

CONTRACT DOCUMENTS TO BE EXECUTED
BY THE
SUCCESSFUL BIDDER
FOLLOWING AWARD OF CONTRACT

**CONSTRUCTION CONTRACT BETWEEN THE CITY OF DEL MAR
AND [NAME OF CONTRACTOR]
FOR SAN DIEGUITO DRIVE IMPROVEMENTS PROJECT**

This Construction Contract ("Contract") is made and entered into by and between the **City of Del Mar**, a municipal corporation, hereinafter referred to as the "City," and **[Name of Contractor]** hereinafter referred to as the "Contractor" (collectively "Parties").

RECITALS

WHEREAS, the City requires a general contractor to construct a Public Works project generally described as the **San Dieguito Drive Improvements Project** hereinafter referred to as the "Project."

WHEREAS, the Contractor represents itself as possessing the necessary skills and qualifications to construct the Project required by the City and possesses the required contractor's license of the appropriate classifications.

NOW THEREFORE, in consideration of these recitals and the mutual covenants contained herein, and in consideration of the payments and agreements hereinafter mentioned, the Parties agree as follows:

1. CONTRACTOR'S OBLIGATIONS.

- 1.1 Contractor shall perform the scope of work shown in the **Attachment A** hereinafter referred to as the "Work", as such term is defined by the Standard Specifications for Public Works Construction, latest version (GREENBOOK).
- 1.2 The Contractor agrees, at the Contractor's own proper cost and expense, to do all the Work and furnish all the materials, except such as are mentioned in the specifications to be furnished by the City, necessary to construct and complete the Work in a good, workmanlike and substantial manner and to the satisfaction of the City.
- 1.3 Said Work shall be performed in accordance with the Contract Specifications, Drawings, and Provisions annexed hereto; and in connection with the Reference Standards below:

Standard	Edition
Standard Specifications for Public Works Construction ("The GREENBOOK")	2021
San Diego Regional Standard Drawings	2025

- 1.4 The Contractor shall maintain throughout the full term of this Contract all professional certifications and licenses required in order to comply with all City, State, and Federal laws in the performance of this Contract.
- 1.5 The Contractor shall pay wages to the Contractor's employees according to the current "General Prevailing Wage Rates" issued by the Department of Industrial Relations of the State of California. Pursuant to provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contractor, from Director of the Department of Industrial Relations. These rates are available online with the California Department of Industrial Relations (www.dir.ca.gov). The Contractor shall post a copy of such rates at the job site and shall pay the adopted prevailing wage rates as a minimum. The Contractor shall

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comply with the provisions of Sections 1725.5, 1771, 1773.8, 1774, 1775, 1776, 1777.5, 1777.6, 1813, and 1815 of the Labor Code.

- 1.6 The Contractor shall register with the Department of Industrial Relations (DIR) in accordance with California Labor Code sections 1771.1 and 1725.5 and the Contractor shall be subject to compliance monitoring and enforcement by DIR in accordance with California Labor Code section 1771.4.
- 1.7 Pursuant to and subject to the provisions of Section 1775 of the Labor Code, Contractor shall forfeit to City, as a penalty, the sum of up to two-hundred dollars (\$200) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any Work done under this Contract, by it or by any subcontractor under it, in violation of the provisions of the Contract.

2. SECURITY FOR CONTRACTOR'S PROMISE TO PERFORM.

- 2.1 For contracts above \$25,000, the Contractor shall post and maintain during the full term of this Contract security for Contractor's promise to perform this Contract in the following forms and amounts:
 - A. The amount of the performance security shall be 100% of bid amount.
 - B. The form of the security shall be one of the following:
 - 1. Cash;
 - 2. Cashier's check made payable to the City;
 - 3. A certified check made payable to the City;
 - 4. A bond, executed by an approved surety insurer using the Performance Bond form found herein or a substitute form acceptable to and approved by the City, made payable to the City; or
 - 5. The Contractor may elect to deposit securities of a value equivalent to the amount of the performance security in accordance with the provisions of section 22300 of the Public Contract Code. The City will make the final determination as to the value of the posted securities.
- 2.2 The City shall retain five percent (5%) of each payment due the Contractor under this Contract until completion and acceptance of the Project. The Contractor may elect to deposit securities of a value equivalent to the retention in accordance with the provisions of Section 22300 of the Public Contract Code and thereby become entitled to receive one hundred percent (100%) of the payments, without retention. The City will make the final determination as to the value of the posted securities. The amount of retention withheld may be reduced, or a portion of withheld retention may be returned, at the sole discretion of the City.
- 2.3 For contract amounts above \$25,000, the Contractor shall file a payment bond using the Payment Bond form found herein or a substitute form acceptable to and approved by the City, in the amount of 100% of bid amount, with and subject to the approval of the Director of Public Works in accordance with Civil Code section 3247.

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3. CONTRACT AMOUNT AND SCHEDULE.

- 3.1 The City agrees to pay and the Contractor agrees to receive and accept the prices set forth in the Bid Schedule attached hereto as **Attachment B** and incorporated by reference 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.
- 3.2 Contractor agrees to complete the Work on San Dieguito Drive Improvements Project in a time period not to exceed **ONE HUNDRED AND TWELVE (112)** calendar days per Section 6-3 of the Standard Specifications for Public Works Construction (GREENBOOK), commencing upon the date stated in the Notice To Proceed issued by the City. Construction shall not commence until the City has approved bonds and insurance.

4. TERMINATION OF CONTRACT.

In the event of the Contractor's failure to prosecute, deliver, or perform the Work as provided for in this Contract, the City may terminate this Contract by notifying the Contractor by certified mail of said termination.

5. STATUS OF THE CONTRACTOR.

The Contractor shall perform the services provided for herein in a manner of Contractor's own choice, as an independent Contractor and in pursuit of Contractor's independent calling, and not as an employee of the City. Contractor shall be under control of the City only as to the result to be accomplished and the personnel assigned to the project. However, Contractor shall confer with the City as required to perform this Contract.

6. SUBCONTRACTING.

The Contractor's ability to subcontract is limited by and must comply with the Subletting and Subcontracting Fair Practices Act, California Public Contract Code sections 4100 *et seq.* If the Contractor subcontracts any of the Work to be performed under this Contract, the Contractor shall be as fully responsible to the City for the acts and omissions of the Contractor's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in the Contract shall create any contractual relations between any subcontractor of Contractor and the City. The Contractor shall bind every subcontractor by the terms of the Contract applicable to Contractor's Work unless specifically noted to the contrary in the subcontract in question approved in writing by the City.

7. ASSIGNMENT OF CONTRACT.

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The Contractor has no authority or right to assign this Contract or any part thereof or any monies due thereunder to any other party without first obtaining the prior written consent of the City.

8. VERBAL AGREEMENT OR CONVERSATION.

No verbal agreement or conversation with any officer, agent or employee of the City, either before, during or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle the Contractor to any additional payment whatsoever under the terms of this Contract.

9. DISPUTES.

- 9.1 If a dispute should arise regarding the performance of this Contract, the following procedures shall be used to address any question of fact or interpretation not otherwise settled by agreement between the parties. Such questions, if they become identified as part of a dispute between persons operating under the provisions of the Contract, shall be reduced to writing by the complaining party. A copy of such documented dispute shall be forwarded to the other party involved along with recommended methods of resolution which would be of benefit to both parties. The party receiving the letter shall reply to the letter along with a recommended method of resolution within ten (10) days of receipt of the letter.
- 9.2 If the dispute is not resolved, the aggrieved party shall send a letter outlining the dispute to the City to be resolved.
- 9.3 If the dispute remains unresolved and the parties have exhausted the procedures of this section, the parties may then seek remedies available to them at law.
- 9.4 Pursuant to Public Contract Code Sections 20104 and 9204, a claim by the Contractor for a time extension; payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or an amount the payment of which is disputed by the City, shall be dealt with as follows:
 - A. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by the Contract for the filing of claims.
 - B. For all claims, pursuant to Public Contract Code Sections 20104 and 9204:
 1. City shall respond in writing to any written claim within forty-five (45) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the City may have against the claimant. City shall identify the disputed and undisputed portion(s) of the claim in the written response. If City fails to issue a written statement, the claim is rejected in its entirety.
 2. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the claimant.

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3. The City's written response to the claim, as further documented, shall be submitted to the claimant within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.
 4. Pursuant to Public Contract Code section 9204, any payment on any undisputed portion of the claim shall be processed and made within sixty (60) days after the public entity issues its written statement.
- C. If the claimant disputes the City's written response, or the City fails to respond within the time prescribed, the claimant may so notify the City, in writing, either within fifteen (15) days of receipt of the City's response or within fifteen (15) days of the 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 a demand sent by registered or certified mail, the City shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute. Within ten (10) business days after the meet and confer conference, City shall prepare a written statement describing portions of the claim in dispute and the portions of the claim that are disputed. Mediation Prerequisite: If following the meet and conference the claim or any portion remains in dispute, the parties agree that as a condition precedent to the initiation of litigation, the parties shall submit to non-binding mediation. The parties shall mutually agree to a mediator within ten (10) business days after the City's response following the meet and confer conference. The parties shall make reasonable attempts to mediate within thirty (30) days of the meet and confer conference. Mediation shall be subject to the following rules:
1. The mediation process shall be administered by a neutral organization agreed to by the parties and shall be confidential subject to Evidence Code Sections 1115 –1128 and 1152.
 2. The costs for mediation will be shared equally by all parties. The expenses of witnesses shall be paid by the party producing such witnesses.
 3. A single mediator shall be selected to mediate the dispute. At least ten (10) days before a scheduled session, each party shall provide the mediator a brief memorandum setting forth its position about the issues that need to be resolved. The brief shall be mutually exchanged between the parties. At the mediation session, the parties will be expected to produce required information for the mediator to understand and evaluate the issues presented.
 4. The mediation process shall be considered terminated when: (1) in the mediator's judgment, further efforts at mediation would not contribute to a resolution of the dispute between the parties; or, (2) by the execution of Settlement Agreement, which may be used as the basis for change order or other directive as appropriate; or, (3) written declaration of a party that it will no longer participate in further mediation proceedings.
- D. If mediation is unsuccessful, as a prerequisite to filing suit, the 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

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Government Code. For purposes of those provisions, the period of time within which a claim must be filed shall begin from the time the claimant submits his or her written claim pursuant to subsection A until the time the claim is denied, including any period of time utilized by the meet and confer conference.

A civil action filed to resolve a claim subject to Section 9.4 of this Contract shall be subject to the provisions of Public Contract Code Sections 20104.4 and 20104.6.

10. HOLD HARMLESS.

- 10.1 The Contractor agrees to indemnify and hold the City; the City's officers, officials, employees and agents; the Engineer; and the Engineer's officers, officials, employees and agents (together, the "City Indemnified Parties"), harmless from, and against any and all liabilities, claims, demands, causes of action, losses, suit damage, expenses and costs, including all costs of defense, expense costs and investigation expenses thereof, arising out of, or in any manner connected directly or indirectly to the acts, omissions or performance of Work by the Contractor or Contractor's agents, employees, subcontractors, officials, officers or representatives. Upon demand, Contractor shall, at its own expense, defend the City Indemnified Parties from and against any and all such liabilities, claims, demands, causes of action, losses, damages and costs, regardless of whether or not such a claim, loss or liability is caused in part by a party indemnified hereunder.
- 10.2 By inspecting, approving or accepting the improvements, City shall not have waived the protections afforded herein to the City Indemnified Parties or diminished the obligation of Contractor, who shall remain obligated in the same degree to indemnify and hold the City Indemnified Parties harmless as provided above.
- 10.3 Contractor's obligation herein does not extend to liabilities, claims, demands, causes of action, losses, damages or costs that arise out of the City Indemnified Parties' sole active negligence or willful misconduct.

11. RESPONSIBILITY FOR DAMAGE.

- 11.1 The Contractor shall obtain and maintain in full force and effect during the life of the Contract, and for five years thereafter, contractual liability insurance for bodily injury liability and property damage liability assumed by the Contractor of all claims and lawsuits against the Contractor and his/her subcontractors arising out of or in connection with the Work to be performed. Such insurance as is afforded by the policy to the Contractor for Contractual Property Damage Liability Insurance shall include coverage for property damage caused by blasting, collapse, structural injuries or damage to underground utilities. The policy shall not contain the so-called "x" "c" "u" exclusions.
- 11.2.1 **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence with an aggregate of **\$4,000,000**. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

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- 11.2.2 **Automobile Liability:** Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than **\$2,000,000** per accident for bodily injury and property damage.
- 11.2.3 **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- 11.2.4 **Contractors' Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions** (if project involves environmental hazards) with limits no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.
- 11.3 If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- 11.4 Evidence of insurance including Commercial General Liability, Workers' Compensation, and Automobile Liability in compliance with the above requirements shall be furnished to the City by Certificate of Insurance. Such Certificate of Insurance shall be furnished prior to the commencement of Work under the Contract. The insurance policy shall provide that the policy shall remain in force during the life of this Contract and shall not be canceled, terminated, or allowed to expire without thirty (30) days prior written notice to City from the insurance company.
- 11.5 Such insurance shall be issued by a company or companies approved by the City, licensed and listed with "Insurance Organizations Authorized by the Insurance Commissioner to Transact the Business of Insurance in the State of California," and shall have a rating of A- or better.
- 11.6 Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude the City from taking such other actions as is available to it under any other provision of this Contract or otherwise in law.
- 11.7 The Contractor shall arrange for the policies to be so conditioned as to cover the performance of any changes or extra Work which may be required under the Contract.
- 11.8 The costs of this insurance shall be considered as included in the prices paid for the various Contract items of Work and no additional compensation will be allowed, therefore.
- 11.9 The Contractor shall either: (1) require each of its subcontractors to procure and to maintain Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified, or (2) insure the activities of its subcontractors in its own policy in like amount.
- 11.10 The Contractor's policies shall contain an Additional Insured Endorsement naming as additional insured the City and its officers, consultants, agents, volunteers, and employees while on the Project and acting within the scope of their duties. For any claims related to the Project, Contractor's insurance coverage shall be primary and

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non-contributory insurance as respects City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

- 11.11 Prior to commencement of Work under this Contract, the Contractor shall furnish endorsements from each of the insurance companies.
- 11.12 The Contractor shall reimburse the City and the Engineer for all costs and expenses, including attorney's fees, incurred by said City and the Engineer, in enforcing the provisions of Section 11 of this Contract.

12. NOTICES.

Any notices to be given under this Contract, or otherwise, shall be served by certified mail and addressed and delivered as listed below:

City of Del Mar
Attn: City Clerk
1050 Camino del Mar
Del Mar, CA 92014
cityclerk@delmar.ca.us

[INSERT CONTRACTOR]
Attn: _____

13. LIQUIDATED DAMAGES; EXTENSION OF TIME.

In accordance with Government Code Section 53069.85, CONTRACTOR agrees to forfeit and pay to CITY the sum of **two hundred fifty dollars (\$250)** per day for each calendar day completion is delayed beyond the time allowed pursuant to paragraph 3 of this Contract. Such sum shall be deducted from any payments due to or to become due to CONTRACTOR. CONTRACTOR will be granted an extension of time and will not be assessed liquidated damages for unforeseeable delays beyond the control of and without the fault or negligence of CONTRACTOR, including delays caused by CITY. CONTRACTOR is required to promptly notify CITY of any such delay.

14. PERFORMANCE.

The City hereby promises and agrees with the Contractor to employ, and does hereby employ the Contractor to provide the materials and to do the Work according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, and in the manner and upon the conditions hereinafter set forth, and the City and the Contractor for themselves, their heirs, executors, administrators, successors, and assigns, do hereby agree to the full performance of the covenants herein contained.

15. CONTRACT AUTHORITY OVER PROPOSAL.

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the Bid or Proposal of the Contractor, then this instrument shall control, and nothing herein shall be considered as an acceptance of the said terms of said Proposal conflicting herewith.

16. CONTRACT DOCUMENTS.

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The Contract consists of the following documents, all of which are component parts of the Contract as if herein set out in full, or attached hereto:

1. Notice Inviting Bid(s)
2. Information and Instructions for Bidders
3. Proposal
4. Contract
5. Worker's Compensation Certificate
6. Performance Bond
7. Payment Bond
8. Modifications to the Standard Specifications: General Provisions, Construction Materials, Construction Methods, Existing Improvements, Temporary Traffic Control, Landscaping and Irrigation, and Special Provisions
9. Plans & Standard Drawings, Approved Submittals, Exhibits, and Site Photos
10. Addenda and approved Change Orders

All the above-named Contract Documents are intended to be complementary. The Work required by one of the above-named documents and not by others shall be performed as if required by all. Any conflicts in terms or requirements of any of the Contract Documents shall be determined by the order of precedence set forth in the GREENBOOK.

17. ATTACHMENTS.

The following Contract Documents are attached hereto:

- A. Scope of Work
- B. Proposal/Bid Schedule/Schedule of Values
- C. Worker's Compensation Certificate
- D. Performance Bond
- E. Payment Bond

18. NON-DISCRIMINATION.

18.1 Contractor shall ensure that Contractor and its Subcontractors shall not deny the Contracts' benefits to any person on the basis of race, color, religion, ancestry, familial status, national origin, genetic information, ethnic group identification, marital status, age, gender, gender identity, gender expression sex, sexual orientation, source of income, age, medical condition, physical handicap or disability, mental disability, political affiliation, military or veteran status, or position in a labor dispute, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, religion, national origin, ethnic group identification, ancestry, familial status, genetic information, physical handicap or disability, mental disability, medical condition, marital status, age, gender, gender identity, gender expression, sex, sexual orientation, source of income political affiliation, military or veteran status, or position in a labor dispute. The Contractor shall ensure and its Subcontractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

18.2 The Contractor shall ensure that the Contractor and its Subcontractors shall comply with the applicable provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), the regulations promulgated thereunder (Title 2,

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California Code of Regulations, section 7285.0 11000 et seq.) the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.85) and any regulations promulgated thereunder.

18.3 The Contractor shall ensure that the Contractor and its Subcontractors shall not knowingly give preferential treatment of any kind whatsoever in connection with any business transaction related to the Contract to any of its affiliates or to any business enterprise in which the Contractor has any financial interest, but in such business transactions shall deal at all times with such affiliates and enterprises on the same basis as though the Contractor were dealing with any other parties.

18.4 The Contractor shall ensure that the Contractor and its Subcontractors shall, with respect to the Contract, give written notice of their obligations under this section to labor organizations representing employees of the Contractor and any contractor or subcontractor performing work on the Contract which have a collective bargaining or other contract with the Contract, such contractor or subcontractor.

18.5 The Contractor shall ensure that the Contractor and its subcontractors shall include the provisions of this section in all subcontracts to perform work with respect to the Contract.

19. CALIFORNIA LAW; VENUE/MISCELLANEOUS.

This Contract shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Contract shall be brought in the County of San Diego, California. Contractor hereby waives any and all rights it might have pursuant to California Code of Civil Procedure section 394.

20. CONSULTANT'S CERTIFICATION OF AWARENESS OF IMMIGRATION AND CONTROL ACT OF 1986.

Contractor certifies that Contractor is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors, and consultants that are included in this Contract.

21. NO WAIVER.

No failure of either the City or the Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract shall constitute a waiver of any such breach of such covenant, term or condition.

22. SEVERABILITY.

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid, or illegal.

23. CONFLICTS BETWEEN TERMS.

If an apparent conflict or inconsistency exists between the main body of this Contract and the Exhibits, the main body of this Contract shall control. If a conflict exists

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between an applicable federal, state, or local law, rule, regulation, order, or code and this Contract, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Contracts, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

24. SIGNING AUTHORITY.

The representative for each Party signing on behalf of a corporation, partnership, joint venture, or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

25. CONTRACT REQUIREMENTS UNDER FEDERAL AWARDS

25.1 If this Contract is purchased under federal funds, additional provisions shall apply as described in Appendix II to 2 CFR §200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and are hereby incorporated by reference.

25.2 If this Contract is purchased under federal-aid funds, additional provisions shall apply as described in Federal Highway Administration (FHWA) Form 1273, and are hereby incorporated by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract, which will be effective as of the date of the City's execution of the Contract listed below.

CITY OF DEL MAR,
a municipal corporation

[NAME OF CONTRACTOR],
a California Corporation

By: _____
Ashley Jones, City Manager

By: _____
[Name], [Title]

Date: _____

Date: _____

APPROVED AS TO FORM:

Christina M. Cameron, City Attorney

ATTEST:

Sarah Krietor, Administrative Services
Manager/City Clerk

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ATTACHMENT A – SCOPE OF WORK**

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ATTACHMENT B – PROPOSAL/BID SCHEDULE/SCHEDULE OF VALUES

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ATTACHMENT C - WORKER'S COMPENSATION CERTIFICATE

Section 3700 of the Labor Code provides in part as follows:

"Every employer except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees."

I hereby certify that 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.

CONTRACTOR'S NAME: _____

ADDRESS: _____

BOND NO.(optional): _____

SIGNATURE: _____

PRINT NAME/TITLE OF SIGNER: _____

DATE: _____

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BOND NO. _____

ATTACHMENT D - PERFORMANCE BOND

WHEREAS, the City of Del Mar, a Charter City and municipal Corporation ("City") on the ____ day of _____, 20____, awarded to **[Name of Contractor]** ("Principal") a contract for the work described as **San Dieguito Drive Improvements Project**; and

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract.

NOW THEREFORE, We, the Principal and _____ duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars (\$.....) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal, his, her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements, in the said contract and any alteration thereof made as therein provided, on his, her or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and virtue.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or additions to the terms of the contract or to the work or to the specifications.

In the event suit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all litigation costs and expenses incurred by City in such suit, including attorney's fees, court costs, expert witness fees and investigation expenses.

IN WITNESS WHEREOF, _____ identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the ____ day of _____, 20____.

**CONSTRUCTION CONTRACT BETWEEN THE CITY OF DEL MAR
AND [NAME OF CONTRACTOR]
FOR SAN DIEGUITO DRIVE IMPROVEMENTS PROJECT**

SURETY

By: _____

(Name)

(Title)

PRINCIPAL

By: _____

(Name)

(Title)

By: _____

(Name)

(Title)

Signature of Attorney-in-Fact

NOTE: (a) Signature of those executing for Surety must be properly acknowledged.
(b) The Attorney-in-fact must attach a certified copy of the Power of Attorney.

**CONSTRUCTION CONTRACT BETWEEN THE CITY OF DEL MAR
AND [NAME OF CONTRACTOR]
FOR SAN DIEGUITO DRIVE IMPROVEMENTS PROJECT**

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____)

On, _____ before me _____,
a notary public in and for said County and State, personally appeared _____
_____ who proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to within this instrument and acknowledged to me
that he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on this instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

**CONSTRUCTION CONTRACT BETWEEN THE CITY OF DEL MAR
AND [NAME OF CONTRACTOR]
FOR SAN DIEGUITO DRIVE IMPROVEMENTS PROJECT**

BOND NO. _____

ATTACHMENT E - PAYMENT BOND

WHEREAS, the City of Del Mar, a Charter City and municipal Corporation (hereinafter designated as City), on ____ day of _____, 20__ awarded to:

(hereinafter designated as the Principal) a contract for the work described as follows:

SAN DIEGUITO DRIVE IMPROVEMENTS PROJECT

WHEREAS, said Principal is required by Chapter 5, Title 3, Part 6, Division 4 (including, specifically, Section 9550) of the California Civil Code to furnish a bond in connection with said contract.

NOW THEREFORE, We, the Principal, and _____, duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars (\$_____) lawful money of the United States, said sum being not less than one hundred percent (100%) of the estimated amount payable by City under the terms of the above-referenced contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, pursuant to Section 9554 of the California Civil Code, if said principal, hers/his/its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named in Section 9100 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the California Revenue and Taxation Code, with respect to such work and labor, the surety or sureties will pay for the same in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court.

This Bond shall inure to the benefit of any of the persons named in Section 9100 of the California Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the

**CONSTRUCTION CONTRACT BETWEEN THE CITY OF DEL MAR
AND [NAME OF CONTRACTOR]
FOR SAN DIEGUITO DRIVE IMPROVEMENTS PROJECT**

bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond, and that his bond be construed most strongly against the surety and in favor of all persons for whose benefit such bond is given, by reason of any breach of contract between the City and Principal or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the California Civil Code, and has not been paid the full amount of his claim. Surety hereby waives notice of any such change, extension of time, addition, alteration or modification herein mentioned.

This bond is executed by Surety to and shall comply with the provisions of Chapter 5, Title 3, Part 6, Division 4 of the Civil Code and of Chapter 2, Title 14, Part 2 of the Code of Civil Procedure and said bond shall be subject to all of the terms and provisions thereof.

IN WITNESS WHEREOF this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____, 20__.

SURETY

By: _____

(Name)

(Title)

PRINCIPAL

By: _____

(Name)

(Title)

By: _____

(Name)

(Title)

Signature of Attorney-in-Fact

(Attach required acknowledgements)

**CONSTRUCTION CONTRACT BETWEEN THE CITY OF DEL MAR
AND [NAME OF CONTRACTOR]
FOR SAN DIEGUITO DRIVE IMPROVEMENTS PROJECT**

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____)

On, _____ before me _____,
a notary public in and for said County and State, personally appeared _____
_____ who proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to within this instrument and acknowledged to me
that he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on this instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)