

## **MASTER AGREEMENT**

### **FOR DEMOLITION AND RELATED ABATEMENT WORK AT VARIOUS CITY LOCATIONS ON AN AS-NEEDED BASIS**

#### **EXCLUSIVE CONSTRUCTION SERVICES, INC.**

This Master Agreement for Demolition and Related Abatement Work at Various Locations Throughout the City on an As-Needed Basis ("Agreement" or "Master Agreement"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date"), by and between the CITY OF RIVERSIDE ("City"), a California charter city and municipal corporation and EXCLUSIVE CONSTRUCTION SERVICES, INC., a California corporation ("Consultant"), in accordance with the following facts:

### **RECITALS**

A. The City, acting through the Code Enforcement Division of the Community & Economic Development Department, issued an open Request for Proposals ("RFP") to establish a contractor panel for demolition and related abatement work ("Contractor Panel") whereby, qualified contractors have the opportunity to bid on and perform demolition and related abatement work ("Specific Project Work") at various locations throughout the City on an as-needed basis.

B. Contractor submitted a response to the RFP demonstrating Contractor's willingness and qualifications to perform such work.

C. City desires to include Contractor in its Contractor Panel who will be given an opportunity to competitively bid with other panelists for Specific Project Work, and Contractor desires to be included in such Contractor Panel.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein to this Agreement, and the following covenants and conditions, the parties agree as follows:

### **AGREEMENT**

#### **1. Contractor's Duties.**

1.1 Work Force and Equipment. Contractor shall at all times maintain a work force and equipment capable of performing the Specific Project Work generally described and in accordance with this Master Agreement and the Special Provisions on an as-needed basis.

1.2 Bids. Contractor shall use its best efforts to submit competitive bid proposals in response to Requests for Bids ("RFB"), as defined in the Special Provisions, issued by City from time to time for Specific Project Work as defined in the RFB's Scope of Work. Any required asbestos work shall be considered a "specialty item" and excluded from the calculation of the percentage of work performed by Contractor.

1.2.1 Contractor understands and agrees that each contract for Specific Project Work ("Purchase Order"), if awarded, will be to the lowest responsive responsible bidder in accordance with the Contract Documents. Execution of this Master Agreement does not guarantee Contractor will be awarded any Specific Project Work.

1.2.2 Contractor further understands and agrees that City may reject any or all bid proposals in accordance with the Contract Documents.

1.2.3 City shall not be liable for any expenses or costs incurred by Contractor in preparing its bid proposals.

1.3 Insurance. At all times during the term of this Agreement, Contractor shall maintain insurance required under this Agreement.

1.4 Bonds. At all times during the term of this Agreement, Contractor shall maintain the performance and payment bonds required under this Agreement.

1.5 Master Agreement. Contractor understands and agrees that all Purchase Orders for Specific Project Work awarded to Contractor shall be governed by, and Contractor shall perform all Specific Project Work in accordance with this Master Agreement and the Contract Documents. Contractor's failure to execute this Master Agreement and provide all required insurance documents within thirty (30) calendar days of City Council approval shall result in Contractor's removal from the Panel.

1.6 Contract Documents. Contract Documents for this Master Agreement shall consist of the following: Request for Proposals for Contractor Panel for Demolition and Related Abatement Work; Contractor's proposal (including any documentation accompanying the Proposal and any post-RFP proposal documentation submitted prior to City's execution of the Master Agreement); this Master Agreement; RFB including all attached plans and specifications; RFB Addenda; Contractor's Bid Proposal (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Bid Award); the Notice of Bid Award; Purchase Orders (if any) for Specific Project Work; Change Orders; City's Special Provisions attached to the RFP ("Special Provisions"); 2009 Edition of the Standard Specifications for Public Works Construction ("Standard Specifications") written by Public Works Standards, Inc.; Standard Plans; Standard Specifications; Uniform Building Code; Plumbing Code; Fire Code; Mechanical Code; National Electric Code; Uniform Code for Abatement of Dangerous Buildings; performance bond and payment bond; and all other documents, maps, texts and items referred to in the foregoing documents. These Contract Documents are incorporated herein by reference and are intended to be correlative and constitute Contractor's performance obligations.

1.7 Use of Local Labor. In order to promote the employment of local residents, to the extent permitted by law, Contractor shall use its best efforts to actively recruit and employ skilled workers located within a fifty-mile radius of the project site ("Local Labor") to comprise at least fifty percent (50%) of its work force.

1.8 Use of Local Suppliers. In order to promote patronage in the City, Contractor shall use its best efforts to purchase supplies within the City limits.

2. **Work.**

2.1 Contractor shall provide all labor, equipment, and materials (when specified in the RFB) for, and shall complete Specific Project Work for all Purchase Orders awarded to Contractor. Contractor understands and agrees that such Specific Project Work may include without limitation, demolition and asbestos testing and abatement at various locations throughout the City on an as-needed basis.

2.2 Where Specific Project Work involves trimming and/or removal of dry weeds and vegetation, Contractor understands that discing is not a permissible method of performing Specific Project Work, unless a prior determination by the Community Development Director has been made that discing is appropriate in light of the topographical characteristics of the site. Should such a determination be made, Contractor shall comply with AQMD Rule 403, including watering the site prior to discing.

3. **Effective Date.** This Agreement shall be effective upon the date first written above.

4. **Termination Date.** This Agreement shall terminate on June 30, 2020, or upon the required date for completion of any Specific Project Work, provided that it was prepared for bid prior to June 30, 2020.

5. **Extension.** This Agreement may be extended for a period of three (3) additional years subject to the approval of the City Manager, the availability of budgeted funds and Contractor's submission of verification that it continues to satisfy the RFP prerequisites.

6. **Completion and Acceptance of Work.**

6.1 Inspection. Upon receipt of Contractor's written assertion that the Specific Project Work has been completed, the Specific Project Work will be inspected by an authorized City inspector for acceptance.

6.2 Contractor's Guarantee. All Specific Project Work shall be guaranteed by the Contractor against defective workmanship and materials furnished by the Contractor for a period of one year from the date the Specific Project Work is completed. The Contractor shall replace or repair any such defective Specific Project Work in a manner satisfactory to the City, after notice to do so from the City, and within the time specified in the notice. If the Contractor fails to make such replacement or repairs within the time specified in the notice, the City may re-let the Specific Project Work and Contractor and its sureties shall be liable for the costs thereof.

7. **Interpretation.**

7.1 Except as expressly modified in this Agreement, the capitalized terms used in this Agreement shall have the meanings defined in the Special Provisions.

7.2 In the event of any contradictory or inconsistent provisions, terms or conditions of the various Contract Documents, the specific terms and conditions in the

7.3 Contract Documents in the following order of precedence, listed from highest to lowest, shall control in questions of interpretation and have precedence: Master Agreement, including amendments thereto, Purchase Order, RFB, including attached plans and specifications, and Contractor's Bid Proposal.

## 8. **Payment.**

8.1 Contract Price. City shall pay Contractor the contract price as set forth in the Purchase Order for the Specific Project Work, which includes all California sales or use tax and County and City taxes, for the performance of all of the Specific Project Work, the completion of the improvements in strict conformity with the provisions hereof, and the guarantee of the Specific Project Work and improvements for the periods set forth in the Contract Documents ("Contract Price"). The cost for each Specific Project Work shall not exceed FIFTY THOUSAND Dollars (\$50,000.00), and the total Contract Price for all Specified Project Work awarded to Contractor shall not exceed THREE HUNDRED THOUSAND Dollars (\$300,000.00) ("**Authorized Not to Exceed Amount**").

8.2 Contractor Certification - Contract Price. Contractor hereby certifies that:

8.2.1 Contractor will carefully examine the requirements of each Request for Bids, Bid Proposal form, Scope of Work, job site description, Plans and Specifications, Instructions to Bidders and Contract Addenda;

8.2.2 Contractor has examined the Special Provisions attached to the RFP that govern all Specific Project Work;

8.2.3 Contractor understands that all items to be furnished shall be for the Contract Price, as set forth in the Purchase Order.

8.3 Contractor understands and agrees that City shall not be obligated to compensate Contractor for any expenses or costs Contractor may incur as a member of the Panel, including without limitation, Contractor's cost of maintaining insurance and bonds required by this Master Agreement and/or any Purchase Order for Specific Project Work. Contractor's sole compensation, if any, shall be the Contract Price set forth in the Purchase Order for any Specific Project Work.

8.4 Payment of Contract Price. City shall make progress payments to Contractor based upon the invoiced amount submitted by Contractor, less ten percent (10%) retention. Final payment of all sums invoiced and unpaid, including all retention shall be made within sixty (60) days of acceptance of the Specific Project Work by the City.

9. **Compensation - Payment of Contractor's Employees.** Contractor shall be solely responsible for the payment of its employees assigned to perform Specific Project Work for City

pursuant to this Agreement, including wages, benefits, payroll deductions, unemployment and worker's compensation, as well as the employer's share of Social Security.

9.1 Contractor and all subcontractors are required to pay all workers employed in the execution of the Specific Project Work not less than the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations ("DIR") under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination of prevailing rates is available on-line at [www.dir.ca.gov/dlsr/DPreWageDetermination.htm](http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm) and is referred to and made a part hereof; the wage rates therein ascertained, determined and specified are referred to and made a part hereof as though fully set forth herein. Contractors and subcontractors on all public works projects shall submit electronic certified payrolls to the Labor Commissioner and City unless excused from this requirement.

9.2 Contractor is aware of and stipulates that Contractor will also comply with the following sections of the California Labor Code:

- a. Section 1775 prescribing sanctions for failure to pay prevailing wage rates;
- b. Section 1776 requiring the making, keeping and disclosing of detailed payroll records and prescribing sanctions for failure to do so;
- c. Section 1777.5 prescribing the terms and conditions for employing registered apprentices;
- d. Section 1810 providing that eight hours of labor shall be a day's work;
- e. Section 1813 prescribing sanctions for violations of the provisions concerning eight-hour work days and forty-hour work weeks; and
- f. Sections 1725.5 and 1771.1 requiring all general contractors and subcontractors to be registered with DIR. Registration can be accomplished through the DIR website by using this link: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

10. **Licenses, Permits and Business Tax.** As a condition of this Agreement, Contractor and all subcontractors shall secure and maintain at all times, a business tax certificate to operate in the City of Riverside, and shall also secure and maintain at all times, any other licenses or permits which may be required. Contractor understands that its performance of Specific Project Work under this Agreement shall constitute doing business in the City of Riverside, and it shall, therefore, register for and pay a business tax pursuant to Chapter 5.04 of the Riverside Municipal Code.

11. **Business Taxes, Charges or Penalties.** Contractor acknowledges and agrees that City shall withhold and offset said amounts from any amounts the City owes to Contractor for unpaid business tax, tax penalties, utility charges, invoiced fees or other outstanding debt under this Agreement. The City shall give Contractor written notice of such withholding and offset. In the event of any dispute as to amounts owed to City, City will hold such disputed amounts throughout an appeal process and resolution of the dispute over the amount owed.

12. **Consent for Amounts in Excess of Contract Price.** Contractor hereby agrees that it shall not be compensated for any extra materials used or time expended, over and above the Contract Price, unless prior written approval for the same has been granted by City.

13. **Work Deadline.**

13.1 Contractor hereby agrees that Contractor shall complete all Specific Project Work within the time frame indicated on the Notice to Proceed issued by the City.

13.2 Failure of Contractor to complete the Specific Project Work within the time specified in the Contract Documents and the City's Notice to Proceed will result in damages being sustained by City. Such damages are, and will continue to be impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified for the completion of the Work, as adjusted in accordance with Section 6-6 of the Standard Specifications, Contractor shall pay to City, or, at City's sole option, have withheld from monies due Contractor, the sum of TWO HUNDRED FIFTY Dollars (\$250.00). Execution of this Agreement shall constitute agreement by City and Contractor that said sum is the minimum value of the costs and actual damage caused by the failure of Contractor to complete the Specific Project Work within the allotted time. Such sum is a liquidated damage and shall not be construed as a penalty, and may be deducted from payments due Contractor if such delay occurs.

14. **Performance and Payment Bonds.**

14.1 Prior to award of each Specific Project Work in excess of \$25,000.00, Contractor shall furnish completed City bond forms. Contractor shall provide a Performance Bond, as security for the performance of each Supplemental Agreement and a Payment Bond, as security for the payment of all persons performing labor and furnishing materials in connection with the Supplemental Agreement. Each Bond shall be for one hundred percent (100%) of the Specific Project Work, and shall be subscribed by a corporate surety that is authorized to transact surety insurance business in the State of California, with a policy holder's rating of A or higher and a financial class of VII or larger. Should any bond or surety become insufficient, Contractor shall furnish City a new bond within ten (10) days after receiving notice from City. No payments will be due or paid under the Contract until any and all bond deficiencies have been remedied.

15. **Workers' Compensation Insurance.** By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any of the Specific Project Work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers Compensation Act. Prior to City's execution of this Agreement, Contractor shall file with City either 1) a Certificate of insurance or self-insurance evidencing that such insurance is in effect, or that Contractor is self-insured for such coverage; or 2) a certified statement that Contractor has no employees, and acknowledging that if Contractor does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with the City shall provide that City shall be given ten (10) days prior written notice before modification or cancellation thereof.

16. **Commercial General and Automobile Liability Insurance.** Prior to City's execution of this Agreement, Contractor shall obtain, and shall thereafter maintain during the term of this Agreement, such commercial general and automobile liability insurance as required to insure

Contractor against damages for personal injury, including accidental death, as well as from claims for property damage which may arise from or which may concern operations by Contractor or by anyone directly indirectly employed by, connected with, or acting for or on behalf of Contractor.

All liability insurance shall be issued by insurance companies authorized to transact liability insurance business in the State of California, with a policy holder's rating of A or higher and a Financial Class of VII or larger.

Contractor's commercial general liability policy shall cover both bodily injury (including death) and property damage (including but not limited to premises-operations liability, products-completed operations liability, independent contractors liability, personal injury liability, and contractual liability), in an amount not less than \$1,000,000 per-occurrence limit and a general aggregate limit in the amount of not less than \$2,000,000..

Contractor's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per-occurrence limit, unless otherwise approved by the City's Risk Manager, or his designees. All of Contractor's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Contractor's performance of this Agreement, which vehicles shall include, but are not limited to, Contractor owned vehicles, Contractor leased vehicles, Contractor's employee vehicles, and non-Contractor owned vehicles and hired vehicles.

These minimum amounts of coverage shall not constitute any limitation or cap on Contractor's indemnification obligations herein.

**17. Additional Insured Endorsements.** Prior to the City's execution of this agreement, copies of insurance policies or original certificates along with additional insured endorsements acceptable to the City evidencing the coverage required by this Agreement, for both commercial general and automobile liability, shall be filed with City and shall include City and its officers, employees, and agents, as additional insureds. Said policies shall be in the usual form of commercial general liability insurance, but shall include the following provisions:

It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

The insurance policy or policies shall also comply with the following provisions:

- a. The policy shall be endorsed to waive any right of subrogation against the City and its subcontractors, employees, officers and agents for services performed under this Agreement.
- b. If the policy is written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after completion of the services. The retroactive date of coverage must also be listed.

- c. The policy shall specify that the insurance provided by Contractor will be considered primary and not contributory to any other insurance available to the City and Endorsement No. CG 20010413 shall be provided to the City.

The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City by certified or registered mail.

City, its agents and employees make no representation that the limits of the insurance specified, to be carried by Contractor pursuant to this Agreement are adequate to protect Contractor. If Contractor believes that any required insurance coverage is inadequate, Contractor will obtain such additional insurance coverage as Contractor deems adequate, at Contractor's sole expense.

18. **Indemnification.** Except as to the sole negligence, active negligence or willful misconduct of the City, Contractor shall indemnify and hold the City, and its employees, officers, managers, agents and council members, harmless from any and all loss, damage, claim for damage, liability, expense or cost, including attorneys' fees, which arises out of, or is related to, or is in any manner connected with the performance of Specific Project Work, activities, operations or duties of Contractor, or anyone employed by or working under Contractor, and from all claims by anyone employed by or working under Contractor for services rendered to Contractor in the performance of this Agreement, notwithstanding that the City may have benefitted from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor or of anyone employed by or working under Contractor.

The parties expressly agree that any payment, attorneys' fees, costs or expense that the City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

19. **Duty to Defend.** Contractor agrees, at its cost and expense, to promptly defend the City and the City's employees, officers, managers, agents and council members (collectively the "Parties to be defended") from and against any and all claims, allegations, lawsuits or other legal proceedings which arise out of, or are related to, or are in any manner connected with: 1) the Specific Project Work, activities, operations, or duties of Contractor, or of anyone employed by or working under the Contractor, or 2) any breach of this Agreement by Contractor. This duty to defend shall apply whether or not such claims, allegations, lawsuits or proceedings have merit or are meritless, or which involve claims or allegations that any of the Parties to be defended were actively, passively or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss, damage or injury. Contractor agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to the City.

20. **Suspension from Panel.** The Project Manager or other authorized City representative may suspend Contractor from participating in bids for Specific Project Work if Contractor has previously received correction notices for substandard or defective work under a Purchase Order for Specific Project Work. Contractor may submit documentation to the Project Manager or other authorized City representative confirming that changes in Contractor's



personnel, policies or practices have remedied the cause of the substandard or defective work. It is within the Project Manager's or other authorized City representative's sole discretion to lift Contractor's suspension based upon Contractor's documentation or to proceed with termination of the Master Agreement and any Purchase Orders thereto.

21. **Termination.** The City may terminate Contractor's performance of this Master Agreement and any Purchase Order for Specific Project Work without liability if:

- (1) Contractor fails promptly to begin the Specific Project Work under the Purchase Order; or
- (2) Contractor refuses or fails to supply enough properly skilled workers or proper materials; or
- (3) Contractor fails to perform the Specific Project Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein, or refuses to remove and replace rejected materials or unacceptable Specific Project Work; or
- (4) Contractor discontinues the prosecution of the Specific Project Work; or
- (5) Any representation or warranty made by Contractor in its Proposal shall have been false or materially misleading when made; or
- (6) Contractor fails to make payment to subcontractors for materials or labor in accordance with the respective Contract Documents and applicable law; or
- (7) Contractor disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction; or
- (8) Contractor otherwise is guilty of breach of a provision of the Contract Documents; or
- (9) Contractor becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide City with adequate assurances of Contractor's ability to satisfy its contractual obligations.

A receiver, trustee, or other judicial officer shall not have any right, title, or interest in or to the Contract. Upon that person's appointment, City has, at its option and sole discretion, the right to immediately cancel the Agreement and declare it null and void.

22. **Independent Contractor.** Contractor shall at all times during its performance of any Specific Project Work retain its status as an independent contractor. Contractor's employees and agents shall under no circumstances be considered or held to be employees or

agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Contractor.

23. **Non-exclusive Agreement.** The City reserves the right to bid any Specific Project Work outside of the Panel, to enter into contracts with non-panel contractors and to add additional contractors to the Panel that meet the RFP prerequisites, whenever the City deems it to be in its best interest.

24. **Nondiscrimination.** During Contractor's performance of this Agreement and any Purchase Order hereto, Contractor shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex or sexual orientation, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Contractor agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

25. **Accounting Records.** Contractor shall maintain complete and accurate records with respect to costs incurred under this Agreement and any Purchase Order hereto. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

26. **Notices.** Service of any notices, bills, invoices or other documents required or permitted under this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

City  
Claudine Sunga  
Community & Economic Development  
City of Riverside  
3900 Main Street  
Riverside, CA 92522

Contractor  
Gerald Kohutek  
Exclusive Construction, Inc.  
3777 Placentia Lane  
Riverside, CA 92501

27. **Severability.** Each Agreement provision, term, condition, covenant and/or restriction, in whole and in part, shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement and the remainder of the Agreement shall continue in full force and effect.

28. **Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Contractor each represent and warrant that they have the legal

power, right and actual authority to bind Contractor to the terms and conditions hereof and thereof.

29. **Venue.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the Superior Court of California, County of Riverside, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed that each party will bear their own attorneys' fees and costs.

30. **Waiver.** No action or failure to act by the City shall constitute a waiver any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be otherwise agreed in writing.

31. **Entire Agreement.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

(signatures on following page)

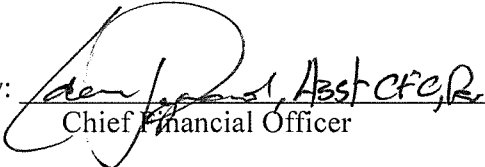
IN WITNESS WHEREOF, City and Contractor have caused this Master Agreement to be duly executed on the day and year first above written.

CITY OF RIVERSIDE, a California  
charter city and municipal corporation

By: \_\_\_\_\_  
City Manager

Attest: \_\_\_\_\_  
City Clerk

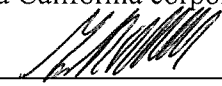
Certified as to Availability of Funds:

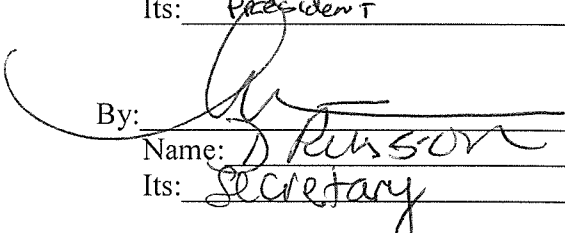
By:   
Chief Financial Officer

APPROVED AS TO FORM

By:   
Deputy City Attorney

EXCLUSIVE CONSTRUCTION  
SERVICES, INC.  
a California corporation

By:   
Name: GERALD Kohutsek  
Its: President

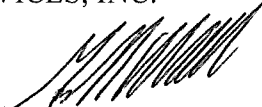
By:   
Name: Secretary  
Its: Secretary

## WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' 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.

DATED: 4/7/17

EXCLUSIVE CONSTRUCTION  
SERVICES, INC.

By 

GERALD KOHUTSKY - President  
Name and Title

## **MASTER AGREEMENT**

### **FOR DEMOLITION AND RELATED ABATEMENT WORK AT VARIOUS CITY LOCATIONS ON AN AS-NEEDED BASIS**

**LYLE A. CASTILLO dba TWIN BUILDERS**

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### **RECITALS**

A. The City, acting through the Code Enforcement Division of the Community & Economic Development Department, issued an open Request for Proposals ("RFP") to establish a contractor panel for demolition and related abatement work ("Contractor Panel") whereby, qualified contractors have the opportunity to bid on and perform demolition and related abatement work ("Specific Project Work") at various locations throughout the City on an as-needed basis.

B. Contractor submitted a response to the RFP demonstrating Contractor's willingness and qualifications to perform such work.

C. City desires to include Contractor in its Contractor Panel who will be given an opportunity to competitively bid with other panelists for Specific Project Work, and Contractor desires to be included in such Contractor Panel.

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1.4 Bonds. At all times during the term of this Agreement, Contractor shall maintain the performance and payment bonds required under this Agreement.

1.5 Master Agreement. Contractor understands and agrees that all Purchase Orders for Specific Project Work awarded to Contractor shall be governed by, and Contractor shall perform all Specific Project Work in accordance with this Master Agreement and the Contract Documents. Contractor's failure to execute this Master Agreement and provide all required insurance documents within thirty (30) calendar days of City Council approval shall result in Contractor's removal from the Panel.

1.6 Contract Documents. Contract Documents for this Master Agreement shall consist of the following: Request for Proposals for Contractor Panel for Demolition and Related Abatement Work; Contractor's proposal (including any documentation accompanying the Proposal and any post-RFP proposal documentation submitted prior to City's execution of the Master Agreement); this Master Agreement; RFB including all attached plans and specifications; RFB Addenda; Contractor's Bid Proposal (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Bid Award); the Notice of Bid Award; Purchase Orders (if any) for Specific Project Work; Change Orders; City's Special Provisions attached to the RFP ("Special Provisions"); 2009 Edition of the Standard Specifications for Public Works Construction ("Standard Specifications") written by Public Works Standards, Inc.; Standard Plans; Standard Specifications; Uniform Building Code; Plumbing Code; Fire Code; Mechanical Code; National Electric Code; Uniform Code for Abatement of Dangerous Buildings; performance bond and payment bond; and all other documents, maps, texts and items referred to in the foregoing documents. These Contract Documents are incorporated herein by reference and are intended to be correlative and constitute Contractor's performance obligations.

1.7 Use of Local Labor. In order to promote the employment of local residents, to the extent permitted by law, Contractor shall use its best efforts to actively recruit and employ skilled workers located within a fifty-mile radius of the project site ("Local Labor") to comprise at least fifty percent (50%) of its work force.

1.8 Use of Local Suppliers. In order to promote patronage in the City, Contractor shall use its best efforts to purchase supplies within the City limits.

2. **Work.**

2.1 Contractor shall provide all labor, equipment, and materials (when specified in the RFB) for, and shall complete Specific Project Work for all Purchase Orders awarded to Contractor. Contractor understands and agrees that such Specific Project Work may include without limitation, demolition and asbestos testing and abatement at various locations throughout the City on an as-needed basis.

2.2 Where Specific Project Work involves trimming and/or removal of dry weeds and vegetation, Contractor understands that discing is not a permissible method of performing Specific Project Work, unless a prior determination by the Community Development Director has been made that discing is appropriate in light of the topographical characteristics of the site. Should such a determination be made, Contractor shall comply with AQMD Rule 403, including watering the site prior to discing.

3. **Effective Date.** This Agreement shall be effective upon the date first written above.

4. **Termination Date.** This Agreement shall terminate on June 30, 2020, or upon the required date for completion of any Specific Project Work, provided that it was prepared for bid prior to June 30, 2020.

5. **Extension.** This Agreement may be extended for a period of three (3) additional years subject to the approval of the City Manager, the availability of budgeted funds and Contractor's submission of verification that it continues to satisfy the RFP prerequisites.

6. **Completion and Acceptance of Work.**

6.1 Inspection. Upon receipt of Contractor's written assertion that the Specific Project Work has been completed, the Specific Project Work will be inspected by an authorized City inspector for acceptance.

6.2 Contractor's Guarantee. All Specific Project Work shall be guaranteed by the Contractor against defective workmanship and materials furnished by the Contractor for a period of one year from the date the Specific Project Work is completed. The Contractor shall replace or repair any such defective Specific Project Work in a manner satisfactory to the City, after notice to do so from the City, and within the time specified in the notice. If the Contractor fails to make such replacement or repairs within the time specified in the notice, the City may re-let the Specific Project Work and Contractor and its sureties shall be liable for the costs thereof.

7. **Interpretation.**

7.1 Except as expressly modified in this Agreement, the capitalized terms used in this Agreement shall have the meanings defined in the Special Provisions.



7.2 In the event of any contradictory or inconsistent provisions, terms or conditions of the various Contract Documents, the specific terms and conditions in the

7.3 Contract Documents in the following order of precedence, listed from highest to lowest, shall control in questions of interpretation and have precedence: Master Agreement, including amendments thereto, Purchase Order, RFB, including attached plans and specifications, and Contractor's Bid Proposal.

## 8. **Payment.**

8.1 Contract Price. City shall pay Contractor the contract price as set forth in the Purchase Order for the Specific Project Work, which includes all California sales or use tax and County and City taxes, for the performance of all of the Specific Project Work, the completion of the improvements in strict conformity with the provisions hereof, and the guarantee of the Specific Project Work and improvements for the periods set forth in the Contract Documents ("Contract Price"). The cost for each Specific Project Work shall not exceed FIFTY THOUSAND Dollars (\$50,000.00), and the total Contract Price for all Specified Project Work awarded to Contractor shall not exceed THREE HUNDRED THOUSAND Dollars (\$300,000.00) ("**Authorized Not to Exceed Amount**").

8.2 Contractor Certification - Contract Price. Contractor hereby certifies that:

8.2.1 Contractor will carefully examine the requirements of each Request for Bids, Bid Proposal form, Scope of Work, job site description, Plans and Specifications, Instructions to Bidders and Contract Addenda;

8.2.2 Contractor has examined the Special Provisions attached to the RFP that govern all Specific Project Work;

8.2.3 Contractor understands that all items to be furnished shall be for the Contract Price, as set forth in the Purchase Order.

8.3 Contractor understands and agrees that City shall not be obligated to compensate Contractor for any expenses or costs Contractor may incur as a member of the Panel, including without limitation, Contractor's cost of maintaining insurance and bonds required by this Master Agreement and/or any Purchase Order for Specific Project Work. Contractor's sole compensation, if any, shall be the Contract Price set forth in the Purchase Order for any Specific Project Work.

8.4 Payment of Contract Price. City shall make progress payments to Contractor based upon the invoiced amount submitted by Contractor, less ten percent (10%) retention. Final payment of all sums invoiced and unpaid, including all retention shall be made within sixty (60) days of acceptance of the Specific Project Work by the City.

9. **Compensation - Payment of Contractor's Employees.** Contractor shall be solely responsible for the payment of its employees assigned to perform Specific Project Work for City

pursuant to this Agreement, including wages, benefits, payroll deductions, unemployment and worker's compensation, as well as the employer's share of Social Security.

9.1 Contractor and all subcontractors are required to pay all workers employed in the execution of the Specific Project Work not less than the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations ("DIR") under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination of prevailing rates is available on-line at [www.dir.ca.gov/dlsr/DPreWageDetermination.htm](http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm) and is referred to and made a part hereof; the wage rates therein ascertained, determined and specified are referred to and made a part hereof as though fully set forth herein. Contractors and subcontractors on all public works projects shall submit electronic certified payrolls to the Labor Commissioner and City unless excused from this requirement.

9.2 Contractor is aware of and stipulates that Contractor will also comply with the following sections of the California Labor Code:

- a. Section 1775 prescribing sanctions for failure to pay prevailing wage rates;
- b. Section 1776 requiring the making, keeping and disclosing of detailed payroll records and prescribing sanctions for failure to do so;
- c. Section 1777.5 prescribing the terms and conditions for employing registered apprentices;
- d. Section 1810 providing that eight hours of labor shall be a day's work;
- e. Section 1813 prescribing sanctions for violations of the provisions concerning eight-hour work days and forty-hour work weeks; and
- f. Sections 1725.5 and 1771.1 requiring all general contractors and subcontractors to be registered with DIR. Registration can be accomplished through the DIR website by using this link: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

10. **Licenses, Permits and Business Tax.** As a condition of this Agreement, Contractor and all subcontractors shall secure and maintain at all times, a business tax certificate to operate in the City of Riverside, and shall also secure and maintain at all times, any other licenses or permits which may be required. Contractor understands that its performance of Specific Project Work under this Agreement shall constitute doing business in the City of Riverside, and it shall, therefore, register for and pay a business tax pursuant to Chapter 5.04 of the Riverside Municipal Code.

11. **Business Taxes, Charges or Penalties.** Contractor acknowledges and agrees that City shall withhold and offset said amounts from any amounts the City owes to Contractor for unpaid business tax, tax penalties, utility charges, invoiced fees or other outstanding debt under this Agreement. The City shall give Contractor written notice of such withholding and offset. In the event of any dispute as to amounts owed to City, City will hold such disputed amounts throughout an appeal process and resolution of the dispute over the amount owed.

12. **Consent for Amounts in Excess of Contract Price.** Contractor hereby agrees that it shall not be compensated for any extra materials used or time expended, over and above the Contract Price, unless prior written approval for the same has been granted by City.

13. **Work Deadline.**

13.1 Contractor hereby agrees that Contractor shall complete all Specific Project Work within the time frame indicated on the Notice to Proceed issued by the City.

13.2 Failure of Contractor to complete the Specific Project Work within the time specified in the Contract Documents and the City's Notice to Proceed will result in damages being sustained by City. Such damages are, and will continue to be impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified for the completion of the Work, as adjusted in accordance with Section 6-6 of the Standard Specifications, Contractor shall pay to City, or, at City's sole option, have withheld from monies due Contractor, the sum of TWO HUNDRED FIFTY Dollars (\$250.00). Execution of this Agreement shall constitute agreement by City and Contractor that said sum is the minimum value of the costs and actual damage caused by the failure of Contractor to complete the Specific Project Work within the allotted time. Such sum is a liquidated damage and shall not be construed as a penalty, and may be deducted from payments due Contractor if such delay occurs.

14. **Performance and Payment Bonds.**

14.1 Prior to award of each Specific Project Work in excess of \$25,000.00, Contractor shall furnish completed City bond forms. Contractor shall provide a Performance Bond, as security for the performance of each Supplemental Agreement and a Payment Bond, as security for the payment of all persons performing labor and furnishing materials in connection with the Supplemental Agreement. Each Bond shall be for one hundred percent (100%) of the Specific Project Work, and shall be subscribed by a corporate surety that is authorized to transact surety insurance business in the State of California, with a policy holder's rating of A or higher and a financial class of VII or larger. Should any bond or surety become insufficient, Contractor shall furnish City a new bond within ten (10) days after receiving notice from City. No payments will be due or paid under the Contract until any and all bond deficiencies have been remedied.

15. **Workers' Compensation Insurance.** By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any of the Specific Project Work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers Compensation Act. Prior to City's execution of this Agreement, Contractor shall file with City either 1) a Certificate of insurance or self-insurance evidencing that such insurance is in effect, or that Contractor is self-insured for such coverage; or 2) a certified statement that Contractor has no employees, and acknowledging that if Contractor does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with the City shall provide that City shall be given ten (10) days prior written notice before modification or cancellation thereof.

16. **Commercial General and Automobile Liability Insurance.** Prior to City's execution of this Agreement, Contractor shall obtain, and shall thereafter maintain during the term of this Agreement, such commercial general and automobile liability insurance as required to insure

Contractor against damages for personal injury, including accidental death, as well as from claims for property damage which may arise from or which may concern operations by Contractor or by anyone directly indirectly employed by, connected with, or acting for or on behalf of Contractor.

All liability insurance shall be issued by insurance companies authorized to transact liability insurance business in the State of California, with a policy holder's rating of A or higher and a Financial Class of VII or larger.

Contractor's commercial general liability policy shall cover both bodily injury (including death) and property damage (including but not limited to premises-operations liability, products-completed operations liability, independent contractors liability, personal injury liability, and contractual liability), in an amount not less than \$1,000,000 per-occurrence limit and a general aggregate limit in the amount of not less than \$2,000,000..

Contractor's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per-occurrence limit, unless otherwise approved by the City's Risk Manager, or his designees. All of Contractor's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Contractor's performance of this Agreement, which vehicles shall include, but are not limited to, Contractor owned vehicles, Contractor leased vehicles, Contractor's employee vehicles, and non-Contractor owned vehicles and hired vehicles.

These minimum amounts of coverage shall not constitute any limitation or cap on Contractor's indemnification obligations herein.

17. **Additional Insured Endorsements.** Prior to the City's execution of this agreement, copies of insurance policies or original certificates along with additional insured endorsements acceptable to the City evidencing the coverage required by this Agreement, for both commercial general and automobile liability, shall be filed with City and shall include City and its officers, employees, and agents, as additional insureds. Said policies shall be in the usual form of commercial general liability insurance, but shall include the following provisions:

It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

The insurance policy or policies shall also comply with the following provisions:

- a. The policy shall be endorsed to waive any right of subrogation against the City and its subcontractors, employees, officers and agents for services performed under this Agreement.
- b. If the policy is written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after completion of the services. The retroactive date of coverage must also be listed.

- c. The policy shall specify that the insurance provided by Contractor will be considered primary and not contributory to any other insurance available to the City and Endorsement No. CG 20010413 shall be provided to the City.

The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City by certified or registered mail.

City, its agents and employees make no representation that the limits of the insurance specified, to be carried by Contractor pursuant to this Agreement are adequate to protect Contractor. If Contractor believes that any required insurance coverage is inadequate, Contractor will obtain such additional insurance coverage as Contractor deems adequate, at Contractor's sole expense.

18. **Indemnification.** Except as to the sole negligence, active negligence or willful misconduct of the City, Contractor shall indemnify and hold the City, and its employees, officers, managers, agents and council members, harmless from any and all loss, damage, claim for damage, liability, expense or cost, including attorneys' fees, which arises out of, or is related to, or is in any manner connected with the performance of Specific Project Work, activities, operations or duties of Contractor, or anyone employed by or working under Contractor, and from all claims by anyone employed by or working under Contractor for services rendered to Contractor in the performance of this Agreement, notwithstanding that the City may have benefitted from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor or of anyone employed by or working under Contractor.

The parties expressly agree that any payment, attorneys' fees, costs or expense that the City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

19. **Duty to Defend.** Contractor agrees, at its cost and expense, to promptly defend the City and the City's employees, officers, managers, agents and council members (collectively the "Parties to be defended") from and against any and all claims, allegations, lawsuits or other legal proceedings which arise out of, or are related to, or are in any manner connected with: 1) the Specific Project Work, activities, operations, or duties of Contractor, or of anyone employed by or working under the Contractor, or 2) any breach of this Agreement by Contractor. This duty to defend shall apply whether or not such claims, allegations, lawsuits or proceedings have merit or are meritless, or which involve claims or allegations that any of the Parties to be defended were actively, passively or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss, damage or injury. Contractor agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to the City.

20. **Suspension from Panel.** The Project Manager or other authorized City representative may suspend Contractor from participating in bids for Specific Project Work if Contractor has previously received correction notices for substandard or defective work under a Purchase Order for Specific Project Work. Contractor may submit documentation to the Project Manager or other authorized City representative confirming that changes in Contractor's

personnel, policies or practices have remedied the cause of the substandard or defective work. It is within the Project Manager's or other authorized City representative's sole discretion to lift Contractor's suspension based upon Contractor's documentation or to proceed with termination of the Master Agreement and any Purchase Orders thereto.

21. **Termination.** The City may terminate Contractor's performance of this Master Agreement and any Purchase Order for Specific Project Work without liability if:

- (1) Contractor fails promptly to begin the Specific Project Work under the Purchase Order; or
- (2) Contractor refuses or fails to supply enough properly skilled workers or proper materials; or
- (3) Contractor fails to perform the Specific Project Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein, or refuses to remove and replace rejected materials or unacceptable Specific Project Work; or
- (4) Contractor discontinues the prosecution of the Specific Project Work; or
- (5) Any representation or warranty made by Contractor in its Proposal shall have been false or materially misleading when made; or
- (6) Contractor fails to make payment to subcontractors for materials or labor in accordance with the respective Contract Documents and applicable law; or
- (7) Contractor disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction; or
- (8) Contractor otherwise is guilty of breach of a provision of the Contract Documents; or
- (9) Contractor becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide City with adequate assurances of Contractor's ability to satisfy its contractual obligations.

A receiver, trustee, or other judicial officer shall not have any right, title, or interest in or to the Contract. Upon that person's appointment, City has, at its option and sole discretion, the right to immediately cancel the Agreement and declare it null and void.

22. **Independent Contractor.** Contractor shall at all times during its performance of any Specific Project Work retain its status as an independent contractor. Contractor's employees and agents shall under no circumstances be considered or held to be employees or

agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Contractor.

23. **Non-exclusive Agreement.** The City reserves the right to bid any Specific Project Work outside of the Panel, to enter into contracts with non-panel contractors and to add additional contractors to the Panel that meet the RFP prerequisites, whenever the City deems it to be in its best interest.

24. **Nondiscrimination.** During Contractor's performance of this Agreement and any Purchase Order hereto, Contractor shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex or sexual orientation, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Contractor agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

25. **Accounting Records.** Contractor shall maintain complete and accurate records with respect to costs incurred under this Agreement and any Purchase Order hereto. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

26. **Notices.** Service of any notices, bills, invoices or other documents required or permitted under this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

City  
Claudine Sunga  
Community & Economic Development  
City of Riverside  
3900 Main Street  
Riverside, CA 92522

Contractor  
Lyle A. Castillo  
dba Twin Builders  
17909 Via Valmonte Circle  
Corona, CA 92881

27. **Severability.** Each Agreement provision, term, condition, covenant and/or restriction, in whole and in part, shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement and the remainder of the Agreement shall continue in full force and effect.

28. **Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Contractor each represent and warrant that they have the legal

power, right and actual authority to bind Contractor to the terms and conditions hereof and thereof.

29. **Venue.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the Superior Court of California, County of Riverside, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed that each party will bear their own attorneys' fees and costs.

30. **Waiver.** No action or failure to act by the City shall constitute a waiver any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be otherwise agreed in writing.

31. **Entire Agreement.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

(signatures on following page)




IN WITNESS WHEREOF, City and Contractor have caused this Master Agreement to be duly executed on the day and year first above written.

CITY OF RIVERSIDE, a California  
charter city and municipal corporation

LYLE A. CASTILLO  
dba TWIN BUILDERS  
a sole proprietor

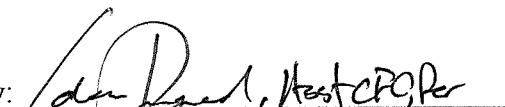
By: \_\_\_\_\_  
City Manager

By:   
Name: Lyle Castillo  
Its: Owner

Attest: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Certified as to Availability of Funds:

By:   
Chief Financial Officer

APPROVED AS TO FORM

By:   
Deputy City Attorney

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17-0276 RME Rev. 03/07/17

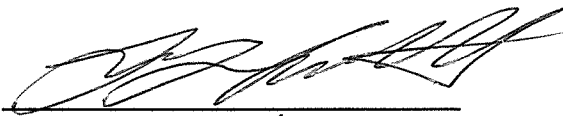
## WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' 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.

DATED: 4/7/17

LYLE A. CASTILLO  
dba TWIN BUILDERS

By



Lyle Castillo owner

Name and Title