

## **CITY OF HERMOSA BEACH CONSTRUCTION AGREEMENT**

This Construction Agreement ("Agreement") is made and entered into as of the date executed by the Mayor and attested to by the City Clerk, by and between United Storm Water, Inc. (hereinafter referred to as "CONTRACTOR") and the City of Hermosa Beach, California, a municipal corporation (hereinafter referred to as "CITY").

### **R E C I T A L S**

- A. CONTRACTOR submitted the lowest responsible bid and was awarded a contract by the City of Ranchos Palos Verdes for the installation of connector pipe screen (CPS) units citywide; and
- B. CONTRACTOR has agreed to extend the same unit pricing to Hermosa Beach for the same work; and
- C. On July 28, 2020, City's City Council determined that formal bidding of the project was not in the public interest because it would not yield a better price than the price being proposed by CONTRACTOR following its recent award of contract in Rancho Palos Verdes, because CONTRACTOR has a proven track record having performed identical work for Hermosa Beach in 2019, and because no other purpose served by formal bidding would be advanced by engaging in the formal bid process;
- D. The City Council determined to waive the formal bidding process and authorized the Mayor to execute a written contract with CONTRACTOR for furnishing labor, equipment and material for the project to install 192 CPS Units in the City of Hermosa Beach

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, it is agreed:

- 1. GENERAL SCOPE OF WORK: CITY agrees to engage CONTRACTOR and CONTRACTOR agrees to furnish all necessary labor, tools, materials, appliances, and equipment for and do the work for the CIP Project No. 419, Storm Drain Pipe Screens, in the City of Hermosa Beach. The work shall be performed in accordance with the Plans and Specifications, (the "Specifications") on file in the office of the City Clerk and in accordance with bid prices set forth in CONTRACTOR'S Bid Proposal and in accordance with the instructions of the City Engineer.
- 2. INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY: The contract documents for the aforesaid project shall consist of the Notice Inviting Bids, Instructions to Bidders, Bid Proposal, Builders General Provisions, Standard Specifications, Special Provisions, Exhibit A and Exhibit B, and all referenced specifications, details, standard drawings, and appendices; together with this Agreement and all required bonds, insurance certificates, permits, notices and affidavits; and also, including any and all addenda or supplemental agreements clarifying, amending, or extending the work contemplated as may be required to insure its completion in an acceptable manner. All of the provisions of said contract documents are made a part hereof as though fully set forth herein. This contract is intended to require a complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by

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CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written agreement, the provisions of this Agreement, the Builders General Provisions and the Standard Specifications, in that order, shall control. Collectively, these contract documents constitute the complete agreement between CITY and CONTRACTOR and supersede any previous agreements or understandings.

COMPENSATION: CONTRACTOR agrees to receive and accept the prices set forth in its Proposal (Eighty-Eight Thousand Five Hundred Sixty-Three Dollars; \$88,563) as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance including those for well and faithfully completing the work and the whole thereof in the manner and time specified in the aforesaid contract documents; and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work.

3. TIME OF PERFORMANCE: CONTRACTOR agrees to complete the work within Thirsty (30) working days from the date of the notice to proceed. By signing this Agreement, CONTRACTOR represents to CITY that the contract time is reasonable for completion of the work and that CONTRACTOR will complete such work within the contract time.

4. PREVAILING WAGES AND CALIFORNIA LABOR LAWS.

A. Pursuant to Labor Code §§ 1720 *et seq.*, and as specified in 8 California Code of Regulations § 16000 (“Prevailing Wage Laws”), CONTRACTOR must pay its workers prevailing wages. It is CONTRACTOR’s responsibility to interpret and implement any prevailing wage requirements, and CONTRACTOR agrees to pay any penalty or civil damages resulting from a violation of the prevailing wage laws. CONTRACTOR shall defend, indemnify and hold the CITY, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. CONTRACTOR and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

B. In accordance with Labor Code § 1773.2, copies of the prevailing rate of per diem wages are available upon request from CITY’s Engineering Division or the website for State of California Prevailing wage determination at <http://www.dir.ca.gov/DLSR/PWD>. CONTRACTOR must post a copy of the prevailing rate of per diem wages at the job site.

C. CITY directs CONTRACTOR’s attention to Labor Code §§ 1777.5, 1777.6 and 3098 concerning the employment of apprentices by CONTRACTOR or any subcontractor.

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- D. Labor Code § 1777.5 requires CONTRACTOR or subcontractor employing tradesmen in any apprenticeship occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate must also fix the ratio of apprentices to journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases will not be less than one to five except:
- i. When employment in the area of coverage by the joint apprenticeship committee has exceeded an average of 15 percent in the 90 days before the request for certificate, or
  - ii. When the number of apprentices in training in the area exceeds a ratio of one to five, or
  - iii. When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally, or
  - iv. Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.
  - v. When CONTRACTOR provides evidence that CONTRACTOR employs registered apprentices on all of his contracts on an annual average of not less than one apprentice to eight journeymen.
  - vi. CONTRACTOR is required to make contributions to funds established for the administration of apprenticeship programs if CONTRACTOR employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.
  - vii. CONTRACTOR and any subcontractor must comply with Labor Code §§ 1777.5 and 1777.6 in the employment of apprentices.
  - viii. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
  - ix. The CONTRACTOR or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

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- E. CONTRACTOR and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of CONTRACTOR in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, CONTRACTOR shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such CONTRACTOR must comply with this section. Should noncompliance still be evident after such 10-day period, CONTRACTOR shall, as a penalty to CITY, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on CONTRACTOR. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.
- F. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.
- G. By executing this Contract, CONTRACTOR verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors and sub-subcontractors to comply with the same.
5. LEGAL HOURS OF WORK: Eight (8) hours of labor shall constitute a legal day's work for all workmen employed in the execution of this contract, and CONTRACTOR and any subcontractor under it shall comply with and be governed by the laws of the State of California having to do with working hours set forth in Division 2, Part 7, Chapter 1, Article 3 of the Labor Code of the State of California as amended.

CONTRACTOR shall forfeit, as a penalty to City, twenty-five dollars (\$25.00) for each laborer, workman or mechanic employed in the execution of the contract, by him or any subcontractor under it, upon any of the work hereinbefore mentioned, for each calendar day during which the laborer, worker or mechanic is required or permitted to labor more than eight (8) hours in any one calendar day or 40 hours in any one calendar week in violation of the Labor Code.

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6. **PUBLIC WORKS CONTRACTOR REGISTRATION:** Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations (DIR). No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the DIR to perform public work. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.
7. **LABOR COMPLIANCE AND STOP ORDERS:** This Project is subject to compliance monitoring and enforcement by the DIR. It shall be CONTRACTOR's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the DIR against CONTRACTOR or any subcontractor that affect CONTRACTOR's performance of Work, including any delay, shall be CONTRACTOR's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered CONTRACTOR caused delay subject to any applicable liquidated damages and shall not be compensable by the CITY. CONTRACTOR shall defend, indemnify and hold CITY, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against CONTRACTOR or any subcontractor.
8. **TRAVEL AND SUBSISTENCE PAY:** CONTRACTOR agrees to pay travel and subsistence pay to each worker needed to execute the work required by this Agreement as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.
9. **CONTRACTOR'S LIABILITY:** The City of Hermosa Beach and its officers, agents and employees ("Indemnitees") shall not be answerable or accountable in any manner for any loss or damage that may happen to the work or any part thereof, or for any of the materials or other things used or employed in performing the work; or for injury or damage to any person or persons, either workers or employees of CONTRACTOR, of its subcontractors or the public, or for damage to adjoining or other property from any cause whatsoever arising out of or in connection with the performance of the work. CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever.

To the fullest extent permitted by law, CONTRACTOR will indemnify Indemnitees against and will hold and save Indemnitees harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of CONTRACTOR, its agents, employees, subcontractors or invitees provided for herein, whether or not there is concurrent passive negligence on the part of City. In connection therewith:

- a. CONTRACTOR will defend any action or actions filed in connection with any such claims, damages, penalties, obligations or liabilities and will pay all costs and expenses, including attorneys' fees, expert fees and costs incurred in connection therewith.

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- b. CONTRACTOR will promptly pay any judgment rendered against CONTRACTOR or Indemnitees covering such claims, damages, penalties, obligations and liabilities arising out of or in connection with such work, operations or activities of CONTRACTOR hereunder, and CONTRACTOR agrees to save and hold the Indemnitees harmless therefrom.
- c. In the event Indemnitees are made a party to any action or proceeding filed or prosecuted against CONTRACTOR for damages or other claims arising out of or in connection with the work, operation or activities hereunder, CONTRACTOR agrees to pay to Indemnitees and any all costs and expenses incurred by Indemnitees in such action or proceeding together with reasonable attorneys' fees.

Contractor's obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this agreement, to the extent required by Civil Code section 2782, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

So much of the money due to CONTRACTOR under and by virtue of the contract as shall be considered necessary by City may be retained by City until disposition has been made of such actions or claims for damages as aforesaid.

It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies which Indemnitees may have under the law.

This indemnity is effective without reference to the existence or applicability of any insurance coverage which may have been required under this Agreement or any additional insured endorsements which may extend to Indemnitees.

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, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the CONTRACTOR regardless of any prior, concurrent, or subsequent passive negligence by the Indemnitees.

- 10. THIRD PARTY CLAIMS. In accordance with Public Contract Code § 9201, CITY will promptly inform CONTRACTOR regarding third-party claims against CONTRACTOR,

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but in no event later than ten (10) business days after CITY receives such claims. Such notification will be in writing and forwarded in accordance with the "Notice" section of this Agreement. As more specifically detailed in the contract documents, CONTRACTOR agrees to indemnify and defend the City against any third-party claim.

11. WORKERS COMPENSATION: In accordance with California Labor Code Sections 1860 and 3700, CONTRACTOR and each of its subcontractors will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, CONTRACTOR, by signing this contract, 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.
12. INSURANCE: With respect to performance of work under this contract, CONTRACTOR shall maintain and shall require all of its subcontractors to maintain insurance as required in the Builders General Provisions.
13. ASSIGNMENT: This contract is not assignable nor the performance of either party's duties delegable without the prior written consent of the other party. Any attempted or purported assignment or delegation of any of the rights or obligations of either party without the prior written consent of the other shall be void and of no force and effect.
13. 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 agents shall have control of the conduct of CONTRACTOR or any of CONTRACTOR'S employees, except as herein set forth. CONTRACTOR shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of CITY.
14. TAXES: CONTRACTOR is responsible for paying all retail sales and use, transportation, export, import, special or other taxes and duties applicable to, and assessable against any work, materials, equipment, services, processes and operations incidental to or involved in this contract. CONTRACTOR is responsible for ascertaining and arranging to pay them. The prices established in the contract shall include compensation for any taxes CONTRACTOR is required to pay by laws and regulations in effect at the bid opening date.
15. LICENSES: CONTRACTOR represents and warrants to CITY that it has all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required of CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to CITY that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance, and approvals which are legally required of CONTRACTOR to practice its profession. CONTRACTOR shall maintain a City of Hermosa Beach business license, if required under CITY ordinance.

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Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

16. RECORDS: CONTRACTOR shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by CITY or any authorized representative, and will be retained for four years after the expiration of this Agreement. All such records shall be made available for inspection or audit by CITY at any time during regular business hours.
17. SEVERABILITY. If any portion of these contract documents are declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.
18. WHOLE AGREEMENT: This Agreement supersedes any and all other agreements either oral or written, between the parties and contains all of the covenants and agreements between the parties pertaining to the work of improvements described herein. Each party to this contract acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement, statements or promise not contained in this contract shall not be valid or binding. Any modifications of this contract will be effective only if signed by the party to be charged.
17. AUTHORITY: CONTRACTOR affirms that the signatures, titles, and seals set forth hereinafter in execution of this Agreement represent all individuals, firm members, partners, joint ventures, and/or corporate officers having a principal interest herein. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party. This Agreement may be modified by written amendment. CITY's city manager may execute any such amendment on CITY's behalf.
18. NOTICES: All notices permitted or required under this Agreement shall be in writing, and shall be deemed made when delivered to the applicable party's representative as provided in this Agreement. Additionally, such notices may be given to the respective parties at the following addresses, or at such other addresses as the parties may provide in writing for this purpose.

Such notices shall be deemed made when personally delivered or when mailed forty-eight (48) hours after deposit in the U.S. mail, first-class postage prepaid, and addressed to the party at its applicable address.



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1315 Valley Drive  
Hermosa Beach, CA 90254  
Attention: Romany Basilyous, Project Supervisor

**CONTRACTOR:**

United Storm Water, Inc.  
14000 E. Valley Blvd.  
City of Industry, CA, 91746  
Attention: Ramon Menjivar

- 19 DISPUTES. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

Claims. For purposes of this Section, "Claim" means a separate demand by CONTRACTOR, after a change order duly requested in accordance with the terms of this Contract has been denied by the CITY, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of CONTRACTOR pursuant to the Contract, or (C) an amount the payment of which is disputed by the CITY. A "Claim" does not include any demand for payment for which CONTRACTOR has failed to provide notice, request a change order, or otherwise failed to follow any procedures contained in the Contract Documents. Claims governed by this Section may not be filed unless and until CONTRACTOR completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and CONTRACTOR's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than fourteen (14) days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the CITY and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

Supporting Documentation. The CONTRACTOR shall submit all claims in the following format:

Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

List of documents relating to claim:

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Specifications  
Drawings  
Clarifications (Requests for Information)  
Schedules  
Other

Chronology of events and correspondence  
Analysis of claim merit  
Analysis of claim cost  
Time impact analysis in CPM format

If CONTRACTOR's claim is based in whole or in part on an allegation of errors or omissions in the Drawings or Specifications for the Project, CONTRACTOR shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.

Cover letter and certification of validity of the claim, including any claims from subcontractors of any tier, in accordance with Government Code section 12650 *et seq.*

City's Response. Upon receipt of a claim pursuant to this Section, CITY shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide CONTRACTOR a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the public entity issues its written statement.

If CITY needs approval from its governing body to provide the CONTRACTOR a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, CITY shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide CONTRACTOR a written statement identifying the disputed portion and the undisputed portion.

Within 30 days of receipt of a claim, CITY may request in writing additional documentation supporting the claim or relating to defenses or claims CITY may have against the CONTRACTOR. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of CITY and the CONTRACTOR.

CITY's written response to the claim, as further documented, shall be submitted to CONTRACTOR within 30 days (if the claim is less than \$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by CONTRACTOR in producing the additional information or requested documentation, whichever is greater.

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Meet and Confer. If the CONTRACTOR disputes CITY's written response, or CITY fails to respond within the time prescribed, the CONTRACTOR may so notify CITY, in writing, either within 15 days of receipt of CITY's response or within 15 days of CITY's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, CITY shall schedule a meet and confer conference within 30 days for settlement of the dispute.

Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, CITY shall provide the CONTRACTOR a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after CITY issues its written statement. Any disputed portion of the claim, as identified by CONTRACTOR in writing, shall be submitted to nonbinding mediation, with CITY and CONTRACTOR sharing the associated costs equally. CITY and CONTRACTOR shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the Parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

Unless otherwise agreed to by CITY and CONTRACTOR in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

The mediation shall be held no earlier than the date CONTRACTOR completes the Work or the date that CONTRACTOR last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

Procedures After Mediation. If following the mediation, the claim or any portion remains in dispute, CONTRACTOR must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time CONTRACTOR submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation.

Civil Actions. The following procedures are established for all civil actions filed to resolve claims subject to this Section:

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Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of these procedures.. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

Government Code Claims. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, CONTRACTOR must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the CITY. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by CONTRACTOR. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, CONTRACTOR shall be barred from bringing and maintaining a valid lawsuit against the CITY. A Government Code claim must be filed no earlier than the date the work is completed or the date CONTRACTOR last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

Non-Waiver. CITY's failure to respond to a claim from CONTRACTOR within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the claim being deemed rejected in its entirety. CITY's failure to respond shall not waive CITY's rights to any subsequent procedures for the resolution of disputed claims.

- 20 NON-DISCRIMINATION: Contractor represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. A violation of this

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section exposes CONTRACTOR to the penalties provided for in Labor Code Section 1735.

- 21 **TERMINATION:** This Contract may be terminated by CITY at any time, either with or without cause, by giving CONTRACTOR three (3) days advance written notice. In the event of termination by CITY for any reason other than the fault of CONTRACTOR, CITY shall pay CONTRACTOR for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, CITY may terminate the Contract immediately without notice, may reduce payment to CONTRACTOR in the amount necessary to offset CITY's resulting damages, and may pursue any other available recourse against CONTRACTOR. CONTRACTOR may not terminate this Contract except for cause. In the event this Contract is terminated in whole or in part as provided, CITY may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, CITY may require CONTRACTOR to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by CONTRACTOR in connection with its performance of this Contract
- 22 **ANTI-TRUST CLAIMS:** This provision shall be operative if this Contract Agreement is applicable to California Public Contract Code Section 7103.5. In entering into this Contract Agreement to supply goods, services or materials, Contractor hereby offers and agrees to assign to the Agency 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. Section 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 the Contract Agreement. This assignment shall be made and become effective at the time the Agency tender final payment to Contractor, without further acknowledgment by the Parties.
- 23 **NO THIRD PARTY BENEFICIARY.** This Contract and every provision herein is for the exclusive benefit of the Contractor and the City and not for the benefit of any other party. There will be no incidental or other beneficiaries of any of the Contractor's or the City's obligations under this Contract.
- 24 **TIME IS OF ESSENCE.** Time is of the essence for each and every provision of the Contract Documents.
- 25 **FORCE MAJEURE.** If CONTRACTOR is delayed in the performance or progress of the work by a Force Majeure Event, then the CONTRACTOR shall be entitled to a time extension, as provided in the contract documents, when the work stopped is on the critical path and shall not be charged liquidated damages. Such a non-compensable adjustment shall be CONTRACTOR's sole and exclusive remedy for such delays and the CONTRACTOR will not receive an adjustment to the contract price or any other compensation. Contractor must submit a timely request in accordance with the requirements of the contract documents. A Force Majeure Event shall mean an event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the project site; (2) terrorism or other acts of a

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public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the work); (4) pandemics, epidemics or quarantine restrictions; and (5) strikes and other organized labor action occurring at the project site and the effects thereof on the work, only to the extent such strikes and other organized labor action are beyond the control of CONTRACTOR and its subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of replacement workers. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority.

- 26 ACCEPTANCE OF FACSIMILE SIGNATURES. The Parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature will be treated in all respects as having the same effect as an original signature.
- 27 GOVERNING LAW: This Agreement shall be governed by the laws of the State of California, and exclusive venue for any action involving this Contract will be in Los Angeles County.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement with all the formalities required by law on the respective dates set forth opposite their signatures.

State of California CONTRACTOR'S License No. \_\_\_\_\_

CONTRACTOR

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

\_\_\_\_\_  
Date By: \_\_\_\_\_  
TITLE

CITY OF HERMOSA BEACH, CALIFORNIA

\_\_\_\_\_  
Date By: \_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
Date By: \_\_\_\_\_  
CITY CLERK

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CONTRACTOR'S Business Phone \_\_\_\_\_

Emergency Phone at which CONTRACTOR can be reached at any time: (\_\_\_\_) \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
Date