.** In entering into this Contract, the Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgment by the parties. Contractor shall include this provision in its contracts with all subcontractors such that they offer and agree to assign to the City all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to their subcontracts.

## Section 8. PROSECUTION AND PROGRESS OF THE WORK

A. **Subletting and Assignment.** The Contractor shall give personal attention to the fulfillment of this Contract and shall be in control of the work. The Contractor shall not assign, transfer nor sublet any part of the Work, nor shall the Contract be assigned, transferred, or sublet, in whole or in part, without the written consent of the City by the City Engineer and of all sureties of the Contractor's bonds. Such consent of the sureties, together with a copy of the subcontract, shall be filed with the City Engineer prior to his or her consent. Any assignment, transfer or subletting of the Contract in violation of this Subsection is null and void. No assignment, transfer or subletting, even though consented to, shall relieve the Contractor of

liability under the Contract. This provision shall govern over Section 2-2 in the Standard Specifications.

**B. Subcontractors.** All persons engaged in the Work, including all subcontractors and their employees, will be considered as employees of the Contractor, their work being subject to the provisions of the Contract and the specifications. Should any subcontractor fail to perform work to the satisfaction of the City Engineer, said subcontractor shall be removed immediately from the Work upon request by the City Engineer and shall not again be employed on the Work, and the Contractor shall be held liable for the deficient work. The Contractor shall list in Appendix G, which is attached hereto and incorporated herein by this reference, the names, California contractor license numbers, addresses, telephone numbers, types of work and percentages of the total Work of all subcontractors.

**C. Temporary Stoppage Of Construction Activities.** In addition to the City Engineer's authority to suspend the Work for other reasons, the City Engineer shall have the authority to issue an order suspending the Work wholly or in part for such a period of time as he may deem necessary due to unsuitable weather, such other conditions as he considers unfavorable for the proper prosecution of the work, or failure on the part of the Contractor to carry out orders or to perform any of the requirements of this Contract. The Contractor shall immediately comply with such an order from the City Engineer and shall not resume operations until so ordered in writing.

#### Section 9. CONTROL OF THE WORK.

**A. Authority of The City Engineer.** In addition to the City Engineer's responsibilities listed in Standard Specifications Section 2-10, the City Engineer shall decide any and all questions that may arise as to the quality and acceptability of materials furnished and work performed, as to the manner of performance and rate of progress of the Work, and any and all questions which may arise as to the interpretation of the plans and specifications. The City Engineer shall likewise decide any and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor, and all questions as to claims and compensations. The decision of the City Engineer shall be final, and he shall have relative authority to enforce and make effective such decisions and actions as the Contractor fails to carry out promptly.

**B. Protection of The Work.** In addition to Standard Specifications Section 4-1.2, the Contractor shall continuously maintain adequate protection of the Work from damage, and the City will not be held responsible for the care or protection of any material, equipment, or parts of the Work, except as expressly provided for in the specifications.

**C. Access To Residents' Driveways.** In addition to Standard Specifications Section 7-10.1.1.1, sufficiently in advance of construction, the Contractor shall notify residents of property adjoining the location of the Work as of the date when such construction work will start. In case of work requiring excavation of the roadway which may interfere with the use by residents of their driveways, suitable provisions shall be made by the Contractor to make it possible for residents to gain access to their driveways until such time as the exigencies of construction may demand a temporary blocking of said driveways. Efforts shall be made by the Contractor to

minimize the duration of said blocking and to notify the residents of this need well in advance, thus allowing them to make suitable arrangements to keep their automobiles elsewhere.

**D. Removal of Interfering Obstructions.** The Contractor shall remove and dispose of all debris, abandoned structures, tree roots, and obstructions of any character met during the process of excavation.

**E. Avoidance of Patchwork Appearance.** New PCC work shall conform in grade, finish and color to the adjoining portions. Any sections of said work having a patchwork appearance will be rejected by the City Engineer, and the Contractor shall replace them at the Contractor's expense. To insure a neat break line between existing and new portions of PCC work, the Contractor will be required to use a concrete cutting saw of a type approved by the City Engineer. Likewise, whenever adjoining PCC work is damaged during the process of new construction, the damaged portions shall be removed in such a way that a neat, straight joint is provided between the new portions and existing work.

**F. Care of Gutters Adjacent To Areas To Be Paved.** During the process of resurfacing the roadways or construction of new pavement, the Contractor shall exercise particular care to remove all excess resurfacing material which may be deposited upon the PCC gutters. Whenever specifications call for the resurfacing material to overlap the existing gutters, the overlapping portions shall not exceed the dimensions shown on the plans and a wavy overlapping line shall be avoided. Any undulation of the overlapping line accidentally resulting from the application of the paving or resurfacing material shall be corrected by the Contractor before the work is accepted by the City Engineer.

**G. Depth of The Required Excavation.** When the Work requires excavation and removal of existing pavement and excess of underlying soil, these materials shall be removed to the depth specified by the City Engineer. Whenever the subgrade exposed after the removal of the excess underlying soil is found to be of the desirable kind, excavation need not proceed below the depth specified by the City Engineer. However, if the excavation discloses the fact that there is mud or any other soft material in the subgrade, said material shall be removed to a minimum depth of six inches (6"), at the discretion of the City Engineer. Backfill of the additional excavated portions shall be made with select material removed from other portions of the Work, provided said material is found suitable by the City Engineer. The volume in place of the additional soil excavation will be determined by the field representatives of the City Engineer, and the Contractor will be entitled in this case to extra payment in an amount agreed upon in advance by the Contractor and the City Engineer based on the additional number of cubic yards excavated. Should imported material be required for the backfill, the unit cost per cubic yard of said imported material shall be agreed in advance, in writing, between the Contractor and the City Engineer, and extra payment for said material will be made to the Contractor for the actual volume used, as verified in the field by representatives of the City Engineer.

**H. Sequence of The Work Of Excavation.** Whenever the Work calls for excavation of existing pavement and excess soil and for construction of base material, the process of excavation shall be conducted by the Contractor so that, at the end of any working day, the area where excavation is proceeding shall not be more than three hundred feet (300') in advance of

the area where the untreated rock base over sections already excavated is being laid, unless otherwise indicated in the specifications.

**I. Maintenance of Traffic And Safety Requirement.** If Contractor must perform work in a street right-of-way, Contractor shall conduct operations so as to cause the least possible obstruction and inconvenience to public traffic and safety, and Contractor shall take all necessary measures to maintain an adequate traffic flow, to prevent accidents, to protect the site of the Work and to keep streets open and in passable condition for emergency vehicles at all times. During construction the Contractor shall, as far as practicable, keep the Work area free of rubbish and debris and in as clean a condition as possible.

A suitable width of any intersecting street shall be kept in reasonably good condition for traffic, including the necessary provisions for proper drainage. Should the requirements of construction demand closing the full width of an intersection, such closing shall be allowed only after the Contractor has secured permission from the City Engineer and the duration of the closing must be for the minimum length of time possible. After said permission is granted, the Contractor shall make the necessary arrangements to provide temporary crossings, or to reroute traffic away from said intersection and provide and maintain barriers, guards, directional signs, watchpersons, and lights at all detour points, in order to give adequate warning to the public at all times that the streets are under construction and of the dangerous conditions as a result thereof. The Contractor shall also erect and maintain such additional warning and directional signs as may be furnished by the City.

**J. Barriers, Lights, Etc.** The above-mentioned barriers, safety lights, warning and regulatory signs, guards, temporary crossovers, and watchpersons shall also be provided and maintained by the Contractor at the Contractor's expense over all portions of the Work during construction and until acceptance of the Work. Provisions shall be made by the Contractor to insure operation of the safety lights throughout the evenings without interruption. No safety lights using inflammable liquids shall be permitted during the progress of the Work, and only electric battery operated safety lamps will be approved for this purpose.

**K. Removal of Defective or Unauthorized Work.** It is the intent of the specifications that only first class work, materials, and workmanship will be acceptable. All work which is defective in its construction or deficient in any of the requirements of the specifications shall be remedied, or removed and replaced by the Contractor in an acceptable manner, and no compensation will be allowed for such correction. Any work done beyond the lines shown on the plans or established by the City Engineer or any extra work done without written authority will be considered as unauthorized and will not be paid for. Upon failure on the part of the Contractor to comply forthwith with any order of the City Engineer made under the provisions of this paragraph, the City Engineer shall have authority to cause defective work to be remedied or removed and replaced and unauthorized work to be removed, and to deduct the costs thereof from any monies due or to become due the Contractor. If the Work is found to be in compliance with this Contract and the specifications, the City Engineer will furnish the Contractor with a certificate to that effect.

**L. Supervision.** All manufactured products, materials, and appliances used and installed and all details of the work done shall at all times be subject to the supervision, test, and

approval of the City Engineer or his authorized representatives. The City Engineer or his authorized representatives shall have access to the work at all times during construction, and shall be furnished with every reasonable facility for securing full knowledge with regard to the progress, workmanship and character of the materials used or employed in the Work.

**M. Inspectors.** The Contractor shall prosecute work only in the presence of inspectors appointed by the City Engineer and any work done in the absence of said inspectors will be subject to rejection. All instructions given to the Contractor by such inspectors shall be regarded as having been given directly by the City Engineer. The Contractor shall make a written application for an inspector at least twenty-four (24) hours before his services are required on the work. Whenever the cost of an improvement or the cost of any portion thereof is defrayed from the Gas Tax Funds allocated to the City by the County of Los Angeles, or by the State of California, inspectors appointed by the State or County shall likewise be given full access to the site of the work in order that they may perform their inspection duties efficiently and without interference. The inspection of the Work shall not relieve the Contractor of any of his obligations to fulfill the Contract as prescribed. Defective work shall be made good and unsuitable materials rejected, notwithstanding the fact that such defective work and unsuitable materials may have been previously overlooked by the inspectors and accepted or estimated for payment.

**N. Final Cleaning Up.** Upon completion of the Work and before making application to the City Engineer for acceptance of the Work, the Contractor shall clean all the streets and grounds occupied by him in connection with the Work of all rubbish, debris, excess material, temporary structures and equipment, leaving the entire site of the Work in a neat, presentable condition.

**O. Loss or Damage.** Any loss or damage arising from any omission or act of the Contractor or any of his subcontractors, employees or agents or by any action which had not been authorized in the provisions of the specifications shall be sustained by the Contractor.

#### Section 10. SAFETY AND PROTECTION OF WORKERS.

Pursuant to Public Contract Code Section 7104, if any work under this Contract involves digging trenches or other excavations that extend deeper than four feet (4') below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify City in writing of any: material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; subsurface or latent physical conditions at the site differing from those indicated; or unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the Contract. The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ or do involve hazardous waste and cause a decrease or increase in the Contractor's cost of or the time required for performance of any part of the Work, the City shall issue a change order under the procedures described in the Contract. In the event that a dispute arises between the City and the Contractor whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in the Contractor's cost of or time required for

performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties. All expenses pursuant to this Section are included in the Contract Amount listed on the Cover Page of this Contract.

Section 11. MISCELLANEOUS.

A. **Severability.** Whenever possible, each covenant, condition, restriction, or provision of this Contract shall be interpreted in such a manner as to be valid under applicable law. If any covenant, condition, restriction, or provision of this Contract or application thereof to any person or entity is determined by a court of competent jurisdiction to be invalid, void or unenforceable, such judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof or the application thereof to any other person or entity, and the same shall remain in full force and effect.

B. **Audit.** The City or its representative shall have the option of inspecting, auditing, or inspecting and auditing all records and other written materials used by Contractor in preparing its billings to the City as a condition precedent to any payment to Contractor. Contractor shall promptly furnish documents requested by the City. Additionally, Contractor shall be subject to State Auditor examination and audit at the request of the City or as part of any audit of the City, for a period of three (3) years after final payment under this Contract.

C. **Notice.** Any notice, request, direction, demand, consent, waiver, approval or other communication required or permitted to be given hereunder shall not be effective unless it is given in writing and shall be delivered (1) in person, (2) by certified mail, postage prepaid, return receipt requested, (3) by facsimile, or (4) by a commercial overnight courier that guarantees next day delivery and provides a receipt. Such communication must be addressed to the parties at the addresses stated on the Cover Page of this Contract or at such other address as either Party may hereafter notify the other in writing as aforementioned.

Service of any such notice or other communications shall be deemed effective on the day of actual delivery, whether accepted or refused.

D. **Entire Contract.** This Contract represents the entire integrated agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by a written instrument signed by both City and Contractor.

E. **Governing Law.** This Contract shall in all respects be interpreted, enforced and governed by and under the laws of the State of California applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships solely within the County of Los Angeles, State of California. Venue and jurisdiction with respect to any action, claim or other proceeding arising under or in relation to this Contract shall be exclusively in the State courts located within the County of Los Angeles, State of California.

F. **Waiver.** The waiver of any provision of this Contract must be in writing and signed by the party providing such waiver. The waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of such provision or any subsequent breach of the same or any other provision of this Contract. Acceptance of performance after the due date of such performance shall not be deemed to be a waiver of any preceding breach of any provision of this Contract, regardless of the accepting Party's knowledge of such preceding breach at the time of acceptance of such performance.

G. **Headings.** All Section headings and subheadings are inserted for convenience only and shall have no effect on the construction or interpretation of this Contract.

H. **Third-Party Claims.** The City shall have full authority to compromise or otherwise settle any claim relating to the Work at any time. The City shall timely notify the Contractor of the receipt of any third-party claim relating to the Work. City shall be entitled to recover its reasonable costs incurred in providing this notice.

I. **Contractor's Representations.** By signing the Contract, Contractor represents, covenants and agrees that: a) Contractor is licensed, qualified, and capable of furnishing the labor, materials, and expertise necessary to perform the services in accordance with the terms and conditions set forth in the Contract; b) there are no obligations, commitments, or impediments of any kind that will limit or prevent Contractor's full performance under the Contract; c) there is no litigation pending against Contractor, and Contractor is not the subject of any criminal investigation or proceeding; and d) to Contractor's actual knowledge, neither Contractor nor its personnel have been convicted of a felony.

J. **Conflicts of Interest.** Contractor agrees not to accept any employment or representation during the term of the Contract or within twelve (12) months after acceptance that is or may likely make Contractor "financially interested," as provided in Government Code Section 1090 and 87100, in any decisions made by City on any matter in connection with which Contractor has been retained pursuant to the Contract.

K. **Independent Contractor.** Contractor is and shall at all times remain, as to the City, a wholly independent contractor. Neither the City nor any of its employees or agents shall have control over the conduct of Contractor or any of the Contractor's employees, except as herein set forth, and Contractor is free to dispose of all portions of its time and activities which it is not obligated to devote to the City in such a manner and to such persons, firms, or corporations at the Contractor wishes except as expressly provided in this Contract. Contractor shall have no power to incur any debt, obligation, or liability on behalf of the City, bind the City in any manner, or otherwise act on behalf of the City as an agent. Contractor shall not, at any time or in any manner, represent that it or any of its agents, servants or employees are in any manner agents, servants or employees of City. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Contract, and to indemnify and hold the City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent contractor relationship created by this Contract. The City shall have the right to offset against the amount of any compensation due to Contractor under this Contract any amount due to the City from Contractor as a result of its failure to promptly pay to the City any reimbursement or indemnification arising under this Section.

L. **Construction.** In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Contract or any incorporated documents shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted the entirety or a portion of the Contract or incorporated document.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

EXECUTED the \_\_\_\_ day of \_\_\_\_\_ 20\_\_, at Beverly Hills, California.

CITY OF BEVERLY HILLS  
A Municipal Corporation

\_\_\_\_\_  
JOHN A. MIRISCH  
Mayor of the City of Beverly Hills, California

ATTEST:

\_\_\_\_\_(SEAL)  
BYRON POPE  
City Clerk

CONTRACTOR: BBS CONSTRUCTION, INC.

  
\_\_\_\_\_  
SONIA BILAVER  
President

  
\_\_\_\_\_  
TOM BILAVER  
Vice President, Secretary, Treasurer

[Signatures continue]

APPROVED AS TO FORM:



DAVID M. SNOW  
Interim City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
MAHDI ALUZRI  
City Manager



GEORGE CHAVEZ  
Assistant City Manager/Director of Public  
Works Services



KARL KIRKMAN  
Risk Manager

## **APPENDIX A**

### **PAYMENT PROCEDURES**

#### **1.0 PROGRESS PAYMENTS**

1.1 Based upon Applications for Payment submitted to the City, the City shall make progress payments to the Contractor based on the cost of each project as provided below. Such payments shall not exceed the Contract Amount as set forth on the Cover Page of the Agreement.

1.2 City shall make payment to the Contractor within thirty (30) days after receipt of a proper Application for Payment.

1.3 Each Application for Payment shall be based upon the approved Schedule of Values submitted by the Contractor. The Schedule of Values shall allocate the entire Contract Amount among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as may be required.

1.4 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for payment.

1.5 The amount of each progress payment shall be computed as follows:

1.5.1 Take that portion of the price for each project properly allocable to completed and satisfactory work as determined by multiplying the percentage completion of each portion of the work by the share of the total project cost allocated to that portion of the work in the Schedule of Values, less a retention of five percent (5%).

1.5.2 Add that portion of the project cost properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the City, suitably stored off the site at a location agreed upon in writing), less a retention of five percent (5%).

1.5.3 Subtract the aggregate of previous payments made by the City.

1.6 Pursuant to Section 22300 of the Public Contract Code, at the request and expense of the Contractor, securities equivalent to the retention amount withheld may be deposited with the City or with a state or federally chartered bank as the escrow agent, and City shall then pay such moneys to the Contractor. Alternatively, the Contractor may request and the City shall make payment of retentions earned directly to the escrow agent at the expense of the Contractor. If Contractor elects one of these options, Contractor shall execute an escrow agreement in a form approved by the City Attorney.

1.7 Reduction or limitation of retention, if any, shall be upon written request by the Contractor. The City, at its discretion, may reduce the total retention withheld or release retention for a specific item of work in accordance with the law.

## **2.0 FINAL PAYMENT**

2.1 The final payments, constituting the unpaid balances of each project, including the retention, shall be made by the City to the Contractor when (1) the project has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming work as agreed to between the City and the Contractor; and (2) a final Certificate for Payment has been submitted by the Contractor and approved by the City; and (3) the Work has been accepted by the City in writing; and (4) a Notice of Completion has been filed, if appropriate. Final payment shall be made by the City not more than forty (40) days after completion of the above, but only to the extent that no stop payment notices or other requirements to withhold funds are then in effect.

## **APPENDIX B**

### **Scope of Work**

CONTRACTOR shall perform the following services:

At the direction of CITY, CONTRACTOR shall provide all materials, necessary equipment and labor to perform as-needed construction services relating to the repair of various CITY facilities. Upon CITY's request, CONTRACTOR shall submit a written proposal, which shall contain the proposed scope of work, performance schedule and price for such work. CITY shall determine the commencement and termination dates for each project upon written acceptance of CONTRACTOR's proposal. CONTRACTOR guarantees that the work shall be performed in accordance with the Scope of Work, specified herein in accordance with all relevant Codes and Regulations and to CITY's full satisfaction.

**APPENDIX C**  
**PAYMENT BOND**

**KNOW ALL PERSONS BY THESE PRESENTS that:**

WHEREAS, the City of Beverly Hills, California, hereinafter "City", has awarded to

\_\_\_\_\_ [Name of Contractor] hereinafter designated as "Principal," a Contract for  
\_\_\_\_\_ within the City,

WHEREAS, said Principal is required under the terms of the Contract, which is incorporated herein, and the California Civil Code, to file a good and sufficient payment bond with the City to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code;

NOW, THEREFORE, we, the undersigned Principal, and \_\_\_\_\_  
("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are held firmly bound unto the City and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Contract and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the penal sum of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_),  
for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

FURTHER the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the Contract Documents, or of the work to be performed thereunder, shall in any way affect the obligations of this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract Documents or to the work or specifications thereunder. Surety hereby waives notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by the Principal and Surety named herein, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

DATE: \_\_\_\_\_

"PRINCIPAL"

"SURETY"

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
Its

BY: \_\_\_\_\_  
Its

BY: \_\_\_\_\_  
Its

BY: \_\_\_\_\_  
Its

{ SEAL }

{ SEAL }

**NOTE: THIS BOND MUST BE EXECUTED IN TRIPLICATE AND DATED. ALL SIGNATURES MUST BE NOTARIZED, AND EVIDENCE OF THE AUTHORITY OF ANY PERSON SIGNING AS ATTORNEY-IN-FACT MUST BE ATTACHED.**

## APPENDIX D

### CERTIFICATE OF INSURANCE (PUBLIC LIABILITY)

This is to certify that the following endorsement is part of the policy(ies) described below:

Named Insured (Contractor)

M. Companies Affording Coverage

A.

Address

B.

C.

| Policy Number | Company A,B,C | Coverage   | Expiration Date | B.I. | Limits P.D. | Aggregate |
|---------------|---------------|--|-----------------|------|-------------|-----------|
|               |               | <input type="checkbox"/> Automobile Liability          |                 |      |             |           |
|               |               | <input type="checkbox"/> General Liability             |                 |      |             |           |
|               |               | <input type="checkbox"/> Products/Completed Operations |                 |      |             |           |
|               |               | <input type="checkbox"/> Blanket Contractual           |                 |      |             |           |
|               |               | <input type="checkbox"/> Contractor's Protective       |                 |      |             |           |
|               |               | <input type="checkbox"/> Personal injury               |                 |      |             |           |
|               |               | <input type="checkbox"/> Other                         |                 |      |             |           |
|               |               | <input type="checkbox"/> Excess Liability              |                 |      |             |           |
|               |               | <input type="checkbox"/> Workers' Compensation         |                 |      |             |           |

N. It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as a joint and several assureds with respect to claims arising out of the following project: \_\_\_\_\_

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all cost and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents, or others employed by contractor while engaged by contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right on contribution with insurance which may be available to City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days' written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, condition of any contract or other document with respect to which this certification or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE \_\_\_\_\_

BY \_\_\_\_\_

AUTHORIZED INSURANCE  
REPRESENTATIVE

AGENCY \_\_\_\_\_

TITLE \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

ADDRESS \_\_\_\_\_  
\_\_\_\_\_

**APPENDIX E**

**CERTIFICATE OF INSURANCE**  
(Workers' Compensation)

WHEREAS, the City of Beverly Hills has requires certain insurance to be provided by:

\_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, the undersigned insurance company does hereby certify that it has issued the policy or policies described below to the following named insureds and that the same are in force at this time.

1. This certificate is issued to: City of Beverly Hills, City Hall, 455 North Rexford Drive, Beverly Hills, California.
2. The insureds under such policy or policies are:

\_\_\_\_\_  
\_\_\_\_\_

3. Workers' Compensation Policy or Policies in a form approved by the Insurance Commissioner of California covering all operations of the named insureds, as follows:

| <u>POLICY NUMBER</u> | <u>EFFECTIVE DATE</u> | <u>EXPIRATION DATE</u> |
|----------------------|-----------------------|------------------------|
| _____                | _____                 | _____                  |
| _____                | _____                 | _____                  |
| _____                | _____                 | _____                  |

3. Said policy or policies shall not be canceled, nor shall there be any reduction in coverage or limits of liability, unless and until thirty days written notice thereof has been served upon the City Clerk of the City of Beverly Hills.

\_\_\_\_\_  
By \_\_\_\_\_  
Its Authorized Representative

Approved as to form:

\_\_\_\_\_ 20 \_\_\_\_

By: \_\_\_\_\_  
LAURENCE S WIENER, City Attorney

## APPENDIX F

### STATEMENT ACKNOWLEDGING OBLIGATION TO COMPLY WITH CALIFORNIA LABOR LAW

I, the undersigned Contractor, certify that I am aware of and will fully comply with the following provisions of California law:

Contractor acknowledges that the Work as defined in this Contract between Contractor and the City, to which this document is attached and incorporated by reference, is a "public work" as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code ("Chapter 1"), and that this Contract is subject to (a) Chapter 1, including without limitation Labor Code Section 1771 and (b) the rules and regulations established by the Director of Industrial Relations ("DIR") implementing such statutes. Contractor shall perform the entire Work as a public work. Contractor shall comply with and be bound by all the terms, rules and regulations described in parts (a) and (b) as though set forth in full herein. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 above.

Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Contract are on file at the office of the City Engineer at City Hall and will be made available to any interested party on request. Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Contractor shall post such rates at each job site covered by this Contract.

Contractor agrees to comply with the provisions of California Labor Code Section 1773.8 which require the payment of travel and subsistence payments to each worker needed to execute the Work, to the extent required by law.

Contractor agrees to comply with the provisions of California Labor Code Section 1774 and 1775 concerning the payment of prevailing wages to workers and the penalties for failure to do so. Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day or portion thereof, for each worker paid less than the prevailing rates, as determined by the Director of Industrial Relations, for the work or craft in which the worker is employed for any public work done under the Contract by Contractor or any subcontractor.

Contractor agrees to comply with the provisions of California Labor Code Section 1776, which require Contractor and each subcontractor to (1) keep accurate payroll records, (2) certify and make those payroll records available for inspection as provided by Section 1776, and (3) inform the City of the location of the records. Contractor is responsible for compliance with Section 1776, by itself and all of its subcontractors.

Contractor agrees to comply with the provisions of California Labor Code Section 1777.5, 1777.6 and 1777.7 and California Administrative Code title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Contract, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Contract, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Contract.

Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor agrees to comply with and be bound by Labor Code Section 1810. Contractor agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. Contractor shall, as a penalty to the Agency, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the Contract by Contractor or by any subcontractor for each calendar day during which such worker was required or permitted to work more than 8 hours in any one calendar day or 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code. Pursuant to Labor Code Section 1815, work performed by employees of Contractor in excess of 8 hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

California Labor Code Sections 1860 and 3700, provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

For every subcontractor who will perform labor on or otherwise participate in the Work, Contractor shall be responsible for such subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Contractor shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any failure.

To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend (at Contractor's expense with counsel reasonably acceptable to the City) the City, its officials, officers, employees, agents and independent contractors serving in the role of City officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Contractor, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Contract, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of Contractor under this Section shall survive termination of the Contract.

Date: 3/21/2016

Signature: [Signature]

Date: 3/21/2016

Signature: Amia Belaver

**APPENDIX G: DESIGNATION OF SUBCONTRACTORS**  
**[Public Contract Code 4104]**

List all Subcontractors doing work in an amount in excess of 0.5% of the Contractor's total Bid or, in the case of Bids or offers for the construction of Streets or highways (including bridges), in excess of 0.5% of the Contractor's total Bid or \$10,000, whichever is greater. If all Subcontractors do not fit on this page, attach another page listing all information for all other Subcontractors.

| Name under which Subcontractor is Licensed | California Contractor's License Number(s) & Class(es) | Address & Phone Number | Type of Work (e.g., Electrical) |
|--|---|------------------------|---------------------------------|
|  |   |                        |                                 |
|  |   |                        |                                 |
|  |   |                        |                                 |
|  |   |                        |                                 |
|  |   |                        |                                 |

# **Attachment 2**

AGREEMENT BETWEEN THE CITY OF BEVERLY  
HILLS AND KORADE & ASSOCIATE BUILDERS, INC.,  
DBA COMMERCIAL WEST FOR AS-NEEDED  
GENERAL CONSTRUCTION SERVICES RELATING TO  
THE MAINTENANCE OF CITY FACILITIES

**COVER PAGE**

NAME OF CONTRACTOR: Korade & Associate Builders, Inc.  
dba Commercial West

CONTRACTOR'S ADDRESS: P.O. Box 1536  
Topanga, CA 90290  
Attention: David Korade, President

CITY'S ADDRESS: City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, CA 90210  
Attention: George Chavez, Assistant City Manager/Director  
of Public Works Services

TERM OF CONTRACT: April 1, 2016 to April 1, 2017, unless extended pursuant to  
Section 2

CONTRACT AMOUNT: Not to exceed \$150,000, as more fully described in Appendix  
A

CONTRACTOR'S LICENSE  
NUMBER 533233

REQUIRED LICENSE  
CLASSIFICATION General

AGREEMENT BETWEEN THE CITY OF BEVERLY  
HILLS AND KORADE & ASSOCIATE BUILDERS, INC.,  
DBA COMMERCIAL WEST FOR AS-NEEDED  
GENERAL CONSTRUCTION SERVICES RELATING  
TO THE MAINTENANCE OF CITY FACILITIES

THIS CONTRACT (the "Contract"), made and entered into this 1<sup>st</sup> day of April, 2016 by and between the CITY OF BEVERLY HILLS, a municipal corporation, hereinafter referred to as "City", and

**Korade & Associate Builders, Inc., dba Commercial West  
P.O. Box 1536  
Topanga, CA 90290**

hereinafter referred to as "Contractor";

W I T N E S S E T H

In this consideration of their covenants, the parties hereto agree as follows:

In this consideration of their covenants, the parties hereto agree as follows:

Section 1. PAYMENT.

A. In consideration of the Work as defined herein, City agrees to pay Contractor for the satisfactory performance by Contractor of all work required under this Contract and Contractor agrees to accept as full consideration of all work required under this Contract the Contract Amount set forth on the Cover Page of this Contract as bid for the work, payable as provided in Appendix A "Payment Procedures," which is attached hereto and incorporated herein by this reference.

B. Any individual project may not exceed Forty-Five Thousand Dollars (\$45,000) unless it is determined by the City Manager that an emergency exists as defined in Public Contract Code sections 22035 & 22050 or in a legally declared emergency the City Council delegates to the City Manager or the Director of Emergency Services the authority to order any action pursuant to Public Contract Code sections 22035 & 22050 (Beverly Hills Municipal Code section. 3-3-303).

Section 2. PERFORMANCE PERIOD. Contractor shall commence and complete Work in the time required on the Cover Page.

A. If the Work is not completed in full within the time specified in this Contract, the City shall have the right to grant or deny an extension of time for completion, as may seem best to serve the interest of the City.

B. In addition to Standard Specifications Section 6-6.1, the Contractor shall not be assessed with liquidated damages during any delay in the completion of the Work caused by

unforeseen events, provided that the Contractor shall, within ten (10) days from the beginning of such delay, notify the City in writing of the cause of the delay. The City will ascertain the facts and the extent of the delay, and the City's findings thereon shall be final and conclusive.

Section 3. WORK TO BE PERFORMED.

A. **Scope of Work.** Contractor shall furnish at Contractor's own expense all labor, materials, supplies, equipment, tools, parts, implements, transportation and other items of expense necessary for, or appurtenant to, the installation, construction and completion in a workmanlike manner of the Work identified on the Cover Page and indicated in the quote provided by Contractor, which is attached hereto as Appendix B and incorporated herein by this reference (the "Work") and in accordance with the terms and conditions of this Contract and the plans and specifications for this Work, which are incorporated by this reference.

B. The current City Standard Drawings and Specifications (the "City Specifications") are incorporated herein by reference, and Contractor shall install all work pursuant to those standard drawings and specifications. Additionally, the Work shall be done in accordance with the provisions of the 2012 edition of "Standard Specifications for Public Works Construction" (commonly known as "the Greenbook"), including the 2013, and all future 2014 Supplements, prepared and promulgated by the Southern California Chapter of the American Public Works Association and the Associated General Contractors of California, which specifications are hereinafter collectively referred to as the "Standard Specifications" and are incorporated herein by this reference. This Contract, the City Specifications and the Standard Specifications are to be read harmoniously when possible. In the event of a conflict, the provisions of the City Specifications shall apply and shall supersede provisions of the Standard Specifications. In the event of a conflict between this Contract and either of the other two documents, the more stringent provision shall apply.

Section 4. SPECIAL CONDITIONS

A. Storage will be limited to the Work area.

B. Contractor shall provide all temporary structures, measures, apparatus and services required to prosecute the Work of this bid package.

C. **Utilities.** All utility service and building system connections or required interruptions shall be coordinated in advance with the City.

1. The Contractor shall verify the location of all underground utilities and services before proceeding with excavation work, requesting in advance the services of inspectors from the utility companies in order to ascertain said locations. Damage to underground utilities resulting from neglect on the part of the Contractor shall be corrected and paid for by the Contractor.

2. The Contractor shall notify all owners of public utilities 48 hours in advance of excavating around any of their substructures, and shall also provide the same notice to Underground Service Alert of Southern California. Upon request, the City Engineer will furnish the Contractor a list of the various offices and numbers to call.

D. **Trash Removal.** Rubbish, debris, waste, dust or surplus materials shall not be allowed to accumulate and shall be removed continuously and disposed of by the Contractor as the work progresses. Specific rubbish removal companies are allowed to operate within the City, a list of these companies may be obtained by calling Public Works Services Customer Service at (310) 285-2467.

E. **Drawings, Warranties and Service Manuals.** Contractor shall submit all as-built drawings, warranties and service manuals upon completion of the work.

F. **Materials And Workmanship.**

1. The City shall have the right to inspect any material used. Material furnished shall be new, complete, ready-for-use and of the latest model, shall not have been used in demonstration or other services and shall have all the usual equipment as shown by its manufacturer's current specifications and catalogs, unless otherwise specified. Equipment, supplies or services that fail to comply with the Contract requirements regarding design, material or workmanship may be rejected at the option of the City. Any materials rejected shall be removed from Work premises at the Contractor's sole expense.

2. All work must be approved by the City. For unsatisfactory work not corrected, the City may, at its option, withhold payment for the unsatisfactory work, deduct the amount from the invoiced amount, have the work corrected by another contractor at Contractor's cost and expense, or perform the corrective work with City personnel and deduct all costs so incurred by the City from moneys owed to the Contractor.

G. **License And Permits.** Except as provided in this Subsection, the Contractor shall obtain and pay for all permits and licenses required by federal, state or local law, rule or regulation and pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the work. Costs for obtaining City permits required under this Contract will be waived. NOTE: All requirements for obtaining permits (including City permits) remain in effect and are not waived; only the costs of City permits are waived. For information concerning business licenses required under the Beverly Hills Municipal Code, contact the Beverly Hills Finance Department.

H. **Changes to the Work.**

1. When the Contractor considers that any change order in writing by the City involves extra work, the Contractor shall immediately notify the City in writing as to when and where extra work is to be performed and shall make a claim for compensation therefor each month not later than the first day of the month following that in which the work claimed as extra work was performed. If the changes do, in the opinion of the City, change the amount of work, the Contract Amount shall be adjusted as "extra work".

2. New and unforeseen work will be classed as extra work only when said work is not covered and cannot be paid for under any of the various items or combination of items for which a bid price appears on the proposal form. The Contractor shall not do any extra work except upon written order from the City Engineer. Compensation for such extra work shall be previously agreed upon in writing between the Contractor and the City Engineer.

3. Extra work, when ordered and accepted pursuant to paragraph 1 of this Subsection, shall be paid for under a written work order in accordance with the terms therein provided. Payment for extra work will be made at the unit price or lump sum previously agreed upon between the Contractor and prepared by the City Engineer. All extra work shall be adjusted daily upon report sheets prepared by the City Engineer, furnished to the Contractor, and signed by both parties, and said daily reports shall be considered thereafter the true record of extra work done.

Section 5. TERMINATION OF WORK.

A. **For Cause.** Upon notice to Contractor, City may terminate the Work or any part thereof immediately for cause, without any prior notification to Contractor.

B. **Without Cause.** City may terminate the Work or any part thereof upon five (5) days prior notice to Contractor.

C. **Payment.** Upon termination of the Contract in whole or in part, City shall pay Contractor, subject to all provisions of the Contract for retention of funds, for all Work completed to the City's satisfaction prior to the date of termination.

Section 6. BONDS AND INSURANCE. Prior to the execution of this Contract, Contractor shall file with the City the bonds and certificates of insurance specified herein.

A. **Bonds.** Contractor shall adhere to the payment bonding requirements listed in Standard Specifications Section 2-4 for each public works projects ordered at \$25,000 or more. Additionally, the required bond shall be filed in the forms attached hereto as Appendix C and incorporated herein by this reference. There must be on file with the City Clerk of the City or submitted with the bond, a copy, duly certified by the proper authority and attested by the seal of the corporation, of the transcript or record of appointment entitling or authorizing the person or persons purporting to execute an undertaking or bond for and on behalf of such corporation to act in the premises.

B. **Insurance and Workers' Compensation.** Contractor shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Contractor, his agents, representatives, employees or subcontractors, pursuant to this Contract. Insurance, together with an endorsement, shall be of the type, in the amounts and subject to the provisions described below.

1. As required in Standard Specifications Section 7-3.2, the Contractor must obtain **commercial general liability** coverage at least as broad as Insurance Services Office Commercial General Liability occurrence coverage ("occurrence" form CG0001, Ed. 11/88) with a limit of not less than \$2,000,000 per occurrence. If the insurance includes a general aggregate limit, that limit shall apply separately to this contract or it shall be at least twice the required per occurrence limit.

2. As required in Standard Specifications Section 7-3.4, the Contractor must obtain **business automobile liability** insurance at least as broad as Insurance Services office

form CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 "any auto" and endorsement CA 0029 (Ed. 12/88) with a limit not less than \$1,000,000 per accident.

3. **Workers' Compensation** In addition to the requirements in Standard Specifications Section 7-3.3, workers' compensation insurance shall be as required by the State of California and employers liability insurance with a limit not less than \$1,000,000 per accident.

4. **Evidence of Coverage:**

(a) In addition to the requirements in Standard Specifications Section 7-3.1, prior to commencement of work under this Contract, Contractor shall file certificates of insurance, in the forms attached hereto as Appendices D and E and incorporated herein by this reference, or on forms approved in writing by the City's Risk Manager, and with original endorsements evidencing coverage in compliance with this Contract.

(b) Contractor shall provide to City, on request, a complete copy, including all endorsements and riders, of any insurance policy.

(c) During the term of this Contract, Contractor shall maintain current valid proof of insurance coverage with City at all times. Proof of renewals shall be filed prior to expiration of any required coverage and shall be provided on the City's standard proof of insurance form.

(d) Failure to submit any required evidences of insurance within the required time period shall be cause for termination for default.

(e) In the event Contractor does not maintain current, valid evidence of insurance at the required minimum amounts or more on file with City throughout the duration of the Contract, City may, at its option, withhold payment of any moneys owed to Contractor, or which it subsequently owes to Contractor, until proper proof is filed.

(f) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or canceled and shall not be reduced in coverage or limits except after 30 days prior written notice provided to the City. Upon prior request of the carrier, the notice period may be reduced to 10 days in the event of non-payment of premium.

(g) All liability coverages shall name the City, its City Council and every officer, agent and employee of City as additional insureds with respect to work under this Contract.

(h) Contractor's insurance and any insurance provided in compliance with these specifications shall be primary with respect to any insurance or self-insurance programs covering the City, its City Council and any officer, agent or employee of City.

(i) Where available, the insurer shall agree to waive all rights of subrogation against the City, its City Council and every officer, agent and employee of City. Any deductibles or self-insured retentions shall be declared to and must be approved by City. At the option of the City, either the insurer shall reduce or eliminate the deductibles or self-insured

retentions as respects the City, or the Contractor shall procure a bond guaranteeing payment of losses and expenses.

(j) In the event that Contractor does not provide continuous insurance coverage, the City shall have the right, but not the obligation, to obtain the required insurance coverage at Contractor's cost, and the City may deduct all such costs from moneys the City owes to the Contractor or from moneys which it subsequently owes to the Contractor, or Contractor shall owe the City this amount.

## Section 7. LEGAL RELATIONS AND RESPONSIBILITY TO THE CITY

**A. Laws To Be Observed.** The Contractor shall be knowledgeable of all existing and pending State and federal laws and all municipal ordinances and regulations of the City, which in any manner affect those employed in the Work or the material used in the Work, or which in any way affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. The Contractor shall particularly observe all ordinances of the City in relation to the obstruction of streets or conduct of the work, keeping open passageways and protecting the same where they are exposed or dangerous to traffic.

**B. Social Security Requirements.** The Contractor shall furnish to the City satisfactory evidence that he/she and all subcontractors are complying with all requirements of the Federal and State Social Security legislation. The Contractor, at any time on request, shall satisfy the City that the Social Security and Withholding Tax are being properly reported and paid.

**C. Labor Laws and Prevailing Wages.** This Work is a "public work," and thus, the Contractor shall pay to all employees, and shall cause all subcontractors to pay to all employees, in accordance with the determination of the Director of the Department of Industrial Relations ("DIR") regarding the prevailing rate of per diem wages. Contractor shall execute simultaneously with the execution of this Contract the Statement Acknowledging Obligation to Comply with California Labor Law, which is attached hereto as Appendix F and incorporated herein by this reference.

**D. Registration Of Contractors.** Only a Contractor licensed in accordance with the provisions of Chapter 9, Division 3 of the Business and Professions Code shall be permitted to enter into a contract with the City for any public improvement. The Contractor shall at all times possess a valid California Contractor's license in the class required on the Cover Page of this Contract.

**E. Registration with the Department of Industrial Relations.** CONTRACTOR and its subcontractors shall be currently registered and qualified to perform the work required by this Agreement (Labor Code Section 1725.5).

**F. Debarment or Suspension.** Contractor and all subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or 1777.7. If Contractor or any subcontractor becomes debarred or suspended throughout the duration of the Work, Contractor shall immediately notify City.

**G. Patents.** The Contractor shall assume all responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices, or processes used on or incorporated in the Work, and shall defend, indemnify, and hold harmless the City, and each of its officers, agents, and employees from and against any and all liabilities, demands, claims, damages, losses, costs, and expenses, of whatsoever kind or nature, arising from such use.

**H. Indemnity.** The following indemnity provisions shall supersede the indemnity in Section 7-3 of the Standard Specifications.

**1. Contractor's Duty.** To the maximum extent permitted by law, Contractor hereby agrees, at its sole cost and expense, to defend with competent defense counsel approved by the City Attorney, protect, indemnify, and hold harmless the City, its elected and appointed officials, officers, employees, volunteers, attorneys, agents (including those City agents serving as independent contractors in the role of City representative), successors, and assigns (collectively "Indemnitees") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, charges, obligations, damages, causes of action, proceedings, suits, losses, stop payment notices, judgments, fines, liens, penalties, liabilities, costs and expenses of every kind and nature whatsoever, in any manner arising out of, incident to, related to, in connection with or resulting from any act, failure to act, error or omission of Contractor or any of its officers, agents, attorneys, servants, employees, subcontractors, material suppliers or any of their officers, agents, servants or employees, arising out of, incident to, related to, in connection with or resulting from any term, provision, image, plan, covenant, or condition in the Contract Documents, including without limitation, the payment of all consequential damages, attorneys' fees, experts' fees, and other related costs and expenses (individually, a "Claim," or collectively, "Claims"). Contractor shall promptly pay and satisfy any judgment, award or decree that may be rendered against Indemnitees in any such Claim. Contractor shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor or Indemnitees. This indemnity shall apply to all Claims regardless of whether any insurance policies are applicable or whether the Claim was caused in part or contributed to by an Indemnitees.

**2. Civil Code Exception.** Nothing in this Section 6(G) shall be construed to encompass Indemnitees' sole negligence or willful misconduct to the limited extent that the underlying Contract is subject to Civil Code Section 2782(a) or the City's active negligence to the limited extent that the underlying Contract is subject to Civil Code Section 2782(b), provided such sole negligence, willful misconduct or active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction.

**3. Nonwaiver of Rights.** Indemnitees do not and shall not waive any rights that they may possess against Contractor because the acceptance by City or the deposit with City of any insurance policy or certificate required pursuant to this Contract. This indemnity provision is effective regardless of any prior, concurrent, or subsequent active or passive negligence by Indemnitees and shall operate to fully indemnify Indemnitees against any such negligence.

4. **Waiver of Right of Subrogation.** Contractor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees while acting within the scope of their duties from all Claims arising out of or incident to the activities or operations performed by or on behalf of the Contractor, or lack or omission thereof, regardless of any prior, concurrent or subsequent active or passive negligence by Indemnitees.

5. **Survival.** The provisions of this Section 6(G) shall survive the term and termination of the Contract, are intended to be as broad and inclusive as is permitted by the law of the State, and are in addition to any other rights or remedies that Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against a Contractor shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision.

I. **Dispute Resolution Meetings.** In the event of any damage or injury caused by Contractor or its subcontractors in the performance of the Contract, the Contractor shall attend dispute resolution meetings with the City and interested parties as required by the City.

J. **Resolution of Claims And Disputes.** Public Contract Code Sections 20104 *et seq.* apply to this Contract and are incorporated herein by this reference. In any arbitration to resolve a dispute relating to or arising out of this Contract, the arbitrator's award shall be supported by law and substantial evidence. The arbitrator shall file a written decision with the court and serve a copy of it on each of the parties. The written decision shall contain a summary of the evidence, reasons underlying the decision, and unless the parties otherwise agree, findings of fact and conclusions of law.

K. **Assignment of Unfair Business Practices.** In entering into this Contract, the Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgment by the parties. Contractor shall include this provision in its contracts with all subcontractors such that they offer and agree to assign to the City all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to their subcontracts.

Section 8. PROSECUTION AND PROGRESS OF THE WORK

A. **Subletting and Assignment.** The Contractor shall give personal attention to the fulfillment of this Contract and shall be in control of the work. The Contractor shall not assign, transfer nor sublet any part of the Work, nor shall the Contract be assigned, transferred, or sublet, in whole or in part, without the written consent of the City by the City Engineer and of all sureties of the Contractor's bonds. Such consent of the sureties, together with a copy of the

subcontract, shall be filed with the City Engineer prior to his or her consent. Any assignment, transfer or subletting of the Contract in violation of this Subsection is null and void. No assignment, transfer or subletting, even though consented to, shall relieve the Contractor of liability under the Contract. This provision shall govern over Section 2-2 in the Standard Specifications.

**B. Subcontractors.** All persons engaged in the Work, including all subcontractors and their employees, will be considered as employees of the Contractor, their work being subject to the provisions of the Contract and the specifications. Should any subcontractor fail to perform work to the satisfaction of the City Engineer, said subcontractor shall be removed immediately from the Work upon request by the City Engineer and shall not again be employed on the Work, and the Contractor shall be held liable for the deficient work. The Contractor shall list in Appendix G, which is attached hereto and incorporated herein by this reference, the names, California contractor license numbers, addresses, telephone numbers, types of work and percentages of the total Work of all subcontractors.

**C. Temporary Stoppage Of Construction Activities.** In addition to the City Engineer's authority to suspend the Work for other reasons, the City Engineer shall have the authority to issue an order suspending the Work wholly or in part for such a period of time as he may deem necessary due to unsuitable weather, such other conditions as he considers unfavorable for the proper prosecution of the work, or failure on the part of the Contractor to carry out orders or to perform any of the requirements of this Contract. The Contractor shall immediately comply with such an order from the City Engineer and shall not resume operations until so ordered in writing.

## Section 9. CONTROL OF THE WORK.

**A. Authority of The City Engineer.** In addition to the City Engineer's responsibilities listed in Standard Specifications Section 2-10, the City Engineer shall decide any and all questions that may arise as to the quality and acceptability of materials furnished and work performed, as to the manner of performance and rate of progress of the Work, and any and all questions which may arise as to the interpretation of the plans and specifications. The City Engineer shall likewise decide any and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor, and all questions as to claims and compensations. The decision of the City Engineer shall be final, and he shall have relative authority to enforce and make effective such decisions and actions as the Contractor fails to carry out promptly.

**B. Protection of The Work.** In addition to Standard Specifications Section 4-1.2, the Contractor shall continuously maintain adequate protection of the Work from damage, and the City will not be held responsible for the care or protection of any material, equipment, or parts of the Work, except as expressly provided for in the specifications.

**C. Access To Residents' Driveways.** In addition to Standard Specifications Section 7-10.1.1.1, sufficiently in advance of construction, the Contractor shall notify residents of property adjoining the location of the Work as of the date when such construction work will start. In case of work requiring excavation of the roadway which may interfere with the use by residents of their driveways, suitable provisions shall be made by the Contractor to make it possible for

residents to gain access to their driveways until such time as the exigencies of construction may demand a temporary blocking of said driveways. Efforts shall be made by the Contractor to minimize the duration of said blocking and to notify the residents of this need well in advance, thus allowing them to make suitable arrangements to keep their automobiles elsewhere.

**D. Removal of Interfering Obstructions.** The Contractor shall remove and dispose of all debris, abandoned structures, tree roots, and obstructions of any character met during the process of excavation.

**E. Avoidance of Patchwork Appearance.** New PCC work shall conform in grade, finish and color to the adjoining portions. Any sections of said work having a patchwork appearance will be rejected by the City Engineer, and the Contractor shall replace them at the Contractor's expense. To insure a neat break line between existing and new portions of PCC work, the Contractor will be required to use a concrete cutting saw of a type approved by the City Engineer. Likewise, whenever adjoining PCC work is damaged during the process of new construction, the damaged portions shall be removed in such a way that a neat, straight joint is provided between the new portions and existing work.

**F. Care of Gutters Adjacent To Areas To Be Paved.** During the process of resurfacing the roadways or construction of new pavement, the Contractor shall exercise particular care to remove all excess resurfacing material which may be deposited upon the PCC gutters. Whenever specifications call for the resurfacing material to overlap the existing gutters, the overlapping portions shall not exceed the dimensions shown on the plans and a wavy overlapping line shall be avoided. Any undulation of the overlapping line accidentally resulting from the application of the paving or resurfacing material shall be corrected by the Contractor before the work is accepted by the City Engineer.

**G. Depth of The Required Excavation.** When the Work requires excavation and removal of existing pavement and excess of underlying soil, these materials shall be removed to the depth specified by the City Engineer. Whenever the subgrade exposed after the removal of the excess underlying soil is found to be of the desirable kind, excavation need not proceed below the depth specified by the City Engineer. However, if the excavation discloses the fact that there is mud or any other soft material in the subgrade, said material shall be removed to a minimum depth of six inches (6"), at the discretion of the City Engineer. Backfill of the additional excavated portions shall be made with select material removed from other portions of the Work, provided said material is found suitable by the City Engineer. The volume in place of the additional soil excavation will be determined by the field representatives of the City Engineer, and the Contractor will be entitled in this case to extra payment in an amount agreed upon in advance by the Contractor and the City Engineer based on the additional number of cubic yards excavated. Should imported material be required for the backfill, the unit cost per cubic yard of said imported material shall be agreed in advance, in writing, between the Contractor and the City Engineer, and extra payment for said material will be made to the Contractor for the actual volume used, as verified in the field by representatives of the City Engineer.

**H. Sequence of The Work Of Excavation.** Whenever the Work calls for excavation of existing pavement and excess soil and for construction of base material, the process of

excavation shall be conducted by the Contractor so that, at the end of any working day, the area where excavation is proceeding shall not be more than three hundred feet (300') in advance of the area where the untreated rock base over sections already excavated is being laid, unless otherwise indicated in the specifications.

**I. Maintenance of Traffic And Safety Requirement.** If Contractor must perform work in a street right-of-way, Contractor shall conduct operations so as to cause the least possible obstruction and inconvenience to public traffic and safety, and Contractor shall take all necessary measures to maintain an adequate traffic flow, to prevent accidents, to protect the site of the Work and to keep streets open and in passable condition for emergency vehicles at all times. During construction the Contractor shall, as far as practicable, keep the Work area free of rubbish and debris and in as clean a condition as possible.

A suitable width of any intersecting street shall be kept in reasonably good condition for traffic, including the necessary provisions for proper drainage. Should the requirements of construction demand closing the full width of an intersection, such closing shall be allowed only after the Contractor has secured permission from the City Engineer and the duration of the closing must be for the minimum length of time possible. After said permission is granted, the Contractor shall make the necessary arrangements to provide temporary crossings, or to reroute traffic away from said intersection and provide and maintain barriers, guards, directional signs, watchpersons, and lights at all detour points, in order to give adequate warning to the public at all times that the streets are under construction and of the dangerous conditions as a result thereof. The Contractor shall also erect and maintain such additional warning and directional signs as may be furnished by the City.

**J. Barriers, Lights, Etc.** The above-mentioned barriers, safety lights, warning and regulatory signs, guards, temporary crossovers, and watchpersons shall also be provided and maintained by the Contractor at the Contractor's expense over all portions of the Work during construction and until acceptance of the Work. Provisions shall be made by the Contractor to insure operation of the safety lights throughout the evenings without interruption. No safety lights using inflammable liquids shall be permitted during the progress of the Work, and only electric battery operated safety lamps will be approved for this purpose.

**K. Removal of Defective or Unauthorized Work.** It is the intent of the specifications that only first class work, materials, and workmanship will be acceptable. All work which is defective in its construction or deficient in any of the requirements of the specifications shall be remedied, or removed and replaced by the Contractor in an acceptable manner, and no compensation will be allowed for such correction. Any work done beyond the lines shown on the plans or established by the City Engineer or any extra work done without written authority will be considered as unauthorized and will not be paid for. Upon failure on the part of the Contractor to comply forthwith with any order of the City Engineer made under the provisions of this paragraph, the City Engineer shall have authority to cause defective work to be remedied or removed and replaced and unauthorized work to be removed, and to deduct the costs thereof from any monies due or to become due the Contractor. If the Work is found to be in compliance with this Contract and the specifications, the City Engineer will furnish the Contractor with a certificate to that effect.

**L. Supervision.** All manufactured products, materials, and appliances used and installed and all details of the work done shall at all times be subject to the supervision, test, and approval of the City Engineer or his authorized representatives. The City Engineer or his authorized representatives shall have access to the work at all times during construction, and shall be furnished with every reasonable facility for securing full knowledge with regard to the progress, workmanship and character of the materials used or employed in the Work.

**M. Inspectors.** The Contractor shall prosecute work only in the presence of inspectors appointed by the City Engineer and any work done in the absence of said inspectors will be subject to rejection. All instructions given to the Contractor by such inspectors shall be regarded as having been given directly by the City Engineer. The Contractor shall make a written application for an inspector at least twenty-four (24) hours before his services are required on the work. Whenever the cost of an improvement or the cost of any portion thereof is defrayed from the Gas Tax Funds allocated to the City by the County of Los Angeles, or by the State of California, inspectors appointed by the State or County shall likewise be given full access to the site of the work in order that they may perform their inspection duties efficiently and without interference. The inspection of the Work shall not relieve the Contractor of any of his obligations to fulfill the Contract as prescribed. Defective work shall be made good and unsuitable materials rejected, notwithstanding the fact that such defective work and unsuitable materials may have been previously overlooked by the inspectors and accepted or estimated for payment.

**N. Final Cleaning Up.** Upon completion of the Work and before making application to the City Engineer for acceptance of the Work, the Contractor shall clean all the streets and grounds occupied by him in connection with the Work of all rubbish, debris, excess material, temporary structures and equipment, leaving the entire site of the Work in a neat, presentable condition.

**O. Loss or Damage.** Any loss or damage arising from any omission or act of the Contractor or any of his subcontractors, employees or agents or by any action which had not been authorized in the provisions of the specifications shall be sustained by the Contractor.

**Section 10. SAFETY AND PROTECTION OF WORKERS.**

Pursuant to Public Contract Code Section 7104, if any work under this Contract involves digging trenches or other excavations that extend deeper than four feet (4') below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify City in writing of any: material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; subsurface or latent physical conditions at the site differing from those indicated; or unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the Contract. The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ or do involve hazardous waste and cause a decrease or increase in the Contractor's cost of or the time required for performance of any part of the Work, the City shall issue a change order under the procedures described in the Contract. In the event that a dispute

arises between the City and the Contractor whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in the Contractor's cost of or time required for performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties. All expenses pursuant to this Section are included in the Contract Amount listed on the Cover Page of this Contract.

Section 11. MISCELLANEOUS.

**A. Severability.** Whenever possible, each covenant, condition, restriction, or provision of this Contract shall be interpreted in such a manner as to be valid under applicable law. If any covenant, condition, restriction, or provision of this Contract or application thereof to any person or entity is determined by a court of competent jurisdiction to be invalid, void or unenforceable, such judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof or the application thereof to any other person or entity, and the same shall remain in full force and effect.

**B. Audit.** The City or its representative shall have the option of inspecting, auditing, or inspecting and auditing all records and other written materials used by Contractor in preparing its billings to the City as a condition precedent to any payment to Contractor. Contractor shall promptly furnish documents requested by the City. Additionally, Contractor shall be subject to State Auditor examination and audit at the request of the City or as part of any audit of the City, for a period of three (3) years after final payment under this Contract.

**C. Notice.** Any notice, request, direction, demand, consent, waiver, approval or other communication required or permitted to be given hereunder shall not be effective unless it is given in writing and shall be delivered (1) in person, (2) by certified mail, postage prepaid, return receipt requested, (3) by facsimile, or (4) by a commercial overnight courier that guarantees next day delivery and provides a receipt. Such communication must be addressed to the parties at the addresses stated on the Cover Page of this Contract or at such other address as either Party may hereafter notify the other in writing as aforementioned.

Service of any such notice or other communications shall be deemed effective on the day of actual delivery, whether accepted or refused.

**D. Entire Contract.** This Contract represents the entire integrated agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by a written instrument signed by both City and Contractor.

**E. Governing Law.** This Contract shall in all respects be interpreted, enforced and governed by and under the laws of the State of California applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships solely within the County of Los Angeles, State of California. Venue and jurisdiction with respect to any action,

claim or other proceeding arising under or in relation to this Contract shall be exclusively in the State courts located within the County of Los Angeles, State of California.

F. **Waiver.** The waiver of any provision of this Contract must be in writing and signed by the party providing such waiver. The waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of such provision or any subsequent breach of the same or any other provision of this Contract. Acceptance of performance after the due date of such performance shall not be deemed to be a waiver of any preceding breach of any provision of this Contract, regardless of the accepting Party's knowledge of such preceding breach at the time of acceptance of such performance.

G. **Headings.** All Section headings and subheadings are inserted for convenience only and shall have no effect on the construction or interpretation of this Contract.

H. **Third-Party Claims.** The City shall have full authority to compromise or otherwise settle any claim relating to the Work at any time. The City shall timely notify the Contractor of the receipt of any third-party claim relating to the Work. City shall be entitled to recover its reasonable costs incurred in providing this notice.

I. **Contractor's Representations.** By signing the Contract, Contractor represents, covenants and agrees that: a) Contractor is licensed, qualified, and capable of furnishing the labor, materials, and expertise necessary to perform the services in accordance with the terms and conditions set forth in the Contract; b) there are no obligations, commitments, or impediments of any kind that will limit or prevent Contractor's full performance under the Contract; c) there is no litigation pending against Contractor, and Contractor is not the subject of any criminal investigation or proceeding; and d) to Contractor's actual knowledge, neither Contractor nor its personnel have been convicted of a felony.

J. **Conflicts of Interest.** Contractor agrees not to accept any employment or representation during the term of the Contract or within twelve (12) months after acceptance that is or may likely make Contractor "financially interested," as provided in Government Code Section 1090 and 87100, in any decisions made by City on any matter in connection with which Contractor has been retained pursuant to the Contract.

K. **Independent Contractor.** Contractor is and shall at all times remain, as to the City, a wholly independent contractor. Neither the City nor any of its employees or agents shall have control over the conduct of Contractor or any of the Contractor's employees, except as herein set forth, and Contractor is free to dispose of all portions of its time and activities which it is not obligated to devote to the City in such a manner and to such persons, firms, or corporations at the Contractor wishes except as expressly provided in this Contract. Contractor shall have no power to incur any debt, obligation, or liability on behalf of the City, bind the City in any manner, or otherwise act on behalf of the City as an agent. Contractor shall not, at any time or in any manner, represent that it or any of its agents, servants or employees are in any manner agents, servants or employees of City. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Contract, and to indemnify and hold the City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent contractor relationship created by this Contract. The City shall have the right to offset against

the amount of any compensation due to Contractor under this Contract any amount due to the City from Contractor as a result of its failure to promptly pay to the City any reimbursement or indemnification arising under this Section.

L. **Construction.** In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Contract or any incorporated documents shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted the entirety or a portion of the Contract or incorporated document.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

EXECUTED the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at Beverly Hills, California.

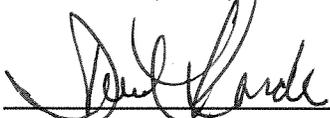
CITY OF BEVERLY HILLS  
A Municipal Corporation

\_\_\_\_\_  
JOHN A. MIRISCH  
Mayor of the City of Beverly Hills, California

ATTEST:

\_\_\_\_\_(SEAL)  
BYRON POPE  
City Clerk

CONTRACTOR: KORADE & ASSOCIATE  
BUILDERS, INC., DBA COMMERCIAL WEST

  
\_\_\_\_\_  
DAVID KORADE  
President and Secretary

[Signatures continue]

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DAVID M. SNOW  
Interim City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
MAHDI ALUZRI  
City Manager

  
\_\_\_\_\_  
GEORGE CHAVEZ  
Assistant City Manager/Director of Public  
Works Services

  
\_\_\_\_\_  
KARL KIRKMAN  
Risk Manager

## **APPENDIX A**

### **PAYMENT PROCEDURES**

#### **1.0 PROGRESS PAYMENTS**

1.1 Based upon Applications for Payment submitted to the City, the City shall make progress payments to the Contractor based on the cost of each project as provided below. Such payments shall not exceed the Contract Amount as set forth on the Cover Page of the Agreement.

1.2 City shall make payment to the Contractor within thirty (30) days after receipt of a proper Application for Payment.

1.3 Each Application for Payment shall be based upon the approved Schedule of Values submitted by the Contractor. The Schedule of Values shall allocate the entire Contract Amount among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as may be required.

1.4 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for payment.

1.5 The amount of each progress payment shall be computed as follows:

1.5.1 Take that portion of the price for each project properly allocable to completed and satisfactory work as determined by multiplying the percentage completion of each portion of the work by the share of the total project cost allocated to that portion of the work in the Schedule of Values, less a retention of five percent (5%).

1.5.2 Add that portion of the project cost properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the City, suitably stored off the site at a location agreed upon in writing), less a retention of five percent (5%).

1.5.3 Subtract the aggregate of previous payments made by the City.

1.6 Pursuant to Section 22300 of the Public Contract Code, at the request and expense of the Contractor, securities equivalent to the retention amount withheld may be deposited with the City or with a state or federally chartered bank as the escrow agent, and City shall then pay such moneys to the Contractor. Alternatively, the Contractor may request and the City shall make payment of retentions earned directly to the escrow agent at the expense of the Contractor. If Contractor elects one of these options, Contractor shall execute an escrow agreement in a form approved by the City Attorney.

1.7 Reduction or limitation of retention, if any, shall be upon written request by the Contractor. The City, at its discretion, may reduce the total retention withheld or release retention for a specific item of work in accordance with the law.

## **2.0 FINAL PAYMENT**

2.1 The final payments, constituting the unpaid balances of each project, including the retention, shall be made by the City to the Contractor when (1) the project has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming work as agreed to between the City and the Contractor; and (2) a final Certificate for Payment has been submitted by the Contractor and approved by the City; and (3) the Work has been accepted by the City in writing; and (4) a Notice of Completion has been filed, if appropriate. Final payment shall be made by the City not more than forty (40) days after completion of the above, but only to the extent that no stop payment notices or other requirements to withhold funds are then in effect.

## **APPENDIX B**

### **Scope of Work**

CONTRACTOR shall perform the following services:

At the direction of CITY, CONTRACTOR shall provide all materials, necessary equipment and labor to perform as-needed construction services relating to the repair of various CITY facilities. Upon CITY's request, CONTRACTOR shall submit a written proposal, which shall contain the proposed scope of work, performance schedule and price for such work. CITY shall determine the commencement and termination dates for each project upon written acceptance of CONTRACTOR's proposal. CONTRACTOR guarantees that the work shall be performed in accordance with the Scope of Work, specified herein in accordance with all relevant Codes and Regulations and to CITY's full satisfaction.

APPENDIX C

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS, the City of Beverly Hills, California, hereinafter "City", has awarded to

\_\_\_\_\_ [Name of Contractor] hereinafter designated as "Principal," a Contract for  
\_\_\_\_\_ within the City;

WHEREAS, said Principal is required under the terms of the Contract, which is incorporated herein, and the California Civil Code, to file a good and sufficient payment bond with the City to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code;

NOW, THEREFORE, we, the undersigned Principal, and \_\_\_\_\_, ("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are held firmly bound unto the City and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Contract and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the penal sum of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

FURTHER the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the Contract Documents, or of the work to be performed thereunder, shall in any way affect the obligations of this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract Documents or to the work or specifications thereunder. Surety hereby waives notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by the Principal and Surety named herein, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

DATE: \_\_\_\_\_

"PRINCIPAL"

"SURETY"

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
Its

BY: \_\_\_\_\_  
Its

BY: \_\_\_\_\_  
Its

BY: \_\_\_\_\_  
Its

{ SEAL }

{ SEAL }

**NOTE: THIS BOND MUST BE EXECUTED IN TRIPLICATE AND DATED. ALL SIGNATURES MUST BE NOTARIZED, AND EVIDENCE OF THE AUTHORITY OF ANY PERSON SIGNING AS ATTORNEY-IN-FACT MUST BE ATTACHED.**

## APPENDIX D

### CERTIFICATE OF INSURANCE (PUBLIC LIABILITY)

This is to certify that the following endorsement is part of the policy(ies) described below:

Named Insured (Contractor)

M. Companies Affording Coverage

A.

Address

B.

C.

| Policy Number | Company A,B,C | Coverage   | Expiration Date | B.I. | Limits P.D. | Aggregate |
|---------------|---------------|--|-----------------|------|-------------|-----------|
|               |               | <input type="checkbox"/> Automobile Liability          |                 |      |             |           |
|               |               | <input type="checkbox"/> General Liability             |                 |      |             |           |
|               |               | <input type="checkbox"/> Products/Completed Operations |                 |      |             |           |
|               |               | <input type="checkbox"/> Blanket Contractual           |                 |      |             |           |
|               |               | <input type="checkbox"/> Contractor's Protective       |                 |      |             |           |
|               |               | <input type="checkbox"/> Personal injury               |                 |      |             |           |
|               |               | <input type="checkbox"/> Other                         |                 |      |             |           |
|               |               | <input type="checkbox"/> Excess Liability              |                 |      |             |           |
|               |               | <input type="checkbox"/> Workers' Compensation         |                 |      |             |           |

N. It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as a joint and several assureds with respect to claims arising out of the following project: \_\_\_\_\_

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all cost and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents, or others employed by contractor while engaged by contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right on contribution with insurance which may be available to City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days' written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, condition of any contract or other document with respect to which this certification or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE \_\_\_\_\_

BY \_\_\_\_\_

AUTHORIZED INSURANCE  
REPRESENTATIVE

AGENCY \_\_\_\_\_

TITLE \_\_\_\_\_

\_\_\_\_\_

ADDRESS \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**APPENDIX E**

**CERTIFICATE OF INSURANCE**

(Workers' Compensation)

WHEREAS, the City of Beverly Hills has requires certain insurance to be provided by:

\_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, the undersigned insurance company does hereby certify that it has issued the policy or policies described below to the following named insureds and that the same are in force at this time.

1. This certificate is issued to: City of Beverly Hills, City Hall, 455 North Rexford Drive, Beverly Hills, California.
2. The insureds under such policy or policies are:

\_\_\_\_\_  
\_\_\_\_\_

3. Workers' Compensation Policy or Policies in a form approved by the Insurance Commissioner of California covering all operations of the named insureds, as follows:

| <u>POLICY NUMBER</u> | <u>EFFECTIVE DATE</u> | <u>EXPIRATION DATE</u> |
|----------------------|-----------------------|------------------------|
| _____                | _____                 | _____                  |
| _____                | _____                 | _____                  |
| _____                | _____                 | _____                  |

3. Said policy or policies shall not be canceled, nor shall there be any reduction in coverage or limits of liability, unless and until thirty days written notice thereof has been served upon the City Clerk of the City of Beverly Hills.

\_\_\_\_\_  
By \_\_\_\_\_  
Its Authorized Representative

Approved as to form:

\_\_\_\_\_ 20 \_\_\_\_\_

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

LAURENCE S. WIENER, City Attorney

## APPENDIX F

### STATEMENT ACKNOWLEDGING OBLIGATION TO COMPLY WITH CALIFORNIA LABOR LAW

I, the undersigned Contractor, certify that I am aware of and will fully comply with the following provisions of California law:

Contractor acknowledges that the Work as defined in this Contract between Contractor and the City, to which this document is attached and incorporated by reference, is a "public work" as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code ("Chapter 1"), and that this Contract is subject to (a) Chapter 1, including without limitation Labor Code Section 1771 and (b) the rules and regulations established by the Director of Industrial Relations ("DIR") implementing such statutes. Contractor shall perform the entire Work as a public work. Contractor shall comply with and be bound by all the terms, rules and regulations described in parts (a) and (b) as though set forth in full herein. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 above.

Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Contract are on file at the office of the City Engineer at City Hall and will be made available to any interested party on request. Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Contractor shall post such rates at each job site covered by this Contract.

Contractor agrees to comply with the provisions of California Labor Code Section 1773.8 which require the payment of travel and subsistence payments to each worker needed to execute the Work, to the extent required by law.

Contractor agrees to comply with the provisions of California Labor Code Section 1774 and 1775 concerning the payment of prevailing wages to workers and the penalties for failure to do so. Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day or portion thereof, for each worker paid less than the prevailing rates, as determined by the Director of Industrial Relations, for the work or craft in which the worker is employed for any public work done under the Contract by Contractor or any subcontractor.

Contractor agrees to comply with the provisions of California Labor Code Section 1776, which require Contractor and each subcontractor to (1) keep accurate payroll records, (2) certify and make those payroll records available for inspection as provided by Section 1776, and (3) inform the City of the location of the records. Contractor is responsible for compliance with Section 1776, by itself and all of its subcontractors.

Contractor agrees to comply with the provisions of California Labor Code Section 1777.5, 1777.6 and 1777.7 and California Administrative Code title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Contract, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Contract, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Contract.

Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor agrees to comply with and be bound by Labor Code Section 1810. Contractor agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. Contractor shall, as a penalty to the Agency, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the Contract by Contractor or by any subcontractor for each calendar day during which such worker was required or permitted to work more than 8 hours in any one calendar day or 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code. Pursuant to Labor Code Section 1815, work performed by employees of Contractor in excess of 8 hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

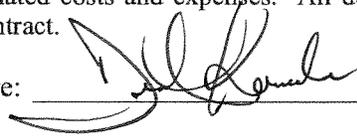
California Labor Code Sections 1860 and 3700, provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

For every subcontractor who will perform labor on or otherwise participate in the Work, Contractor shall be responsible for such subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Contractor shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any failure.

To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend (at Contractor's expense with counsel reasonably acceptable to the City) the City, its officials, officers, employees, agents and independent contractors serving in the role of City officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Contractor, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Contract, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of Contractor under this Section shall survive termination of the Contract.

Date: 3.22.16

Signature: 

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

Signature: \_\_\_\_\_

**APPENDIX G: DESIGNATION OF SUBCONTRACTORS**  
**[Public Contract Code 4104]**

List all Subcontractors doing work in an amount in excess of 0.5% of the Contractor's total Bid or, in the case of Bids or offers for the construction of Streets or highways (including bridges), in excess of 0.5% of the Contractor's total Bid or \$10,000, whichever is greater. If all Subcontractors do not fit on this page, attach another page listing all information for all other Subcontractors.

| Name under which Subcontractor is Licensed | California Contractor's License Number(s) & Class(es) | Address & Phone Number | Type of Work (e.g., Electrical) |
|--|---|------------------------|---------------------------------|
|  |   |                        |                                 |
|  |   |                        |                                 |
|  |   |                        |                                 |
|  |   |                        |                                 |
|  |   |                        |                                 |

# **Attachment 3**

AGREEMENT BETWEEN THE CITY OF BEVERLY  
HILLS AND KRB CONSTRUCTION, INC. FOR AS-  
NEEDED GENERAL CONSTRUCTION SERVICES  
RELATING TO THE MAINTENANCE OF CITY  
FACILITIES

**COVER PAGE**

|                                    |   |
|------------------------------------|---|
| NAME OF CONTRACTOR:                | KRB Construction, Inc.  |
| CONTRACTOR'S ADDRESS:              | 2774 Sawtelle Blvd.<br>Los Angeles, CA 90064<br>Attention: Karl Brook, Principal  |
| CITY'S ADDRESS:                    | City of Beverly Hills<br>455 N. Rexford Drive<br>Beverly Hills, CA 90210<br>Attention: George Chavez, Assistant City Manager/Director<br>of Public Works Services |
| TERM OF CONTRACT:                  | April 1, 2016 to April 1, 2017, unless extended pursuant to<br>Section 2  |
| CONTRACT AMOUNT:                   | Not to exceed \$150,000, as more fully described in Appendix<br>A   |
| CONTRACTOR'S LICENSE<br>NUMBER     | 485282  |
| REQUIRED LICENSE<br>CLASSIFICATION | General   |

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND KRB CONSTRUCTION, INC. FOR AS-NEEDED GENERAL CONSTRUCTION SERVICES RELATING TO THE MAINTENANCE OF CITY FACILITIES

THIS CONTRACT (the "Contract"), made and entered into this 1<sup>st</sup> day of April, 2016 by and between the CITY OF BEVERLY HILLS, a municipal corporation, hereinafter referred to as "City", and

**KRB Construction, Inc.  
2774 Sawtelle Blvd.  
Los Angeles, CA 90064**

hereinafter referred to as "Contractor";

W I T N E S S E T H

In this consideration of their covenants, the parties hereto agree as follows:

Section 1. PAYMENT.

A. In consideration of the Work as defined herein, City agrees to pay Contractor for the satisfactory performance by Contractor of all work required under this Contract and Contractor agrees to accept as full consideration of all work required under this Contract the Contract Amount set forth on the Cover Page of this Contract as bid for the work, payable as provided in Appendix A "Payment Procedures," which is attached hereto and incorporated herein by this reference.

B. Any individual project may not exceed Forty-Five Thousand Dollars (\$45,000) unless it is determined by the City Manager that an emergency exists as defined in Public Contract Code sections 22035 & 22050 or in a legally declared emergency the City Council delegates to the City Manager or the Director of Emergency Services the authority to order any action pursuant to Public Contract Code sections 22035 & 22050 (Beverly Hills Municipal Code section. 3-3-303).

Section 2. PERFORMANCE PERIOD. Contractor shall commence and complete Work in the time required on the Cover Page.

A. If the Work is not completed in full within the time specified in this Contract, the City shall have the right to grant or deny an extension of time for completion, as may seem best to serve the interest of the City.

B. In addition to Standard Specifications Section 6-6.1, the Contractor shall not be assessed with liquidated damages during any delay in the completion of the Work caused by unforeseen events, provided that the Contractor shall, within ten (10) days from the beginning of

such delay, notify the City in writing of the cause of the delay. The City will ascertain the facts and the extent of the delay, and the City's findings thereon shall be final and conclusive.

Section 3. WORK TO BE PERFORMED.

A. **Scope of Work.** Contractor shall furnish at Contractor's own expense all labor, materials, supplies, equipment, tools, parts, implements, transportation and other items of expense necessary for, or appurtenant to, the installation, construction and completion in a workmanlike manner of the Work identified on the Cover Page and indicated in the quote provided by Contractor, which is attached hereto as Appendix B and incorporated herein by this reference (the "Work") and in accordance with the terms and conditions of this Contract and the plans and specifications for this Work, which are incorporated by this reference.

B. The current City Standard Drawings and Specifications (the "City Specifications") are incorporated herein by reference, and Contractor shall install all work pursuant to those standard drawings and specifications. Additionally, the Work shall be done in accordance with the provisions of the 2012 edition of "Standard Specifications for Public Works Construction" (commonly known as "the Greenbook"), including the 2013, and all future 2014 Supplements, prepared and promulgated by the Southern California Chapter of the American Public Works Association and the Associated General Contractors of California, which specifications are hereinafter collectively referred to as the "Standard Specifications" and are incorporated herein by this reference. This Contract, the City Specifications and the Standard Specifications are to be read harmoniously when possible. In the event of a conflict, the provisions of the City Specifications shall apply and shall supersede provisions of the Standard Specifications. In the event of a conflict between this Contract and either of the other two documents, the more stringent provision shall apply.

Section 4. SPECIAL CONDITIONS

A. Storage will be limited to the Work area.

B. Contractor shall provide all temporary structures, measures, apparatus and services required to prosecute the Work of this bid package.

C. **Utilities.** All utility service and building system connections or required interruptions shall be coordinated in advance with the City.

1. The Contractor shall verify the location of all underground utilities and services before proceeding with excavation work, requesting in advance the services of inspectors from the utility companies in order to ascertain said locations. Damage to underground utilities resulting from neglect on the part of the Contractor shall be corrected and paid for by the Contractor.

2. The Contractor shall notify all owners of public utilities 48 hours in advance of excavating around any of their substructures, and shall also provide the same notice to Underground Service Alert of Southern California. Upon request, the City Engineer will furnish the Contractor a list of the various offices and numbers to call.

D. **Trash Removal.** Rubbish, debris, waste, dust or surplus materials shall not be allowed to accumulate and shall be removed continuously and disposed of by the Contractor as the work progresses. Specific rubbish removal companies are allowed to operate within the City, a list of these companies may be obtained by calling Public Works Services Customer Service at (310) 285-2467.

E. **Drawings, Warranties and Service Manuals.** Contractor shall submit all as-built drawings, warranties and service manuals upon completion of the work.

F. **Materials And Workmanship.**

1. The City shall have the right to inspect any material used. Material furnished shall be new, complete, ready-for-use and of the latest model, shall not have been used in demonstration or other services and shall have all the usual equipment as shown by its manufacturer's current specifications and catalogs, unless otherwise specified. Equipment, supplies or services that fail to comply with the Contract requirements regarding design, material or workmanship may be rejected at the option of the City. Any materials rejected shall be removed from Work premises at the Contractor's sole expense.

2. All work must be approved by the City. For unsatisfactory work not corrected, the City may, at its option, withhold payment for the unsatisfactory work, deduct the amount from the invoiced amount, have the work corrected by another contractor at Contractor's cost and expense, or perform the corrective work with City personnel and deduct all costs so incurred by the City from moneys owed to the Contractor.

G. **License And Permits.** Except as provided in this Subsection, the Contractor shall obtain and pay for all permits and licenses required by federal, state or local law, rule or regulation and pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the work. Costs for obtaining City permits required under this Contract will be waived. NOTE: All requirements for obtaining permits (including City permits) remain in effect and are not waived; only the costs of City permits are waived. For information concerning business licenses required under the Beverly Hills Municipal Code, contact the Beverly Hills Finance Department.

H. **Changes to the Work.**

1. When the Contractor considers that any change order in writing by the City involves extra work, the Contractor shall immediately notify the City in writing as to when and where extra work is to be performed and shall make a claim for compensation therefor each month not later than the first day of the month following that in which the work claimed as extra work was performed. If the changes do, in the opinion of the City, change the amount of work, the Contract Amount shall be adjusted as "extra work".

2. New and unforeseen work will be classed as extra work only when said work is not covered and cannot be paid for under any of the various items or combination of items for which a bid price appears on the proposal form. The Contractor shall not do any extra work except upon written order from the City Engineer. Compensation for such extra work shall be previously agreed upon in writing between the Contractor and the City Engineer.

3. Extra work, when ordered and accepted pursuant to paragraph 1 of this Subsection, shall be paid for under a written work order in accordance with the terms therein provided. Payment for extra work will be made at the unit price or lump sum previously agreed upon between the Contractor and prepared by the City Engineer. All extra work shall be adjusted daily upon report sheets prepared by the City Engineer, furnished to the Contractor, and signed by both parties, and said daily reports shall be considered thereafter the true record of extra work done.

Section 5.      TERMINATION OF WORK.

A. **For Cause.** Upon notice to Contractor, City may terminate the Work or any part thereof immediately for cause, without any prior notification to Contractor.

B. **Without Cause.** City may terminate the Work or any part thereof upon five (5) days prior notice to Contractor.

C. **Payment.** Upon termination of the Contract in whole or in part, City shall pay Contractor, subject to all provisions of the Contract for retention of funds, for all Work completed to the City's satisfaction prior to the date of termination.

Section 6.      BONDS AND INSURANCE. Prior to the execution of this Contract, Contractor shall file with the City the bonds and certificates of insurance specified herein.

A. **Bonds.** Contractor shall adhere to the payment bonding requirements listed in Standard Specifications Section 2-4 for each public works projects ordered at \$25,000 or more. Additionally, the required bond shall be filed in the forms attached hereto as Appendix C and incorporated herein by this reference. There must be on file with the City Clerk of the City or submitted with the bond, a copy, duly certified by the proper authority and attested by the seal of the corporation, of the transcript or record of appointment entitling or authorizing the person or persons purporting to execute an undertaking or bond for and on behalf of such corporation to act in the premises.

B. **Insurance and Workers' Compensation.** Contractor shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Contractor, his agents, representatives, employees or subcontractors, pursuant to this Contract. Insurance, together with an endorsement, shall be of the type, in the amounts and subject to the provisions described below.

1. As required in Standard Specifications Section 7-3.2, the Contractor must obtain **commercial general liability** coverage at least as broad as Insurance Services Office Commercial General Liability occurrence coverage ("occurrence" form CG0001, Ed. 11/88) with a limit of not less than \$2,000,000 per occurrence. If the insurance includes a general aggregate limit, that limit shall apply separately to this contract or it shall be at least twice the required per occurrence limit.

2. As required in Standard Specifications Section 7-3.4, the Contractor must obtain **business automobile liability** insurance at least as broad as Insurance Services office

form CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 "any auto" and endorsement CA 0029 (Ed. 12/88) with a limit not less than \$1,000,000 per accident.

3. **Workers' Compensation** In addition to the requirements in Standard Specifications Section 7-3.3, workers' compensation insurance shall be as required by the State of California and employers liability insurance with a limit not less than \$1,000,000 per accident.

4. **Evidence of Coverage:**

(a) In addition to the requirements in Standard Specifications Section 7-3.1, prior to commencement of work under this Contract, Contractor shall file certificates of insurance, in the forms attached hereto as Appendices D and E and incorporated herein by this reference, or on forms approved in writing by the City's Risk Manager, and with original endorsements evidencing coverage in compliance with this Contract.

(b) Contractor shall provide to City, on request, a complete copy, including all endorsements and riders, of any insurance policy.

(c) During the term of this Contract, Contractor shall maintain current valid proof of insurance coverage with City at all times. Proof of renewals shall be filed prior to expiration of any required coverage and shall be provided on the City's standard proof of insurance form.

(d) Failure to submit any required evidences of insurance within the required time period shall be cause for termination for default.

(e) In the event Contractor does not maintain current, valid evidence of insurance at the required minimum amounts or more on file with City throughout the duration of the Contract, City may, at its option, withhold payment of any moneys owed to Contractor, or which it subsequently owes to Contractor, until proper proof is filed.

(f) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or canceled and shall not be reduced in coverage or limits except after 30 days prior written notice provided to the City. Upon prior request of the carrier, the notice period may be reduced to 10 days in the event of non-payment of premium.

(g) All liability coverages shall name the City, its City Council and every officer, agent and employee of City as additional insureds with respect to work under this Contract.

(h) Contractor's insurance and any insurance provided in compliance with these specifications shall be primary with respect to any insurance or self-insurance programs covering the City, its City Council and any officer, agent or employee of City.

(i) Where available, the insurer shall agree to waive all rights of subrogation against the City, its City Council and every officer, agent and employee of City. Any deductibles or self-insured retentions shall be declared to and must be approved by City. At the option of the City, either the insurer shall reduce or eliminate the deductibles or self-insured

retentions as respects the City, or the Contractor shall procure a bond guaranteeing payment of losses and expenses.

(j) In the event that Contractor does not provide continuous insurance coverage, the City shall have the right, but not the obligation, to obtain the required insurance coverage at Contractor's cost, and the City may deduct all such costs from moneys the City owes to the Contractor or from moneys which it subsequently owes to the Contractor, or Contractor shall owe the City this amount.

#### Section 7. LEGAL RELATIONS AND RESPONSIBILITY TO THE CITY

**A. Laws To Be Observed.** The Contractor shall be knowledgeable of all existing and pending State and federal laws and all municipal ordinances and regulations of the City, which in any manner affect those employed in the Work or the material used in the Work, or which in any way affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. The Contractor shall particularly observe all ordinances of the City in relation to the obstruction of streets or conduct of the work, keeping open passageways and protecting the same where they are exposed or dangerous to traffic.

**B. Social Security Requirements.** The Contractor shall furnish to the City satisfactory evidence that he/she and all subcontractors are complying with all requirements of the Federal and State Social Security legislation. The Contractor, at any time on request, shall satisfy the City that the Social Security and Withholding Tax are being properly reported and paid.

**C. Labor Laws and Prevailing Wages.** This Work is a "public work," and thus, the Contractor shall pay to all employees, and shall cause all subcontractors to pay to all employees, in accordance with the determination of the Director of the Department of Industrial Relations ("DIR") regarding the prevailing rate of per diem wages. Contractor shall execute simultaneously with the execution of this Contract the Statement Acknowledging Obligation to Comply with California Labor Law, which is attached hereto as Appendix F and incorporated herein by this reference.

**D. Registration Of Contractors.** Only a Contractor licensed in accordance with the provisions of Chapter 9, Division 3 of the Business and Professions Code shall be permitted to enter into a contract with the City for any public improvement. The Contractor shall at all times possess a valid California Contractor's license in the class required on the Cover Page of this Contract.

**E. Registration with the Department of Industrial Relations.** CONTRACTOR and its subcontractors shall be currently registered and qualified to perform the work required by this Agreement (Labor Code Section 1725.5).

**F. Debarment or Suspension.** Contractor and all subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or 1777.7. If Contractor or any subcontractor becomes debarred or suspended throughout the duration of the Work, Contractor shall immediately notify City.

G. **Patents.** The Contractor shall assume all responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices, or processes used on or incorporated in the Work, and shall defend, indemnify, and hold harmless the City, and each of its officers, agents, and employees from and against any and all liabilities, demands, claims, damages, losses, costs, and expenses, of whatsoever kind or nature, arising from such use.

H. **Indemnity.** The following indemnity provisions shall supersede the indemnity in Section 7-3 of the Standard Specifications.

1. **Contractor's Duty.** To the maximum extent permitted by law, Contractor hereby agrees, at its sole cost and expense, to defend with competent defense counsel approved by the City Attorney, protect, indemnify, and hold harmless the City, its elected and appointed officials, officers, employees, volunteers, attorneys, agents (including those City agents serving as independent contractors in the role of City representative), successors, and assigns (collectively "Indemnitees") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, charges, obligations, damages, causes of action, proceedings, suits, losses, stop payment notices, judgments, fines, liens, penalties, liabilities, costs and expenses of every kind and nature whatsoever, in any manner arising out of, incident to, related to, in connection with or resulting from any act, failure to act, error or omission of Contractor or any of its officers, agents, attorneys, servants, employees, subcontractors, material suppliers or any of their officers, agents, servants or employees, arising out of, incident to, related to, in connection with or resulting from any term, provision, image, plan, covenant, or condition in the Contract Documents, including without limitation, the payment of all consequential damages, attorneys' fees, experts' fees, and other related costs and expenses (individually, a "Claim," or collectively, "Claims"). Contractor shall promptly pay and satisfy any judgment, award or decree that may be rendered against Indemnitees in any such Claim. Contractor shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor or Indemnitees. This indemnity shall apply to all Claims regardless of whether any insurance policies are applicable or whether the Claim was caused in part or contributed to by an Indemnitees.

2. **Civil Code Exception.** Nothing in this Section 6(G) shall be construed to encompass Indemnitees' sole negligence or willful misconduct to the limited extent that the underlying Contract is subject to Civil Code Section 2782(a) or the City's active negligence to the limited extent that the underlying Contract is subject to Civil Code Section 2782(b), provided such sole negligence, willful misconduct or active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction.

3. **Nonwaiver of Rights.** Indemnitees do not and shall not waive any rights that they may possess against Contractor because the acceptance by City or the deposit with City of any insurance policy or certificate required pursuant to this Contract. This indemnity provision is effective regardless of any prior, concurrent, or subsequent active or passive negligence by Indemnitees and shall operate to fully indemnify Indemnitees against any such negligence.

4. **Waiver of Right of Subrogation.** Contractor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees while acting within the scope of their duties from all Claims arising out of or incident to the activities or operations performed by or on behalf of the Contractor, or lack or omission thereof, regardless of any prior, concurrent or subsequent active or passive negligence by Indemnitees.

5. **Survival.** The provisions of this Section 6(G) shall survive the term and termination of the Contract, are intended to be as broad and inclusive as is permitted by the law of the State, and are in addition to any other rights or remedies that Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against a Contractor shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision.

I. **Dispute Resolution Meetings.** In the event of any damage or injury caused by Contractor or its subcontractors in the performance of the Contract, the Contractor shall attend dispute resolution meetings with the City and interested parties as required by the City.

J. **Resolution of Claims And Disputes.** Public Contract Code Sections 20104 *et seq.* apply to this Contract and are incorporated herein by this reference. In any arbitration to resolve a dispute relating to or arising out of this Contract, the arbitrator's award shall be supported by law and substantial evidence. The arbitrator shall file a written decision with the court and serve a copy of it on each of the parties. The written decision shall contain a summary of the evidence, reasons underlying the decision, and unless the parties otherwise agree, findings of fact and conclusions of law.

K. **Assignment of Unfair Business Practices.** In entering into this Contract, the Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgment by the parties. Contractor shall include this provision in its contracts with all subcontractors such that they offer and agree to assign to the City all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to their subcontracts.

## Section 8. PROSECUTION AND PROGRESS OF THE WORK

A. **Subletting and Assignment.** The Contractor shall give personal attention to the fulfillment of this Contract and shall be in control of the work. The Contractor shall not assign, transfer nor sublet any part of the Work, nor shall the Contract be assigned, transferred, or sublet, in whole or in part, without the written consent of the City by the City Engineer and of all sureties of the Contractor's bonds. Such consent of the sureties, together with a copy of the

subcontract, shall be filed with the City Engineer prior to his or her consent. Any assignment, transfer or subletting of the Contract in violation of this Subsection is null and void. No assignment, transfer or subletting, even though consented to, shall relieve the Contractor of liability under the Contract. This provision shall govern over Section 2-2 in the Standard Specifications.

**B. Subcontractors.** All persons engaged in the Work, including all subcontractors and their employees, will be considered as employees of the Contractor, their work being subject to the provisions of the Contract and the specifications. Should any subcontractor fail to perform work to the satisfaction of the City Engineer, said subcontractor shall be removed immediately from the Work upon request by the City Engineer and shall not again be employed on the Work, and the Contractor shall be held liable for the deficient work. The Contractor shall list in Appendix G, which is attached hereto and incorporated herein by this reference, the names, California contractor license numbers, addresses, telephone numbers, types of work and percentages of the total Work of all subcontractors.

**C. Temporary Stoppage Of Construction Activities.** In addition to the City Engineer's authority to suspend the Work for other reasons, the City Engineer shall have the authority to issue an order suspending the Work wholly or in part for such a period of time as he may deem necessary due to unsuitable weather, such other conditions as he considers unfavorable for the proper prosecution of the work, or failure on the part of the Contractor to carry out orders or to perform any of the requirements of this Contract. The Contractor shall immediately comply with such an order from the City Engineer and shall not resume operations until so ordered in writing.

#### Section 9. CONTROL OF THE WORK.

**A. Authority of The City Engineer.** In addition to the City Engineer's responsibilities listed in Standard Specifications Section 2-10, the City Engineer shall decide any and all questions that may arise as to the quality and acceptability of materials furnished and work performed, as to the manner of performance and rate of progress of the Work, and any and all questions which may arise as to the interpretation of the plans and specifications. The City Engineer shall likewise decide any and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor, and all questions as to claims and compensations. The decision of the City Engineer shall be final, and he shall have relative authority to enforce and make effective such decisions and actions as the Contractor fails to carry out promptly.

**B. Protection of The Work.** In addition to Standard Specifications Section 4-1.2, the Contractor shall continuously maintain adequate protection of the Work from damage, and the City will not be held responsible for the care or protection of any material, equipment, or parts of the Work, except as expressly provided for in the specifications.

**C. Access To Residents' Driveways.** In addition to Standard Specifications Section 7-10.1.1.1, sufficiently in advance of construction, the Contractor shall notify residents of property adjoining the location of the Work as of the date when such construction work will start. In case of work requiring excavation of the roadway which may interfere with the use by residents of their driveways, suitable provisions shall be made by the Contractor to make it possible for

residents to gain access to their driveways until such time as the exigencies of construction may demand a temporary blocking of said driveways. Efforts shall be made by the Contractor to minimize the duration of said blocking and to notify the residents of this need well in advance, thus allowing them to make suitable arrangements to keep their automobiles elsewhere.

**D. Removal of Interfering Obstructions.** The Contractor shall remove and dispose of all debris, abandoned structures, tree roots, and obstructions of any character met during the process of excavation.

**E. Avoidance of Patchwork Appearance.** New PCC work shall conform in grade, finish and color to the adjoining portions. Any sections of said work having a patchwork appearance will be rejected by the City Engineer, and the Contractor shall replace them at the Contractor's expense. To insure a neat break line between existing and new portions of PCC work, the Contractor will be required to use a concrete cutting saw of a type approved by the City Engineer. Likewise, whenever adjoining PCC work is damaged during the process of new construction, the damaged portions shall be removed in such a way that a neat, straight joint is provided between the new portions and existing work.

**F. Care of Gutters Adjacent To Areas To Be Paved.** During the process of resurfacing the roadways or construction of new pavement, the Contractor shall exercise particular care to remove all excess resurfacing material which may be deposited upon the PCC gutters. Whenever specifications call for the resurfacing material to overlap the existing gutters, the overlapping portions shall not exceed the dimensions shown on the plans and a wavy overlapping line shall be avoided. Any undulation of the overlapping line accidentally resulting from the application of the paving or resurfacing material shall be corrected by the Contractor before the work is accepted by the City Engineer.

**G. Depth of The Required Excavation.** When the Work requires excavation and removal of existing pavement and excess of underlying soil, these materials shall be removed to the depth specified by the City Engineer. Whenever the subgrade exposed after the removal of the excess underlying soil is found to be of the desirable kind, excavation need not proceed below the depth specified by the City Engineer. However, if the excavation discloses the fact that there is mud or any other soft material in the subgrade, said material shall be removed to a minimum depth of six inches (6"), at the discretion of the City Engineer. Backfill of the additional excavated portions shall be made with select material removed from other portions of the Work, provided said material is found suitable by the City Engineer. The volume in place of the additional soil excavation will be determined by the field representatives of the City Engineer, and the Contractor will be entitled in this case to extra payment in an amount agreed upon in advance by the Contractor and the City Engineer based on the additional number of cubic yards excavated. Should imported material be required for the backfill, the unit cost per cubic yard of said imported material shall be agreed in advance, in writing, between the Contractor and the City Engineer, and extra payment for said material will be made to the Contractor for the actual volume used, as verified in the field by representatives of the City Engineer.

**H. Sequence of The Work Of Excavation.** Whenever the Work calls for excavation of existing pavement and excess soil and for construction of base material, the process of

excavation shall be conducted by the Contractor so that, at the end of any working day, the area where excavation is proceeding shall not be more than three hundred feet (300') in advance of the area where the untreated rock base over sections already excavated is being laid, unless otherwise indicated in the specifications.

**I. Maintenance of Traffic And Safety Requirement.** If Contractor must perform work in a street right-of-way, Contractor shall conduct operations so as to cause the least possible obstruction and inconvenience to public traffic and safety, and Contractor shall take all necessary measures to maintain an adequate traffic flow, to prevent accidents, to protect the site of the Work and to keep streets open and in passable condition for emergency vehicles at all times. During construction the Contractor shall, as far as practicable, keep the Work area free of rubbish and debris and in as clean a condition as possible.

A suitable width of any intersecting street shall be kept in reasonably good condition for traffic, including the necessary provisions for proper drainage. Should the requirements of construction demand closing the full width of an intersection, such closing shall be allowed only after the Contractor has secured permission from the City Engineer and the duration of the closing must be for the minimum length of time possible. After said permission is granted, the Contractor shall make the necessary arrangements to provide temporary crossings, or to reroute traffic away from said intersection and provide and maintain barriers, guards, directional signs, watchpersons, and lights at all detour points, in order to give adequate warning to the public at all times that the streets are under construction and of the dangerous conditions as a result thereof. The Contractor shall also erect and maintain such additional warning and directional signs as may be furnished by the City.

**J. Barriers, Lights, Etc.** The above-mentioned barriers, safety lights, warning and regulatory signs, guards, temporary crossovers, and watchpersons shall also be provided and maintained by the Contractor at the Contractor's expense over all portions of the Work during construction and until acceptance of the Work. Provisions shall be made by the Contractor to insure operation of the safety lights throughout the evenings without interruption. No safety lights using inflammable liquids shall be permitted during the progress of the Work, and only electric battery operated safety lamps will be approved for this purpose.

**K. Removal of Defective or Unauthorized Work.** It is the intent of the specifications that only first class work, materials, and workmanship will be acceptable. All work which is defective in its construction or deficient in any of the requirements of the specifications shall be remedied, or removed and replaced by the Contractor in an acceptable manner, and no compensation will be allowed for such correction. Any work done beyond the lines shown on the plans or established by the City Engineer or any extra work done without written authority will be considered as unauthorized and will not be paid for. Upon failure on the part of the Contractor to comply forthwith with any order of the City Engineer made under the provisions of this paragraph, the City Engineer shall have authority to cause defective work to be remedied or removed and replaced and unauthorized work to be removed, and to deduct the costs thereof from any monies due or to become due the Contractor. If the Work is found to be in compliance with this Contract and the specifications, the City Engineer will furnish the Contractor with a certificate to that effect.

**L. Supervision.** All manufactured products, materials, and appliances used and installed and all details of the work done shall at all times be subject to the supervision, test, and approval of the City Engineer or his authorized representatives. The City Engineer or his authorized representatives shall have access to the work at all times during construction, and shall be furnished with every reasonable facility for securing full knowledge with regard to the progress, workmanship and character of the materials used or employed in the Work.

**M. Inspectors.** The Contractor shall prosecute work only in the presence of inspectors appointed by the City Engineer and any work done in the absence of said inspectors will be subject to rejection. All instructions given to the Contractor by such inspectors shall be regarded as having been given directly by the City Engineer. The Contractor shall make a written application for an inspector at least twenty-four (24) hours before his services are required on the work. Whenever the cost of an improvement or the cost of any portion thereof is defrayed from the Gas Tax Funds allocated to the City by the County of Los Angeles, or by the State of California, inspectors appointed by the State or County shall likewise be given full access to the site of the work in order that they may perform their inspection duties efficiently and without interference. The inspection of the Work shall not relieve the Contractor of any of his obligations to fulfill the Contract as prescribed. Defective work shall be made good and unsuitable materials rejected, notwithstanding the fact that such defective work and unsuitable materials may have been previously overlooked by the inspectors and accepted or estimated for payment.

**N. Final Cleaning Up.** Upon completion of the Work and before making application to the City Engineer for acceptance of the Work, the Contractor shall clean all the streets and grounds occupied by him in connection with the Work of all rubbish, debris, excess material, temporary structures and equipment, leaving the entire site of the Work in a neat, presentable condition.

**O. Loss or Damage.** Any loss or damage arising from any omission or act of the Contractor or any of his subcontractors, employees or agents or by any action which had not been authorized in the provisions of the specifications shall be sustained by the Contractor.

#### Section 10. SAFETY AND PROTECTION OF WORKERS.

Pursuant to Public Contract Code Section 7104, if any work under this Contract involves digging trenches or other excavations that extend deeper than four feet (4') below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify City in writing of any: material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; subsurface or latent physical conditions at the site differing from those indicated; or unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the Contract. The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ or do involve hazardous waste and cause a decrease or increase in the Contractor's cost of or the time required for performance of any part of the Work, the City shall issue a change order under the procedures described in the Contract. In the event that a dispute

arises between the City and the Contractor whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in the Contractor's cost of or time required for performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties. All expenses pursuant to this Section are included in the Contract Amount listed on the Cover Page of this Contract.

Section 11. MISCELLANEOUS.

A. **Severability.** Whenever possible, each covenant, condition, restriction, or provision of this Contract shall be interpreted in such a manner as to be valid under applicable law. If any covenant, condition, restriction, or provision of this Contract or application thereof to any person or entity is determined by a court of competent jurisdiction to be invalid, void or unenforceable, such judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof or the application thereof to any other person or entity, and the same shall remain in full force and effect.

B. **Audit.** The City or its representative shall have the option of inspecting, auditing, or inspecting and auditing all records and other written materials used by Contractor in preparing its billings to the City as a condition precedent to any payment to Contractor. Contractor shall promptly furnish documents requested by the City. Additionally, Contractor shall be subject to State Auditor examination and audit at the request of the City or as part of any audit of the City, for a period of three (3) years after final payment under this Contract.

C. **Notice.** Any notice, request, direction, demand, consent, waiver, approval or other communication required or permitted to be given hereunder shall not be effective unless it is given in writing and shall be delivered (1) in person, (2) by certified mail, postage prepaid, return receipt requested, (3) by facsimile, or (4) by a commercial overnight courier that guarantees next day delivery and provides a receipt. Such communication must be addressed to the parties at the addresses stated on the Cover Page of this Contract or at such other address as either Party may hereafter notify the other in writing as aforementioned.

Service of any such notice or other communications shall be deemed effective on the day of actual delivery, whether accepted or refused.

D. **Entire Contract.** This Contract represents the entire integrated agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by a written instrument signed by both City and Contractor.

E. **Governing Law.** This Contract shall in all respects be interpreted, enforced and governed by and under the laws of the State of California applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships solely within the County of Los Angeles, State of California. Venue and jurisdiction with respect to any action,

claim or other proceeding arising under or in relation to this Contract shall be exclusively in the State courts located within the County of Los Angeles, State of California.

F. **Waiver.** The waiver of any provision of this Contract must be in writing and signed by the party providing such waiver. The waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of such provision or any subsequent breach of the same or any other provision of this Contract. Acceptance of performance after the due date of such performance shall not be deemed to be a waiver of any preceding breach of any provision of this Contract, regardless of the accepting Party's knowledge of such preceding breach at the time of acceptance of such performance.

G. **Headings.** All Section headings and subheadings are inserted for convenience only and shall have no effect on the construction or interpretation of this Contract.

H. **Third-Party Claims.** The City shall have full authority to compromise or otherwise settle any claim relating to the Work at any time. The City shall timely notify the Contractor of the receipt of any third-party claim relating to the Work. City shall be entitled to recover its reasonable costs incurred in providing this notice.

I. **Contractor's Representations.** By signing the Contract, Contractor represents, covenants and agrees that: a) Contractor is licensed, qualified, and capable of furnishing the labor, materials, and expertise necessary to perform the services in accordance with the terms and conditions set forth in the Contract; b) there are no obligations, commitments, or impediments of any kind that will limit or prevent Contractor's full performance under the Contract; c) there is no litigation pending against Contractor, and Contractor is not the subject of any criminal investigation or proceeding; and d) to Contractor's actual knowledge, neither Contractor nor its personnel have been convicted of a felony.

J. **Conflicts of Interest.** Contractor agrees not to accept any employment or representation during the term of the Contract or within twelve (12) months after acceptance that is or may likely make Contractor "financially interested," as provided in Government Code Section 1090 and 87100, in any decisions made by City on any matter in connection with which Contractor has been retained pursuant to the Contract.

K. **Independent Contractor.** Contractor is and shall at all times remain, as to the City, a wholly independent contractor. Neither the City nor any of its employees or agents shall have control over the conduct of Contractor or any of the Contractor's employees, except as herein set forth, and Contractor is free to dispose of all portions of its time and activities which it is not obligated to devote to the City in such a manner and to such persons, firms, or corporations at the Contractor wishes except as expressly provided in this Contract. Contractor shall have no power to incur any debt, obligation, or liability on behalf of the City, bind the City in any manner, or otherwise act on behalf of the City as an agent. Contractor shall not, at any time or in any manner, represent that it or any of its agents, servants or employees are in any manner agents, servants or employees of City. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Contract, and to indemnify and hold the City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent contractor relationship created by this Contract. The City shall have the right to offset against

the amount of any compensation due to Contractor under this Contract any amount due to the City from Contractor as a result of its failure to promptly pay to the City any reimbursement or indemnification arising under this Section.

L. **Construction.** In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Contract or any incorporated documents shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted the entirety or a portion of the Contract or incorporated document.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

EXECUTED the \_\_\_\_ day of \_\_\_\_\_ 20 \_\_, at Beverly Hills, California.

CITY OF BEVERLY HILLS  
A Municipal Corporation

\_\_\_\_\_  
JOHN A. MIRISCH  
Mayor of the City of Beverly Hills, California

ATTEST:

\_\_\_\_\_(SEAL)  
BYRON POPE  
City Clerk

CONTRACTOR: KRB Construction, Inc.

Karl R Brook  
KARL BROOK  
Principal

[Signatures continue]

APPROVED AS TO FORM:



DAVID M. SNOW  
Interim City Attorney

APPROVED AS TO CONTENT:

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MAHDI ALUZRI  
City Manager



GEORGE CHAVEZ  
Assistant City Manager/Director of Public  
Works Services



KARL KIRKMAN  
Risk Manager

## APPENDIX A

### PAYMENT PROCEDURES

#### **1.0 PROGRESS PAYMENTS**

1.1 Based upon Applications for Payment submitted to the City, the City shall make progress payments to the Contractor based on the cost of each project as provided below. Such payments shall not exceed the Contract Amount as set forth on the Cover Page of the Agreement.

1.2 City shall make payment to the Contractor within thirty (30) days after receipt of a proper Application for Payment.

1.3 Each Application for Payment shall be based upon the approved Schedule of Values submitted by the Contractor. The Schedule of Values shall allocate the entire Contract Amount among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as may be required.

1.4 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for payment.

1.5 The amount of each progress payment shall be computed as follows:

1.5.1 Take that portion of the price for each project properly allocable to completed and satisfactory work as determined by multiplying the percentage completion of each portion of the work by the share of the total project cost allocated to that portion of the work in the Schedule of Values, less a retention of five percent (5%).

1.5.2 Add that portion of the project cost properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the City, suitably stored off the site at a location agreed upon in writing), less a retention of five percent (5%).

1.5.3 Subtract the aggregate of previous payments made by the City.

1.6 Pursuant to Section 22300 of the Public Contract Code, at the request and expense of the Contractor, securities equivalent to the retention amount withheld may be deposited with the City or with a state or federally chartered bank as the escrow agent, and City shall then pay such moneys to the Contractor. Alternatively, the Contractor may request and the City shall make payment of retentions earned directly to the escrow agent at the expense of the Contractor. If Contractor elects one of these options, Contractor shall execute an escrow agreement in a form approved by the City Attorney.

1.7 Reduction or limitation of retention, if any, shall be upon written request by the Contractor. The City, at its discretion, may reduce the total retention withheld or release retention for a specific item of work in accordance with the law.

## **2.0 FINAL PAYMENT**

2.1 The final payments, constituting the unpaid balances of each project, including the retention, shall be made by the City to the Contractor when (1) the project has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming work as agreed to between the City and the Contractor; and (2) a final Certificate for Payment has been submitted by the Contractor and approved by the City; and (3) the Work has been accepted by the City in writing; and (4) a Notice of Completion has been filed, if appropriate. Final payment shall be made by the City not more than forty (40) days after completion of the above, but only to the extent that no stop payment notices or other requirements to withhold funds are then in effect.

## **APPENDIX B**

### **Scope of Work**

CONTRACTOR shall perform the following services:

At the direction of CITY, CONTRACTOR shall provide all materials, necessary equipment and labor to perform as-needed construction services relating to the repair of various CITY facilities. Upon CITY's request, CONTRACTOR shall submit a written proposal, which shall contain the proposed scope of work, performance schedule and price for such work. CITY shall determine the commencement and termination dates for each project upon written acceptance of CONTRACTOR's proposal. CONTRACTOR guarantees that the work shall be performed in accordance with the Scope of Work, specified herein in accordance with all relevant Codes and Regulations and to CITY's full satisfaction.

**APPENDIX C**  
**PAYMENT BOND**

**KNOW ALL PERSONS BY THESE PRESENTS that:**

WHEREAS, the City of Beverly Hills, California, hereinafter "City", has awarded to

\_\_\_\_\_ [Name of Contractor] hereinafter designated as "Principal," a Contract for  
\_\_\_\_\_ within the City;

WHEREAS, said Principal is required under the terms of the Contract, which is incorporated herein, and the California Civil Code, to file a good and sufficient payment bond with the City to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code;

NOW, THEREFORE, we, the undersigned Principal, and \_\_\_\_\_  
("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are held firmly bound unto the City and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Contract and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the penal sum of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_),  
for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

FURTHER the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the Contract Documents, or of the work to be performed thereunder, shall in any way affect the obligations of this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract Documents or to the work or specifications thereunder. Surety hereby waives notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by the Principal and Surety named herein, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

DATE: \_\_\_\_\_

"PRINCIPAL"

"SURETY"

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
Its

BY: \_\_\_\_\_  
Its

BY: \_\_\_\_\_  
Its

BY: \_\_\_\_\_  
Its

{ SEAL }

{ SEAL }

**NOTE: THIS BOND MUST BE EXECUTED IN TRIPLICATE AND DATED. ALL SIGNATURES MUST BE NOTARIZED, AND EVIDENCE OF THE AUTHORITY OF ANY PERSON SIGNING AS ATTORNEY-IN-FACT MUST BE ATTACHED.**

**APPENDIX D**

**CERTIFICATE OF INSURANCE**  
(PUBLIC LIABILITY)

This is to certify that the following endorsement is part of the policy(ies) described below:

Named Insured (Contractor)

M. Companies Affording Coverage

A.

Address

B.

C.

| Policy Number | Company A,B,C | Coverage   | Expiration Date | B.I. | Limits P.D. | Aggregate |
|---------------|---------------|--|-----------------|------|-------------|-----------|
|               |               | <input type="checkbox"/> Automobile Liability          |                 |      |             |           |
|               |               | <input type="checkbox"/> General Liability             |                 |      |             |           |
|               |               | <input type="checkbox"/> Products/Completed Operations |                 |      |             |           |
|               |               | <input type="checkbox"/> Blanket Contractual           |                 |      |             |           |
|               |               | <input type="checkbox"/> Contractor's Protective       |                 |      |             |           |
|               |               | <input type="checkbox"/> Personal injury               |                 |      |             |           |
|               |               | <input type="checkbox"/> Other                         |                 |      |             |           |
|               |               | <input type="checkbox"/> Excess Liability              |                 |      |             |           |
|               |               | <input type="checkbox"/> Workers' Compensation         |                 |      |             |           |

N. It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as a joint and several assureds with respect to claims arising out of the following project: \_\_\_\_\_

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all cost and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents, or others employed by contractor while engaged by contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right on contribution with insurance which may be available to City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days' written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, condition of any contract or other document with respect to which this certification or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE \_\_\_\_\_

BY \_\_\_\_\_

AUTHORIZED INSURANCE  
REPRESENTATIVE

AGENCY \_\_\_\_\_

TITLE \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

ADDRESS \_\_\_\_\_  
\_\_\_\_\_

**APPENDIX E**

**CERTIFICATE OF INSURANCE**

(Workers' Compensation)

WHEREAS, the City of Beverly Hills has requires certain insurance to be provided by:

\_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, the undersigned insurance company does hereby certify that it has issued the policy or policies described below to the following named insureds and that the same are in force at this time.

- 1. This certificate is issued to: City of Beverly Hills, City Hall, 455 North Rexford Drive, Beverly Hills, California.
- 2. The insureds under such policy or policies are:

\_\_\_\_\_  
\_\_\_\_\_

- 3. Workers' Compensation Policy or Policies in a form approved by the Insurance Commissioner of California covering all operations of the named insureds, as follows:

| <u>POLICY NUMBER</u> | <u>EFFECTIVE DATE</u> | <u>EXPIRATION DATE</u> |
|----------------------|-----------------------|------------------------|
| _____                | _____                 | _____                  |
| _____                | _____                 | _____                  |
| _____                | _____                 | _____                  |

- 3. Said policy or policies shall not be canceled, nor shall there be any reduction in coverage or limits of liability, unless and until thirty days written notice thereof has been served upon the City Clerk of the City of Beverly Hills.

\_\_\_\_\_  
By \_\_\_\_\_  
Its Authorized Representative

Approved as to form:

\_\_\_\_\_ 20 \_\_\_\_

By: \_\_\_\_\_  
LAURENCE S. WIENER, City Attorney

## APPENDIX F

### STATEMENT ACKNOWLEDGING OBLIGATION TO COMPLY WITH CALIFORNIA LABOR LAW

I, the undersigned Contractor, certify that I am aware of and will fully comply with the following provisions of California law:

Contractor acknowledges that the Work as defined in this Contract between Contractor and the City, to which this document is attached and incorporated by reference, is a "public work" as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code ("Chapter 1"), and that this Contract is subject to (a) Chapter 1, including without limitation Labor Code Section 1771 and (b) the rules and regulations established by the Director of Industrial Relations ("DIR") implementing such statutes. Contractor shall perform the entire Work as a public work. Contractor shall comply with and be bound by all the terms, rules and regulations described in parts (a) and (b) as though set forth in full herein. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 above.

Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Contract are on file at the office of the City Engineer at City Hall and will be made available to any interested party on request. Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Contractor shall post such rates at each job site covered by this Contract.

Contractor agrees to comply with the provisions of California Labor Code Section 1773.8 which require the payment of travel and subsistence payments to each worker needed to execute the Work, to the extent required by law.

Contractor agrees to comply with the provisions of California Labor Code Section 1774 and 1775 concerning the payment of prevailing wages to workers and the penalties for failure to do so. Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day or portion thereof, for each worker paid less than the prevailing rates, as determined by the Director of Industrial Relations, for the work or craft in which the worker is employed for any public work done under the Contract by Contractor or any subcontractor.

Contractor agrees to comply with the provisions of California Labor Code Section 1776, which require Contractor and each subcontractor to (1) keep accurate payroll records, (2) certify and make those payroll records available for inspection as provided by Section 1776, and (3) inform the City of the location of the records. Contractor is responsible for compliance with Section 1776, by itself and all of its subcontractors.

Contractor agrees to comply with the provisions of California Labor Code Section 1777.5, 1777.6 and 1777.7 and California Administrative Code title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Contract, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Contract, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Contract.

Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor agrees to comply with and be bound by Labor Code Section 1810. Contractor agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. Contractor shall, as a penalty to the Agency, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the Contract by Contractor or by any subcontractor for each calendar day during which such worker was required or permitted to work more than 8 hours in any one calendar day or 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code. Pursuant to Labor Code Section 1815, work performed by employees of Contractor in excess of 8 hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

California Labor Code Sections 1860 and 3700, provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

For every subcontractor who will perform labor on or otherwise participate in the Work, Contractor shall be responsible for such subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Contractor shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any failure.

To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend (at Contractor's expense with counsel reasonably acceptable to the City) the City, its officials, officers, employees, agents and independent contractors serving in the role of City officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Contractor, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Contract, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of Contractor under this Section shall survive termination of the Contract.

Date: 3-21-16 Signature: Karl R Brook

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

**APPENDIX G: DESIGNATION OF SUBCONTRACTORS**  
**[Public Contract Code 4104]**

List all Subcontractors doing work in an amount in excess of 0.5% of the Contractor's total Bid or, in the case of Bids or offers for the construction of Streets or highways (including bridges), in excess of 0.5% of the Contractor's total Bid or \$10,000, whichever is greater. If all Subcontractors do not fit on this page, attach another page listing all information for all other Subcontractors.

| Name under which Subcontractor is Licensed | California Contractor's License Number(s) & Class(es) | Address & Phone Number | Type of Work (e.g., Electrical) |
|--|---|------------------------|---------------------------------|
|  |   |                        |                                 |
|  |   |                        |                                 |
|  |   |                        |                                 |
|  |   |                        |                                 |
|  |   |                        |                                 |