

**CONSTRUCTION AGREEMENT  
BY AND BETWEEN  
THE CITY OF VICTORVILLE  
AND  
(NAME OF PROVIDER)**

**BM12-032 REHABILITATION OF EAGLE RANCH PASEO**

THIS CONSTRUCTION AGREEMENT (the "Agreement") is made and entered into by and between the City of Victorville, a municipal corporation located in the County of San Bernardino, State of California, hereinafter referred to as the "City", and **(NAME OF PROVIDER)**, a General Contractor, hereinafter referred to as the "Contractor". The City and the Contractor are sometimes hereinafter referred to as a "Party" or as the "Parties".

**RECITALS:**

**WHERE AS, REHABILITATION OF EAGLE RANCH PASEO** requires **CONCRETE REHABILITATION** (the "Project"); and

**WHEREAS**, in light of the facts set forth above, the City desires to retain Contractor in connection with **CONCRETE REHABILITATION**.

**NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS, AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE PARTIES HERETO AGREE AS FOLLOWS:**

**Section 1. RECITALS.**

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth herein.

**Section 2. TERM.**

This Agreement shall commence on **(DATE)** (the "Commencement Date") and shall terminate upon completion of the Project **(DATE)** (the "Termination Date"), unless sooner terminated in accordance with the provisions of this Agreement (the "Term").

**Section 3. CONTRACT DOCUMENTS; PRIORITY.**

The contract documents shall include the following documents (as maybe applicable), attached hereto as exhibits and incorporated herein by this reference as though set forth in full (the "Contract Documents"):

- This Agreement.  
Exhibits:
- Notice Inviting Bids for the Project;
- Bid Proposal Form(s) for the Project;
- City Specifications for the Project (not applicable);
- Special Provisions (not applicable); and
- Accepted Proposal (not applicable).

In the event of any conflict between or among the Contract Documents, or any dispute as to the meaning of any term or provision, the Contract Documents shall be given priority according to the order listed herein above. In the event of any conflict or dispute that cannot be resolved by reference to the Contract Documents, the following documents may be used to clarify or interpret any term therein:

- Non-Collusion Affidavit;
- Bidder's Bond;
- List of Subcontractors;
- Faithful Performance Bond;
- Payment Bond;
- Certification re Previous Contracts (not applicable); and
- Guaranty.

**Section 4.                    CONTRACTOR'S OBLIGATIONS.**

Contractor shall complete the Project as specifically set forth in the Contract Documents. Contractor shall furnish, at its own cost and expense, all labor, services, material, tools, equipment, supplies, transportation, and any other items and facilities necessary therefore, as provided in the Contract Documents.

**Section 5.                    COMPENSATION.**

The Contractor agrees to receive and accept the following amount; **(AWARD AMOUNT SPELLED OUT) (\$0)**, as full compensation for furnishing; all materials, doing all the work contemplated and embraced in this contract, all loss or damage arising out of the nature of the work aforesaid, the action of the elements, any unforeseen difficulties or obstructions which may arise or be encountered in the execution of the work until its acceptance by the City of Victorville, and for all risks of every description connected with the work, all expenses incurred by or in consequence of the suspension or discontinuance of work well and faithfully completing the whole work, thereof, according to the Plans and Specifications, and requirements of **JOHN A. McGLADE, DIRECTOR OF PUBLIC WORKS**, or his designee to wit: SEE EXHIBIT "A" BID PROPOSAL.

**Section 6.                    PAYMENT SCHEDULE.**

The City shall pay Contractor as provided in the Payment Schedule, attached hereto as Exhibit "B" (not applicable), and incorporated herein by this reference as though set forth in full, subject to approval of the City, when applicable.

**Section 7.                    PERFORMANCE SCHEDULE.**

Contractor shall complete the Project in accordance with the Contract Documents.

**Section 8.                    PREVAILING WAGES (Not Required)**

**Section 9.                   WORKERS' COMPENSATION INSURANCE.**

Contractor shall procure and maintain, at its own expense, during the Term of this Agreement, workers' compensation insurance, providing coverage as required by the California State Workers' Compensation Law. If any class of employees employed by Contractor is not protected by the California State Workers' Compensation Law, Contractor shall provide adequate insurance for the protection of such employees to the satisfaction of the City.

In conformance with current statutory requirements of Section 1860 et seq., of the Labor Code of the State of California, the undersigned confirms the following as their certification:

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the work of this contract.

**Section 10.                   NOTICE TO PROCEED.**

No work, service, material, or equipment shall be performed or furnished under this Contract unless and until a Notice to Proceed has been given to the Contractor by the City. Contractor shall commence work pursuant to the Contract Documents as directed by the City in the Notice to Proceed, and to diligently execute the same to completion within the time limits set forth in the Contract Documents.

**Section 11.                   COMPLIANCE WITH LAWS.**

Contractor shall comply with all local, state, and federal laws and regulations applicable to the services required hereunder, including any rule, regulation, or bylaw governing the conduct or performance of Contractor or its employees, officers, or board members.

**Section 12.                   COMPREHENSIVE GENERAL AND AUTOMOBILE LIABILITY INSURANCE.**

Contractor shall procure and maintain at its own expense, during the term of this Agreement, comprehensive general liability insurance, of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the wrongful or negligent acts by the Contractor or its officers, employees, servants, volunteers, and agents and independent contractors.

Contractor shall further procure and maintain, at its own expense, during the Term of this Agreement, commercial vehicle liability insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) Combined Single Limit, covering any vehicle(s) utilized by Contractor or its officers, employees, servants, volunteers, or agents and independent contractors in performing the services required by this Agreement.

**Section 13.                   ADDITIONAL NAMED INSURED.**

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation coverage, shall bear an endorsement whereby it is provided that, the City and its officers, employees, servants, volunteers, and agents and independent contractors, including, without limitation, the City Attorney, are named as Additional Insured's.

**Section 14. WAIVER OF SUBROGATION RIGHTS.**

Contractor shall require the carriers of all required insurance policies to waive all rights of subrogation against the City and its officers, volunteers, employees, contractors, and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

**Section 15. PROOF OF INSURANCE COVERAGE; REQUIRED PRIOR TO COMMENCEMENT OF SERVICES.**

a. Contractor shall secure from a good and responsible company or companies authorized to do insurance business in the State of California the policies of insurance required by this Agreement and furnish to the City Clerk certificates of said insurance at least one (1) day prior to the commencement of any services to be performed under this Agreement.

b. The certificates of insurance shall bear an endorsement whereby it is provided that, in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the City shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or amendment is effective. In the case of non-payment, ten (10) days' advance written notice shall be given.

c. The certificates of insurance shall bear an endorsement whereby it is provided that the respective insurance policy shall not be terminated or expire without first providing thirty (30) days written notice to the City of such termination or expiration.

d. The certificates of insurance shall indicate that the respective insurance policy will be maintained throughout the Term, and (if applicable during any Option Period) of this Agreement.

e. The Comprehensive General Liability and vehicle liability policies shall be endorsed to contain the following provision: "For any claims related to this Contract, Contractor's service coverage shall be primary with respect to the City. Any insurance maintained by the City shall be in excess of Contractor's insurance and shall not contribute to it.

**Section 16. TIME OF THE ESSENCE.**

Time is of the essence in the performance of this Agreement.

**Section 17. INDEMNIFICATION.**

Notwithstanding the limits of any insurance, Contractor shall indemnify the City, its officials, officers, agents, volunteers and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising or alleged to arise out of or in connection with the negligent performance of the work, operations or activities of Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising or alleged to arise from the negligent acts or omissions of Contractor hereunder, or arising or alleged to arise from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities or portion of such claims or liabilities arising or alleged to arise from the negligence or willful misconduct of the City its officials, officers, agents, volunteers or employees, and in connection therewith:

- (a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;
- (b) Contractor will promptly pay any judgment rendered against the City, its officials, officers, agents or employees for any such claims or liabilities arising or alleged to arise out of or in connection with Contractor's (or its agents', employees', subcontractors' or invitees') negligent performance of or failure to perform such work, operations or activities hereunder; and Contractor agrees to save and hold the City, its officials, volunteers, officers, agents, and employees harmless there from;
- (c) In the event the City, its officials, officers, agents, volunteers or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising or alleged to arise out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor shall pay to the City, its officials, volunteers officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees for counsel acceptable to City.
- (d) Contractor's duty to defend and indemnify as set out in this Section shall include any claims, liabilities, obligations, losses, demands, actions, penalties, suits, costs, expenses or damages or injury to persons or property arising or alleged to arise from, in connection with, as a consequence of or pursuant to any state or federal law or regulation regarding hazardous substances, including but not limited to the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Resource Conservation and Recovery Act of 1976 ("RCRA"), the Hazardous and Solid Waste Amendments of 1984, the Hazardous Material Transportation Act, the Toxic Substances control Act, the Clean Air Act, the Clean Water Act, the California Hazardous Substance Account Act, the California Hazardous Waste Control Law or the Porter-Cologne Water Quality Control Act, as any of those statutes may be amended from time to time.

The Contractor's indemnification obligations pursuant to this Section shall survive the termination of this Agreement. Contractor shall require the same indemnification from all subcontractors.

#### **Section 18.           REPORTS.**

Upon request by **JOHN A. McGLADE, DIRECTOR OF PUBLIC WORKS**, or his designee, Contractor shall prepare and submit reports concerning Contractor's performance of the services required by this Agreement.

#### **Section 19.           RECORDS.**

a. Contractor shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable **JOHN A. McGLADE, DIRECTOR OF PUBLIC WORKS**, or his designee to evaluate the cost and the performance of such services.

b. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principals.

c. **JOHN A. McGLADE, DIRECTOR OF PUBLIC WORKS** or his designee shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

d. Records and supporting documents pertaining to the use of funds paid to Contractor hereunder shall be retained by Contractor and made available to **JOHN A. McGLADE, DIRECTOR OF PUBLIC WORKS** or his designee or his designee for purposes of performing an audit for a period of five (5) years from the date of termination of this Agreement.

**Section 20.                    MODIFICATIONS AND AMENDMENTS.**

This Agreement may be modified or amended only by a written instrument signed by both parties.

**Section 21.                    ENTIRE AGREEMENT.**

a. This Agreement supersedes any and all prior or contemporaneous agreements, either oral or written, between the City and Contractor with respect to the subject matter of this Agreement.

b. The Contract Documents contain all of the covenants and agreements between the parties with respect to the subject matter herein, and each party acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party, except those covenants and agreements in this Agreement and the Contract Documents.

c. No agreement, statement, or promise with respect to the subject matter of the Contract Documents, which is not contained in the Contract Documents, or in a valid modification or amendment to the Contract Documents, shall be valid or binding on either party.

**Section 22.                    AMBIGUITIES.**

This Agreement is in all respects intended by each party hereto to be deemed and construed to have been jointly prepared by the parties and the parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

**Section 23.                    NOTICES.**

Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To the City:	<b>John A. McGlade, Director Department of Public Works City of Victorville 14343 Civic Center Drive Victorville, CA 92392</b>
--------------	--

To Contractor:	<b>Provider Address</b>
----------------	-----------------------------

## City, State, Zip

b. Notices, payments, and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

### **Section 24. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES.**

No officer or employee of the City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to Contractor or to its successor(s), or for any breach of any obligation of the terms of this Agreement.

### **Section 25. REVIEW BY ATTORNEYS.**

Each party hereto has had its attorneys review this Agreement and all related documents. Each party hereto has consulted with its attorneys and has negotiated the terms of this Agreement based on such consultation.

### **Section 26. CARE OF WORK.**

The performance of services by Contractor or the payment of money by the City shall not relieve Contractor from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the City, when such inaccuracies are due to the negligence of Contractor.

### **Section 27. CAPTIONS AND HEADINGS**

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

### **Section 28. SUCCESSORS, HEIRS, AND ASSIGNS.**

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the parties.

### **Section 29. GENDER; PLURAL.**

In this Agreement, unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall include one another.

### **Section 30. SEVERABILITY.**

If any one or more of the sentences, clauses, paragraphs, or sections contained herein is declared invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair, or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

### **Section 31. GOVERNING LAW.**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, shall be construed pursuant to and in accordance with California law.

**Section 32. CUMULATIVE REMEDIES**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default of any other default by the other party.

**Section 33. VENUE.**

All proceedings involving disputes over the terms, provisions, covenants, or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in San Bernardino County, California.

**Section 34. ATTORNEY'S FEES.**

Should any litigation, specifically including but not limited to, arbitration and other non-judicial resolution of disputes be commenced between the parties to this agreement concerning this agreement or the rights and duties of either in relation thereto, the parties prevailing in such litigation or other proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney fees in such litigation where the proceeding which, if not agreed upon by the parties, shall be determined by the court or other entity in which such litigation or other proceeding is brought.

**Section 35. EFFECTIVENESS OF AGREEMENT.**

This Agreement shall not be binding upon the City, until signed by the authorized representative(s) of Contractor, approved by the City's Risk Manager, and executed by **JOHN A. McGLADE, DIRECTOR OF PUBLIC WORKS.**

**Section 36. REPRESENTATIONS OF PARTIES AND PERSONS EXECUTING AGREEMENT.**

(a) Each of the parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the parties hereto.

(b) The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the parties each purports to represent.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates written below.

**CITY OF VICTORVILLE**

By: \_\_\_\_\_  
**Ryan McEachron, Mayor**

Dated: \_\_\_\_\_

**CONTRACTOR: (Provider)**

CSLB #: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
**Carolee Bates, City Clerk**

**APPROVED AS TO STANDARD FORM:**

By: \_\_\_\_\_  
**Andre de Bortnowsky, City Attorney**

**CITY OF VICTORVILLE**

By: \_\_\_\_\_  
**Chuck Buquet, Risk Manager**

Dated: \_\_\_\_\_