

DESIGN-BUILD AGREEMENT

FOR

REDONDO BEACH CITYWIDE SKATE FACILITIES - PERRY PARK  
AND PAD 10 LOCATIONS

between

The City of Redondo Beach  
as Owner

and

Spohn Ranch, Inc., a California corporation as Design-Builder

Dated: September 7, 2021

## **DESIGN-BUILD AGREEMENT**

THIS DESIGN/BUILD AGREEMENT ("Agreement" or "Contract") is made and entered into this 7<sup>th</sup> day of September, 2021, by and between the City of Redondo Beach, a California charter city ("City"), and Spohn Ranch, a California corporation ("Design-Builder") for design, management, and construction of the Citywide Skate Facilities, Perry Park and Pad 10 Locations, in the City of Redondo Beach, California ("Project", sometimes herein).

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

WHEREAS, THE City Charter authorizes the City to use design-build procurement for the design and construction of certain public works projects, including the Project. Design-Builder shall perform, directly and through subcontracts, the services set forth in this Agreement and the Contract Documents; and

WHEREAS, City issued a Request for Proposals ("RFP") to select a design-builder to design, build and deliver to City the Redondo Beach the Citywide Skate Facilities - Perry Park and Pad 10 Locations. The Project consists of the total design and construction of the Citywide Skate Facilities - Perry Park and Pad 10 Locations, as described in, and in accordance with, the Scope of Services, complete with all appurtenances necessary to produce such facilities; and

WHEREAS, City has selected Design-Builder for the Project based on its response to the RFP; and

WHEREAS, Design-Builder warrants that it is ready, willing and able to design and build the Project in accordance with the terms and conditions of the Agreement; and

WHEREAS, Design-Builder represents that it has the necessary professional expertise, capacity, and skill to perform such services; and

WHEREAS, City enters this Agreement in reliance on all of Design-Builder's foregoing representations, and responses to the City's RFP.

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, City and Design-Builder agree as follows:

## **AGREEMENT**

### **ARTICLE 1 – CONTRACT DOCUMENTS AND INTERPRETATION**

#### **1.1 Definitions.**

The meaning of all terms used in the Contract Documents and not otherwise defined herein is contained in the General Conditions. City and Design-Builder are sometimes individually referred to as a “Party” and collectively as the “Parties.” Except as indicated otherwise, all references to City include its elected officials, officers, directors, employees, agents, and volunteers. Except as indicated otherwise, all references to Design-Builder include its personnel, employees, agents, and subcontractors.

#### **1.2 Contract Documents.**

The “Contract Documents” shall consist of the following documents, all of which are either attached hereto as Exhibits or are referenced herein, and all of the same are incorporated into this Agreement by this reference, with the same force and effect as if the same were set forth at length herein:

1. This Agreement, including all Exhibits and attachments:
  - a. Project Description and Scope of Work attached hereto as Exhibit A;
  - b. The Performance Bond attached hereto as Exhibit B;
  - c. The Payment Bond attached hereto as Exhibit C;
  - d. Indemnity provisions attached hereto as Exhibit D;
  - e. Insurance provisions attached hereto as Exhibit E;
2. The General Conditions found at:  
<https://www.redondo.org/civicax/filebank/blobdload.aspx?t=57978.43&BlobID=39463> ;
3. The Proposal attached as Exhibit F;
4. Preliminary Design Documents to be prepared by Design-Builder and approved in writing by the City;
5. The 2021 Standard Specifications for Public Works Construction (“Standard Specifications” or “Greenbook”) written by Public Works Standards, Inc., in association with the American Public Works Association, as modified and supplemented by the City;

6. Construction Documents to be prepared by Design-Builder and approved by the City in writing;
7. Design Documents to be prepared by Design-Builder and approved by the City in writing; and
8. Request for Proposals for this Project dated May 26, 2021 ("Request for Proposals" or "RFP") and any addenda ("RFP Addenda") which are all on file at the Public Works Department.

### 1.3 Order of Precedence.

Each of the Contract Documents is an essential part of the Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete Contract. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below.

#### (a) For design and other non-construction Work:

1. Permits
2. Change orders
3. Agreement and those documents listed under sub-section 1 of Section 1.2
4. General Conditions
5. RFP Addenda, if any
6. RFP
7. 2021 Standard Specifications
8. Construction Documents prepared by Design-Builder
9. Design Documents prepared by Design-Builder
10. Preliminary Design Documents prepared by Design-Builder
11. Proposal dated July 1, 2021

(b) For construction-related standards, specifications and requirements, the same order of precedence shall apply, except that the Final Design Documents shall also be considered Contract Documents and shall be added at the end of the order of precedence, provided that (i) specifications contained therein shall have precedence over plans, and (ii) any deviations contained in the Final Design Documents shall have priority over conflicting requirements of other Contract Documents only to the extent that the conflicts are specifically identified in the City's approval thereof.

### 1.4 Entire Agreement.

This Agreement together with all other Contract Documents constitutes the entire agreement between the Parties and all other representations or statements theretofore made, verbal or written, are merged herein. Both Parties have, with

the assistance of their respective counsel, drafted or reviewed the provisions contained in this Agreement. Therefore, no provision in this Agreement will be construed in favor or against any Party by virtue of the identity of its preparer. This Agreement may be amended only by written modification executed by duly authorized representatives of the Parties hereto.

#### 1.5 Interpretation and Intent.

1.5.1 Design-Builder and City, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder shall promptly notify the City Engineer concerning any conflicts or ambiguities. Design-Builder and City will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

1.5.2 Interpretation. The Contract Documents are intended to be coordinated so that figures, words or notes exhibited on plans and not mentioned in the Specifications, or vice versa, are to be executed to the true intent and meaning thereof, the same as if mentioned in the Specifications and set forth in plans. Work shown on plans, the dimensions of which are not given, is to be accurately followed according to the scale to which plans are made, but figured dimensions in all cases are to be followed, although they may differ from the scale measurements. The City Engineer will interpret the meaning of any part of the Contract Documents about which any misunderstanding may arise, and his decision shall be final. In the event of the Design-Builder's failure to give such notice pursuant to subsection 1.5.1, the Design-Builder shall make good any damage or defect caused thereby. The execution of work specially detailed or explained without a previous written claim for an extra charge, shall constitute an acceptance by the Design-Builder of the detailed explanations as being in conformity with the work covered by the Contract.

1.5.3 Unless otherwise stated in the Contract Documents, words which have well-known, technical or construction industry meanings are used in accordance with such recognized meanings. Whenever in the Contract Documents the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of the City Engineer is intended, and similarly the words "approved," "acceptable," "satisfactory," or words of like import, shall mean approved or acceptable to, or satisfactory to the City Engineer unless otherwise expressly stated.

1.5.4 The Contract Documents form the entire agreement between City and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## 1.6 Ownership of Work Product.

1.6.1 The Construction Documents and other Project-related documents and electronic data prepared by or on behalf of the Design-Builder for the Project shall be deemed to be "works for hire" and, upon final payment being made, are the property of the City. The Design-Builder hereby assigns to the City, without reservation, all copyrights and all other intellectual property rights to all Project-related documents, images, designs, electronic files, models, computer drawings and other electronic expression, photographs, and other expression produced by the Design-Builder in connection with this Agreement (collectively, "Work Product"). Among those documents are certain "Instruments of Service," including the design drawings, Design-Builder Specifications, and other documents that are required by the Contract Documents. Design-Builder shall obtain a valid written assignment of copyrights and all other intellectual property rights from its consultants in terms identical to those that obligate the Design-Builder to the City as expressed in this subsection, which intellectual property rights the Design-Builder hereby irrevocably assigns to the City. The City, in turn, hereby grants to the Design-Builder a nonexclusive license to reproduce the Work Product for purposes relating directly to the Design-Builder's performance of this Project, for the Design-Builder's archival records, and for the Design-Builder's reproduction of drawings and photographs in the Design-Builder's marketing materials provided the contents of those materials, as to this Project, are approved by City. No other Work Product may be reproduced for any other purpose without the express written permission of the City. No other copyrights are included in this grant of nonexclusive license to the Design-Builder. This nonexclusive license shall terminate immediately upon the breach of this Agreement by the Design-Builder.

1.6.2 A copy of every technical memorandum and report prepared by Design-Builder shall be submitted to the City to demonstrate progress toward completion of Work. In the event City rejects or has comments on any such work product, City shall identify specific requirements for satisfactory completion by Design-Builder. Design-Builder shall provide City with Project-related documents in reproducible or electronic format, upon City's written request. Complete Record Documents, including a complete set of "as-built" drawings, shall be turned over to City upon termination of this Agreement or Final Completion, whichever occurs first. If the City subsequently reproduces Project-related documents or creates (or causes to create) a derivative work based upon Project-related documents created by the Design-Builder, the City shall remove or completely obliterate the original professional seals, logos, and other indications on the documents of the identity of the Design-Builder and its consultants. However, where required by law, such identification with appropriate qualifying language or other statutorily prescribed information identifying the original architect or the scopes of the reuse of the documents may remain or be applied. City agrees that its use any of the Project-related documents for any purpose other than the Project, shall be at City's sole risk.

## **ARTICLE 2 – TIME FOR PERFORMANCE**

### **2.1 Contract Time.**

2.1.1 Contract Time shall be two hundred seventy three (273) Calendar Days from issuance of Notice to Proceed to Substantial Completion.

#### **CONTRACT MILESTONES: (TENTATIVE ONLY)**

1. Notice to Proceed Issued: September 22, 2021
2. Designs complete: December 31, 2021
3. Construction Documents and permits: February 28, 2022
4. Pad 10 Phase 1 complete: May 15, 2022
5. Perry Park Phase 1 complete: April 15, 2022
6. Final completion, including punch list items: June 21, 2022

2.1.2 By executing this Agreement, Design-Builder confirms that the Contract Time is a reasonable period for performing the Work. Design-Builder agrees to commence Services within five (5) calendar days after a written Notice to Proceed is issued by the City, to perform the Work in a diligent and workmanlike manner, to complete the Work within the Contract Time, and to achieve Final Completion of the Work within the time fixed by the City. The Contract Time may be extended only with the written permission of the City.

### **2.2 Liquidated Damages for Design-Builder Delays.**

2.2.1 Design-Builder and City have agreed to liquidate damages with respect to Design-Builder's failure to achieve Substantial Completion of the Work within the Contract Time. The Parties intend for the Liquidated Damages set forth herein to constitute liquidated damages as such term is used in Government Code Section 53069.85. Design-Builder acknowledges and agrees that the Liquidated Damages are intended to compensate City solely for Design-Builder's failure to meet the deadline for Substantial Completion and shall not excuse Design-Builder from liability from any other breach, including any failure of the Work to conform to the requirements of the Contract Documents.

2.2.2 In the event that Design-Builder fails to achieve Substantial Completion of the Work within the Contract Time, Design-Builder agrees to pay City the following amounts:

Two Hundred Fifty Dollars (\$250) per day for each calendar Day that Substantial Completion is not achieved.

2.2.3 Design-Builder acknowledges and agrees that the foregoing damages have been set based on an evaluation by City of damages that it will incur in the event of late completion. Design-Builder and City agree that the amount of such damages is impossible to ascertain as of the date of execution hereof, and the parties have agreed to such Liquidated Damages to fix Design-Builder's costs and to avoid later disputes over which items are properly chargeable to Design-Builder. It is understood and agreed by Design-Builder that any Liquidated Damages payable pursuant to his Agreement are not a penalty and that such amounts are not manifestly unreasonable under the circumstances existing as of the date of execution of this Agreement.

2.2.4 It is further agreed that City shall have the right to deduct Liquidated Damages against progress payments or retainage and that the City will issue a unilateral deductive change order and will reduce the Contract Price accordingly. In the event the remaining unpaid Contract Price is insufficient to cover the full amount of Liquidated Damages, Design-Builder shall pay the difference to City.

### 2.3 Delays and Extensions of Time.

2.3.1 Non-Compensable Delays. The Parties acknowledge that the following types of delays and events are not within the responsibility or control of City, and are reasonably contemplated by the Parties to occur during the course of performance of the Work which may impact the schedule for performance: construction by separate Design-Builders on or adjacent to the Project site; and Force Majeure events as described in the General Conditions ("Non-Compensable Delays"). Notwithstanding anything to the contrary in the Contract Documents, an extension of the Contract Time, to the extent permitted under Article 3 of the General Conditions, shall be the sole remedy of Design-Builder for the above referenced Non-Compensable Delays. In no event shall Design-Builder be entitled to any compensation or recovery of any damages in connection with the Non-Compensable Delays identified in this Section including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration.

2.3.2 Compensable Delays. If the date for Substantial Completion of the Work is delayed by events which are the responsibility of or within the control of the City, are unforeseeable and are unreasonable under the circumstances involved, the Design-Builder shall be entitled to an equitable adjustment of the Contract Time and/or the Contract Price, subject to the requirements of Article 3 of the General Conditions.



## **ARTICLE 3 – CONTRACT PRICE**

### **3.1 Contract Price.**

3.1.1 City shall pay Design-Builder in accordance with Article 7 of the General Conditions, the total, all-inclusive contract price of one hundred forty thousand dollars (\$140,000) subject to any adjustments made in accordance with the General Conditions.

### **3.2 Non-Reimbursable Costs.**

Article 7 of the General Conditions lists those items that are not deemed as costs of the Work.

## **ARTICLE 4 – PAYMENT**

### **4.1 Progress Payments.**

4.1.1 Design-Builder shall submit to City on the first (1st) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's application for payment in accordance with Article 7 of the General Conditions of Contract.

4.1.2 City shall make payment in accordance with Article 7 of the General Conditions.

### **4.2 Retainage on Progress Payments.**

4.2.1 City will follow those procedures outlined in Article 7 of the General Conditions regarding payments and retainage.

4.3 Final Payment. Design-Builder shall submit its application for Final Payment to Owner in accordance with Article 7 of the General Conditions of Contract.

4.4 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of four (4) years after Final Payment, City and City's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work. Such inspection shall

take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the City and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

## **ARTICLE 5 – DESIGN-BUILDER'S DUTIES AND RESPONSIBILITIES**

In addition to those duties outlined in the General Conditions, Design-Builder agrees as follows:

### **5.1 General Services.**

5.1.1 Design-Builder's Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with City and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the consent of City.

5.1.2 Design-Builder shall provide City with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Agreement; and (iv) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

5.1.3 The Project Schedule shall be reviewed and revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. City's review of, and response to, the Project Schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

5.1.4 The parties will meet within seven (7) days after execution of the Agreement, or at such other agreed upon time, to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

## 5.2 Design Professional Services.

5.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed design consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any design consultant.

## 5.3 Standard of Care for Design Professional Services.

5.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

## 5.4 Design Development Services.

Design-Builder shall follow those procedures outlined in Article 9 of the General Conditions regarding design submittals.

## 5.5 Legal Requirements.

5.5.1 Design-Builder shall perform the Work in accordance with all applicable local, State, and federal laws, statutes, codes, regulations, and orders including, but not limited to, the California Labor Code, California Public Contract Code, and the California Building Standards Code (collectively, "Legal Requirements") and shall provide all notices applicable to the Work as required by the Legal Requirements.

5.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

5.5.3 The City will issue no-fee permits building and encroachment permits, as required. Design-Builder shall pay City Business Licenses. Design-Builder shall pay all other fees and permits required by other public agencies.

5.5.4 Design-Builder shall provide reasonable assistance to City in obtaining those permits, approvals and licenses that are City's responsibility.

5.5.6 Labor Code Compliance. Design-Builder understands and agrees that the Project is a public work and is subject to payment of prevailing wages, as well as compliance with other provisions of the California Labor Code related to public works set forth Labor Code Sections 1720 through Section 1861, and as referenced in Article 12 of the General Conditions and the Contract Documents.

## 5.6 Key Personnel.

5.6.1 The Design-Builder's single lead Project Manager and authorized representative for this Project is Vince Onel, and he has the authority to make decisions for and bind the Design-Builder. This Project Manager shall manage and coordinate all commercial and technical aspects of the Project. The Project Manager shall submit monthly progress reports to the City and maintain the Project Schedule. The Project Manager originally assigned to this Project shall not be changed once the Project has commenced unless the Project Manager ceases to be in the Design-Builder's employ. Any change in the Project Manager shall be subject to City's prior approval as provided in Subsection 5.6.2 herein. The Site Manager may be different from the Project Manager. The Site Manager will be required to live in or near Redondo Beach with 24-hour access during the period of time when construction is performed on the Project site.

5.6.2 In addition to the Project Manager, Design-Builder shall employ the Project Superintendent and Key Personnel identified in the Proposal, attached hereto, or other Key Personnel approved by the City in writing. City may at any time elect to add job categories to the Key Personnel list. City has the right to review the qualifications and character of each individual appointed to a key position (including personnel employed by Subcontractors) and to accept or reject the use of such individual. Design-Builder shall submit to the City in writing any proposed change in Key Personnel and obtain City's prior written consent to any such change. The City's consent to a change in Key Personnel shall not be unreasonably withheld. If City determines in its sole discretion that performance of any Key Personnel is unsatisfactory, then City has the right to direct a change in such Key Personnel.

## 5.7 Design-Builder's Construction Phase Services.

In addition to those duties outlined in the General Conditions and Exhibit A, Design-Builder agrees to the following:

5.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other

temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

5.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

5.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents.

5.7.4 Design-Builder assumes responsibility to City for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

5.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

5.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.

## 5.8 Design-Builder's Responsibility for Project Safety.

In addition to those duties outlined in the General Conditions, Design-Builder agrees as follows:

5.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for

implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

5.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

5.8.3 Design-Builder's responsibility for safety under this Section 5.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

## 5.9 Design-Builder's Warranty.

5.9.1 Design-Builder warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this Section or the Contract Documents. Design-Builder will provide City with all manufacturers' warranties upon Substantial Completion.

## 5.10 Correction of Defective Work.

In addition to those duties outlined in Article 2 of the General Conditions and elsewhere in the Contract Documents, Design-Builder agrees as follows:

5.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 5.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

5.10.2 Design-Builder shall, within fourteen (14) days of receipt of written notice from City that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such fourteen (14) day period, City, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that City will commence correction of such nonconforming Work with its own forces and/or will request Design-Builder's Surety to promptly undertake such corrective work. If City does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by City in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the fourteen (14) day period identified herein shall be deemed inapplicable.

5.10.3 The one year period referenced in Section 5.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies City may have regarding Design-Builder's other obligations under the Contract Documents.

#### 5.11. Supervision and Coordination of Construction.

5.11.1 Design-Builder shall supervise, inspect and direct the construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the construction in accordance with the Contract Documents. Design-Builder shall be solely responsible to see that the completed construction complies accurately with the Contract Documents and shall keep City advised as to the quality and progress of the Work.

5.11.2 Design-Builder shall coordinate its Work with adjoining property owners and tenants to provide access to the Project site and adjoining property, and shall implement measures to prevent disruption to operations and occupancy of such property owners and tenants.

## 5.12 Labor, Materials and Equipment.

In addition to those duties outlined in the General Conditions and Exhibit A, Design-Builder agrees as follows:

5.12.1 Design-Builder shall provide competent, suitably qualified personnel to survey and lay out the construction and perform construction as required by the Contract Documents. Design-Builder shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all construction at the site shall be performed during regular working hours, and Design-Builder will not permit overtime work or the performance of construction on Saturday, Sunday or any legal holiday without City's prior written consent.

5.12.2 Unless otherwise specified in the Contract Documents, Design-Builder shall furnish or cause to be furnished and assume full responsibility for materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work. Design-Builder, in the presence of City's personnel, will direct the checkout of utilities and operations of systems and equipment.

5.12.3 All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of City. If required by City, Design-Builder shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable supplier, except as otherwise provided in the Contract Documents

## **ARTICLE 6 – CITY'S DUTIES AND RESPONSIBILITIES**

In addition to those duties outlined in the General Conditions, City agrees as follows:

### 6.1 Duty to Cooperate.

6.1.1 City shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.



6.1.2 City shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in the General Conditions.

6.1.3 City shall give Design-Builder timely notice of any Work that City notices to be defective or not in compliance with the Contract Documents.

## 6.2 Furnishing of Services and Information.

6.2.1 Unless expressly stated to the contrary in the Contract Documents, and only to the extent in the City's possession as of the effective date of this Agreement, City shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work, except as provided in Section 9.7:

6.2.1.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

6.2.1.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site(s);

6.2.1.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

6.2.1.4 A legal description of the Site(s);

6.2.1.5 To the extent available, record drawings of any existing structures at the Site(s); and

6.2.1.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site(s).

## 6.3 City's Representative.

6.3.1 City's Representative shall be responsible for providing City-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. City's Representative shall also provide Design-Builder with prompt notice if they observe any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. City's Representative shall

communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of City. The City Engineer is the City's authorized representative for this Project. The City Engineer may designate in writing, from time to time, one or more representatives authorized to act on the City's behalf with respect to the Project.

#### 6.4 City's Separate Contractors.

6.4.1 City is responsible for all work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors, if any, to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

#### 6.5 City's Right to Make Changes and Award Separate Contracts.

6.5.1 The City reserves the right to order changes in the Work, to perform Work or operations related to the Project with the City's own forces, and to award separate contracts in connection with the Project.

#### 6.6 City's Right to Stop the Work.

6.6.1 If the Design-Builder fails to correct defective Work as required herein, or fails to carry out the Work in accordance with the Contract Documents, the City may, in its sole discretion, elect to order the Design-Builder to stop the Work, or any portion thereof, until the City reasonably determines that the cause for such order has been eliminated. The City's right to stop the Work is in addition to the City's right to terminate set forth herein.

#### 6.7 Suspension by City for Convenience.

6.7.1 The City may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine. If such suspension, delay or interruption causes the Design-Builder to incur increased cost for the performance of the Work, an adjustment to the Contract Price shall be made for such costs as are directly attributable to such suspension, delay or interruption. If such suspension, delay or interruption causes a delay to the critical path of the Work, an adjustment to the Contract Time shall be made.

### **ARTICLE 7 - TERMINATION OR SUSPENSION OF THE CONTRACT**

#### 7.1 Termination for Default.

7.1.1 If the Design-Builder refuses or fails to commence or prosecute the Work after written notice(s) is provided by the City to the Design-

Builder, or any separate part thereof, or with such diligence as will insure its completion within the time specified in this Contract and any authorized extension thereof, fails to perform the Work in strict accordance with the Contract Documents, fails to use an adequate number of skilled workers, fails to make prompt payment to Subcontractors or for material or labor, fails to install Work that is free of defects, or disregards Legal Requirements, the City may serve written notice upon Design-Builder and its Surety of City's intention to terminate the Work to be performed under this Contract, such notice to contain the reasons for such intention, and unless within fourteen (14) days after the serving of such notice, such violation shall cease and arrangements satisfactory to City Engineer for the correction thereof be made, upon the expiration of said fourteen (14) days Design-Builder shall be determined to be in default, and further work thereunder by the Design-Builder shall immediately cease and terminate Work.

7.1.2 It is recognized that in the event a voluntary or involuntary petition in bankruptcy is filed by or against the Design-Builder, or if the Design-Builder signs or makes a general assignment for the benefit of creditors, or if an application or other procedure for appointment of a receiver for the Design-Builder or his business is favorably ruled upon by competent authority providing for such appointment of a receiver, such events could impair or frustrate Design-Builder's performance of the Work. Accordingly, it is agreed that upon the occurrence of any such event, City shall be entitled to request of Design-Builder, or its successor in interest, adequate assurance of future performance in accordance with the Contract Documents. Design-Builder's failure to comply with City's request for adequate assurances within ten (10) calendar days of the request shall entitle City to terminate the Design-Builder for default.

7.1.3 In the event of any such termination as provided in Sections 7.1.1 and 7.1.2 above, legal title to all equipment, materials, and supplies, whether or not incorporated or installed in the work to be done hereunder, and all construction or installations and work done shall immediately vest in and pass to the City, and the City may take charge of the Work and complete all the Work to be furnished and done under this Contract in any manner considered to be for the best interest of the City. In completing this Contract, the City may take possession of and use any or all of the materials and supplies in the discretion of the City, for which the Design-Builder has a valid agreement with the supplier. The City may procure other materials, equipment, supplies and provide the necessary labor for the completion of the work, or enter into a Contract therefore, and charge all the cost and expenses to fully complete the Contract to the Design-Builder. In the event such cost and expense to fully complete the Contract shall exceed the amount which would have been due the Design-Builder under the Contract had it been completed by him, any such excess cost and expense shall be due and paid to the City by the Design-Builder and its Surety. If Design-Builder or its Surety fails to pay such amount immediately upon City's demand, then City shall be entitled to collect interest from the date of said demand.

7.1.4 In lieu of relying on the provisions of this section for termination for fault, City may pay the Design-Builder for portions of Work already completed and treat the unperformed work as if it had never been included in the Contract. If this provision is invoked by City, Design-Builder shall have no claim for prospective profits on Work not performed.

7.1.5 Upon a determination by a court of competent jurisdiction that any default termination of Design-Builder, or its successor in interest was wrongful, such termination will be deemed to be converted to a termination for convenience pursuant to the provisions of this Subsection and Design-Builder's remedy for wrongful termination in such event shall be limited to the recovery of the payments permitted for termination for convenience as set forth herein.

7.1.6 The provisions of this subsection shall be non-exclusive, and shall be in addition to all other rights and remedies available to City under law or in equity.

## 7.2 Termination for Convenience.

7.2.1 City reserves the right to terminate Design-Builder's performance, without regard to cause or fault or breach of Design-Builder, by providing not less than ten (10) days' prior, written Notice of Termination for Convenience.

7.2.2 The amount to be paid to the Design-Builder by City in the event of Termination for Convenience shall consist solely of:

7.2.2.1 The cost of Work completed in accordance with the Contract Documents up to the date of issuance of the Notice of Termination; and

7.2.2.2 The Design-Builder's documented, reasonable costs of demobilization for a period of fourteen (14) days following the effective date of the Notice of Termination, including costs of the Design-Builder's personnel reasonably required to effectuate the cancellation, and such storage, transportation, and other costs incurred which are reasonably necessary for the preservation, protection or disposition of the Work.

7.2.3 In no event shall City be responsible for and Design-Builder hereby waives any claim for overhead or anticipated profits on unperformed work or other economic loss upon termination for convenience.

## 7.3 Suspension by City for Convenience.

The City may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine. If such suspension, delay or interruption causes the Design-

Builder to incur increased cost for the performance of the Work, an adjustment to the Contract Price shall be made for such costs as are directly attributable to such suspension, delay or interruption. If such suspension, delay or interruption causes a delay to the critical path of the Work, an adjustment to the Contract Time shall be made.

## **ARTICLE 8 - INDEMNITY, INSURANCE AND BONDS**

### **8.1 Indemnity.**

The Design-Builder is subject to and bound by the indemnification requirements set forth in Exhibit "D" hereto.

### **8.2 Insurance.**

Design-Builder will obtain and maintain in full force and effect during the term of this Agreement (or for such longer term as may be required under Exhibit "E", insurance in accordance with, and meeting the requirements set forth in, Exhibit "E". Further obligations of Design-Builder with respect to insurance are set forth in Exhibit "E". Design-Builder will cause information concerning any reduction, change or cancellation of coverage to be promptly furnished to City. If Design-Builder fails to purchase and maintain any insurance required under this Section, and such failure remains unremedied for five (5) calendar days after written notice thereof from the City, then City may, but will not be obligated to, purchase such insurance on behalf of Design-Builder and will be entitled to be reimbursed by Design-Builder promptly upon demand. Design-Builder's insurance required under this Agreement shall cover fully Design-Builder's financial responsibility and liability for the acts, errors, omissions, negligence, fault or omission of, Design-Builder's Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with Design-Builder. The provisions requiring Design-Builder to carry insurance will not be construed in any manner as waiving, restricting or limiting the liability of Design-Builder as to any obligations imposed under this Agreement, whether or not same are, or may be, covered by insurance. Should any provisions of this Section conflict with any provision in Exhibit "E", the language, terms and conditions providing City with the greatest protection shall govern.

### **8.3 Bonds.**

8.3.1 General. The Design-Builder shall promptly furnish, at its own cost and expense, the requisite Faithful Performance and Payment Bonds with a responsible Corporate Surety authorized to issue such bonds in California using the bond forms set forth in Exhibits "B" and "C" hereto, and subject to approval of the City Attorney. The bonds shall be executed by a California admitted surety with the Best's Insurance Guide rating satisfactory to the City. Their effective date shall not be prior to the effective date of this Agreement. If a Best's Insurance

Guide rating is not available, the proposed Surety must meet comparable standards of another rating service satisfactorily to City. Bonds issued by a surety listed in the latest version of the U.S. Department of Treasury Circular 570 shall be deemed to be accepted unless specifically rejected by City. Bonds from sureties not listed in Treasury Circular 570 must be accompanied by all of the documents enumerated in California Code of Civil Procedure Section 995.660(a). Every Bond must display the Surety's bond number and incorporate this Contract by reference. The terms of the Bonds shall provide that the Surety agrees that no change, extension of time, alteration or modification of the Contract Documents or the Work to be performed thereunder shall in anyway affect its obligations and shall waive notice of any such change, extension of time, alteration or modification of the Contract Documents.

8.3.2 Faithful Performance Bond. The Faithful Performance Bond shall be in the sum of not less than one hundred percent (100%) of the maximum amount of the Contract Price. The bond shall be furnished as a guaranty of the faithful performance of all covenants, terms, conditions and stipulations contained in the Contract Documents including, but not limited to, the covenants that all materials used and workmanship employed in the performance of the Contract shall be free from defects, and that should any defects therein appear within a period of one year from the date of acceptance by the City the Design-Builder shall, at his own cost and expense, repair, replace and correct such defects to the satisfaction of the City Engineer within thirty (30) days after notice thereof by the City.

8.3.3 Payment Bond. The Design-Builder shall furnish a Payment Bond in the sum of not less than one hundred percent (100%) of the maximum amount of the Contract Price and shall be conditioned and provide that if the Design-Builder or its Subcontractors, fails to pay for any materials, transportation, appliances, or utilities used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, said Surety will pay the same in an amount not exceeding the sum set for above, and also in case suit is brought upon this bond a reasonable attorney's fee to be fixed by the Court.

## **ARTICLE 9 – MISCELLANEOUS PROVISIONS**

### **9.1 Independent Contractor.**

Design-Builder is retained by City only to the extent set forth in this Agreement, and the Design-Builder's relationship to the City is that of an independent contractor. Design-Builder shall be free to dispose of all portions of Design-Builder's time and activities which Design-Builder is not obligated to devote to the City in such a manner and to such persons, firms, or corporations as the Design-Builder sees fit except as expressly provided in this Agreement. Neither

the City nor any of its agents shall have control over the conduct of the Design-Builder or any of the Design-Builder's employees, except as set forth in this Agreement. Design-Builder shall not have the status of an employee under this Agreement, or be entitled to participate in any insurance, medical care, vacation, sick leave or other benefits provided for City's officers or employees. Design-Builder shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of the City as an agent. Design-Builder shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City. Design-Builder agrees to pay all required taxes on amounts paid to Design-Builder under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Design-Builder shall fully comply with the workers' compensation law regarding Design-Builder and Design-Builder's employees. Design-Builder further agrees to indemnify and hold City harmless from any failure of Design-Builder to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any fees due to Design-Builder under this Agreement any amount due to City from Design-Builder as a result of Design-Builder's failure to promptly pay to City any reimbursement or indemnification arising under this Section.

## 9.2 Avoidance of Conflicts.

Design-Builder shall employ no City official nor any regular City employee in the Work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement in violation of applicable provisions of law. Design-Builder further warrants on behalf of itself and its officers, employees, associates and subcontractors, if any, that they will comply with all conflict of interest statutes of the State of California applicable to Design-Builder's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Design-Builder shall retain the right to perform similar services for other clients, but neither Design-Builder nor any of its officers, employees, associates and subcontractors shall, without the prior written approval of the City, perform work for another person or entity for whom Design-Builder is not currently performing work that would require Design-Builder or any of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Design-Builder agrees that a clause substantially similar to this section shall be incorporated into any subcontracts which Design-Builder executes in connection with the performance of this Agreement. Design-Builder agrees to indemnify and hold City harmless from any failure of Design-Builder to comply with the requirements of this Section 9.2.

### 9.3 Notices.

Any notice or special instructions required to be given in writing under this Agreement shall be given either by personal delivery to Design-Builder's agent (as designated in Section 5.6.1 hereinabove) or to City's Engineer as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed as follows:

#### TO CITY:

City of Redondo Beach  
Public Works Department  
Engineering Services Division  
415 Diamond Street, Door 2  
Redondo Beach, California 90277

#### TO DESIGN-BUILDER:

Spohn Ranch, Inc.  
6824 S. Centinela Ave.  
Los Angeles, CA 90230

### 9.4 Contractor's License Notice.

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

### 9.5 Claim Dispute Resolution.

In the event of any dispute or controversy with the City over any matter whatsoever, the Design-Builder shall not cause any delay or cessation in or of Work, but shall proceed with the performance of the Work in dispute. The Design-Builder shall retain any and all rights provided that pertain to the resolution of disputes and protests between the parties. The disputed Work will be categorized as an "unresolved dispute" and payment, if any, shall be as later determined by mutual agreement or a court of law. The Design-Builder shall keep accurate, detailed records of all disputed Work, claims and other disputed matters.

All claims arising out of or related to the Contract Documents or this Project, and the consideration and payment of such claims, are subject to Public Contract Code Section 9204 and Public Contract Code Section 20104 et seq. (Article 1.5), where applicable. This Contract hereby incorporates those provisions as though fully set forth herein. For purposes of this Section, "claim" means a separate demand by the Design-Builder sent by registered mail or certified mail with return receipt requested, for (i) a time extension, including,



without limitation, for relief from damages or penalties for delay assessed by the City, (ii) payment by the City of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract Documents, payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled, or (iii) payment of an amount that is disputed by the City. The Design-Builder or any Subcontractor must file a claim in accordance with Section 9204 and Article 1.5 (if applicable), and must then adhere to Section 9204 and Article 1.5 (as applicable).

In addition to compliance with Public Contract Code Section 9204 and Article 1.5, filing a claim in accordance with the Government Claims Act (Government Code Section 810 et seq.) is a prerequisite to filing any lawsuit against the City relating to this Contract.

#### 9.6 Third Party Claims

The City shall have full authority to compromise or otherwise settle any claim relating to the Project at any time. The City shall timely notify the Design-Builder of the receipt of any third-party claim relating to the Project. The City shall be entitled to recover its reasonable costs incurred in providing this notice.

#### 9.7 Existing Utilities.

Except as shown in plans and specifications provided to the Design-Builder, the location and existence of underground utilities or substructures has not been obtained. Subject to Gov't Code Section 4215, the methods used and costs involved to locate existing elements, points of connection and all construction methods are the Design-Builder's sole responsibility. Accuracy of information furnished, as to existing conditions, is not guaranteed by the City. The Design-Builder, at its sole expense, must make all investigations necessary to determine locations of existing elements, which may include contacting Underground Service Alert and other private underground locating firm(s), utilizing specialized locating equipment, hand trenching, or both. For every Dig Alert Identification Number issued by Underground Service Alert during the course of the Project, the Design-Builder must submit to the City the following form. The Design-Builder shall be responsible for preserving the integrity of the existing underground utilities at the site.

#### **UNDERGROUND SERVICE ALERT IDENTIFICATION NUMBER FORM**

No excavation will be permitted until this form is completed and returned to the City.

Government Code Section 4216, *et seq.* requires a Dig Alert Identification Number to be issued before a permit to excavate will be valid.

To obtain a Dig Alert Identification Number, call Underground Service Alert at **811** a minimum of three (3) Working Days before scheduled excavation. For best response, provide as much notice as possible up to ten (10) Working Days.

***Dig Alert Identification Number:***

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

Spohn Ranch,  
a California corporation

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

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

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

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

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

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

Note: This form is required for every Dig Alert Identification Number issued by Underground Service during the course of the Work. Additional forms may be obtained from the City upon request.

**9.8 Applicable Law and Venue.**

The provisions of this Agreement shall be governed by and interpreted pursuant to the laws of the State of California, without regard for conflicts of law principles. Venue for any legal action related to this Agreement shall be any court of competent jurisdiction in the County of Los Angeles, California.

**9.9 Time Is of the Essence.**

Time is of the essence in every term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers the day, month and year first above written.

SPOHN RANCH,  
a California corporation

CITY OF REDONDO BEACH,  
a California charter city

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

By: \_\_\_\_\_  
William C. Brand, Mayor

By: \_\_\_\_\_  
(signature)

ATTEST:

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
Eleanor Manzano, City Clerk

Its: \_\_\_\_\_  
(print title)

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael W. Webb, City Attorney

California Contractor's License No. 761475

DIR Registration No. 1000005197

Tax I.D. No. 95-4670208

## EXHIBIT A

### PROJECT DESCRIPTION AND SCOPE OF WORK

EXHIBIT B

Bond No. \_\_\_\_\_

**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the City of Redondo Beach ("City"), has awarded to \_\_\_\_\_

\_\_\_\_\_  
("Principal")

*(Name and address of Contractor)*

a contract (the "Contract") for the Work described as follows:

\_\_\_\_\_  
*(Project name)*

WHEREAS, Principal is required under the terms of the Contract to furnish a Bond for the faithful performance of the Contract.

NOW, THEREFORE, we, the undersigned Principal, and \_\_\_\_\_

\_\_\_\_\_  
*(Name and address of Surety)*

("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto the City in the penal sum of \_\_\_\_\_

Dollars (\$\_\_\_\_\_), this amount being not less than the total Contract Price, in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors executors and administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded 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 provisions in the Contract and any alteration thereof made as therein provided, on the Principal's 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, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered. Surety hereby waives any statute of limitations as it applies to an action on this Bond.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or of the Work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the specifications. Surety hereby waives the provisions of California Civil Code Sections 2845 and 2849. The City is the principal beneficiary of this Bond and has all rights of a party hereto.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

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

“Principal”

“Surety”

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

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

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

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

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

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

(Seal)

(Seal)

*Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. **DATE OF BOND MUST NOT BE BEFORE DATE OF CONTRACT.** Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.*

EXHIBIT C

Bond No. \_\_\_\_\_

**PAYMENT BOND  
(LABOR AND MATERIALS)**

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the City of Redondo Beach ("City"), State of California, has awarded to \_\_\_\_\_

\_\_\_\_\_

("Principal")

*(Name and address of Contractor)*

a contract (the "Contract") for the Work described as follows:

\_\_\_\_\_

*(Project name)*

WHEREAS, under the terms of the Contract, the Principal is required before entering upon the performance of the Work, to file a good and sufficient payment Bond with the City to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

NOW, THEREFORE, we, the undersigned Principal, and \_\_\_\_\_

\_\_\_\_\_

*(Name and address of Surety)*

("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto the City and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Contract and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this Work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this Bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

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

Upon expiration of the time within which the California Labor Commissioner may serve a civil wage and penalty assessment against the principal, any of its subcontractors, or both

the principal and its subcontractors pursuant to Labor Code Section 1741, and upon expiration of the time within which a joint labor management committee may commence an action against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code Section 1771.2, if the condition of this Bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or the Specifications accompanying the same shall in any manner affect its obligations on this Bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

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

“Principal”

“Surety”

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

(Seal)

(Seal)

*Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. **DATE OF BOND MUST NOT BE BEFORE DATE OF CONTRACT.** Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.*



EXHIBIT D

INDEMNITY

[ATTACHED BEHIND THIS PAGE]

## INDEMNIFICATION

1. Indemnification for Services Other than Design Professional Services. Other than for design-professional services, and to the fullest extent permitted by law, Design-Builder hereby undertakes and assumes liability for, and agrees to defend (at Redondo Beach's option), indemnify, and hold harmless the City of Redondo Beach, its elected officials, officers, employees, contractors serving as City officials, agents and representatives (collectively, the "Indemnitees" or singularly, "Indemnatee" sometimes hereinafter in this Exhibit D) from and against any and all claims, losses, damages, defense costs and/or liability (including strict liability), expenses, fines, penalties, assessments or judgments of any kind or nature (individually and collectively referred to hereinafter as "Claim" or "Claims"), arising out of or in connection with Design-Builder's or any of Design-Builder's subcontractor's (of any tier) acts, errors, omissions, work or products and equipment installed relative to, or in connection with, this Agreement, except only for those Claims which arise out of the sole negligence or willful misconduct of Redondo Beach; and including, but not limited to, Claims arising out of or in connection with Design-Builder's and/or any of Design-Builder's subcontractor's (of any tier) acts, errors, omissions, products and equipment installed, or work, for:

(a) Damage to third party property and damage to Redondo Beach property not a part of the Project;

(b) The release of any Hazardous Substances (except for Pre-Existing Hazardous Substances not discovered or made known to Design-Builder prior to such Release) on or from the Project Site(s) or any areas adjacent;

(c) The violation of any applicable legal requirements or applicable permits;

(d) Any claim or allegation that any equipment, materials or information provided constitutes an infringement of any patent, trade secret, trademark, copyright or other proprietary rights of any third party;

(e) Design-Builder's breach of any subcontracts;

(f) The performance of the Work or the failure to perform the Work by, or on behalf of, Design-Builder or any of its subcontractors; or

(g) Goods and services provided by or on behalf of Design-Builder or Design-Builder's vendors.

2. Indemnification for Design Professional Services. To the fullest extent permitted by law, the Design-Builder shall, at its sole cost and expense, indemnify and hold harmless the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever,

including fees of accountants and other professionals, and all costs associated therewith, and reimbursement of attorneys' fees and costs of defense, whether actual, alleged or threatened, which arise out of, pertain to, or relate to, in whole or in part, the negligence, recklessness or willful misconduct of the Design-Builder, and/or its officers, agents, servants, employees, subcontractors, contractors or their officers, agents, servants or employees (or any entity or individual that the Design-Builder shall bear the legal liability thereof) in the performance of design professional services under this Agreement by a "design professional," as the term is defined under California Civil Code § 2782.8(c).

3. Notice and Legal Defense. Promptly after receipt by an Indemnatee of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation in connection with an actual or potential Claim from any party as to which any indemnity provided for this Exhibit may apply, the Indemnatee will notify the City of Redondo Beach and Design-Builder in writing of such fact. Any delay in an Indemnatee's notifying Design-Builder of any such claim or notice will not excuse Design-Builder of its obligations hereunder. Upon Design-Builder's receipt of such notice, Design-Builder shall assume, on behalf of the Indemnatee, and conduct with due diligence and in good faith, the defense thereof with counsel reasonably satisfactory to the Indemnatee; provided that the Indemnatee shall have the right at its own expense to be represented therein by advisory counsel of its own selection; and provided further that if the defendants in any such action include both Design-Builder and the Indemnatee, and if the Indemnatee shall have reasonably concluded that there may be legal defenses available to it which are different from, additional to, or inconsistent with those available to Design-Builder, then the Indemnatee shall have the right to select separate counsel to participate in the defense of such action on its own behalf and at Design-Builder's expense.

4. Failure to Defend Action. If any Claim arises as to which any indemnity provided for in this Exhibit may apply, and Design-Builder fails to assume the defense of such Claim promptly after the receipt by Design-Builder of notification thereof, then the Indemnatee against which the claim is instituted or commenced may, at Design-Builder's expense, contest, or (with the prior written consent of Design-Builder, not to be unreasonably withheld) settle, such Claim; provided that no such contest need be made and settlement or full payment of any such Claim may be made without Design-Builder's consent (with Design-Builder remaining obligated to indemnify the Indemnatee under this Exhibit) if, in the written opinion of the Indemnatee's legal counsel, such Claim is meritorious. All costs and expenses incurred by Indemnatee or Redondo Beach in connection with any such contest, settlement or payment may be deducted from any amounts due to Design-Builder under this Agreement, with all such costs in excess of the amount deducted to be reimbursed by Design-Builder to Redondo Beach or the Indemnatee promptly following, but not later than thirty (30) days following, Redondo Beach's or Indemnatee's demand therefor. In the event and to the extent that Redondo Beach makes a deduction as described in the preceding sentence, then Redondo Beach shall be responsible for making appropriate payments to any Indemnitees, and

shall indemnify Design-Builder for any claims by the Indemnitees arising out of City's failure to make such payments.

4. Survival. The provisions of this Exhibit shall survive any termination or expiration of the Agreement.

5. Insurance Not Limiting. The obligations set forth in this indemnification provision shall be in effect without regard to whether or not Redondo Beach, Design-Builder, or any other person maintains, or fails to maintain, insurance coverage, or a self-insurance program, for any such Claims.

EXHIBIT E

INSURANCE

[ATTACHED BEHIND THIS PAGE]

## INSURANCE REQUIREMENTS

1. Insurance Requirements. Design-Builder shall obtain and maintain for the term of the Project or, with City's prior written consent, cause to be obtained and maintained, the following insurance coverages:

1.1 Commercial Automobile Liability Insurance. The Design-Builder shall provide Commercial Automobile Liability Insurance which shall include coverage for liability arising out of the use of owned, non-owned and hired vehicles for performance of the work, as required to be licensed under the State of California. The Commercial Automobile Liability Insurance shall not have limits less than \$2,000,000, combined single limit per occurrence, shall be written on an occurrence form, and shall apply to all activities and operations of the Design-Builder and those acting on Design-Builder's behalf.

The Commercial Automobile Liability policy shall name the City of Redondo Beach its elected officials, officers, employees, agents and representatives, while acting within the scope of their employment, as additional insureds, and shall insure against liability for death, bodily injury, and/or property damage resulting from the performance of the Design-Builder, or anyone acting on behalf of Design-Builder, under this Agreement

1.2 Commercial General Liability Insurance. The Design-Builder shall provide Commercial General Liability Insurance, including, but not limited to, coverage for Contractual Liability, Broad Form Property Damage, Explosion/Collapse-Underground, Premises and Operations, Independent Contractors, Products and Completed Operations, and Personal Injury. Such insurance shall be written on an occurrence form and provide coverage for total limits actually arranged and carried by the Design-Builder, but not less than \$2,000,000 per occurrence, and an aggregate limit of not less than \$5,000,000, applying separately to this Project. Coverage for Products and Completed Operations shall not have a sub-limit or a reduction in the coverage or reporting periods. Umbrella or Excess Liability coverage, on a follow-form basis, may be used to supplement primary coverages to meet the required limits.

Evidence of such coverage shall be properly completed and executed, to the reasonable approval of City, Certificates of Insurance and shall provide for the following, either by separate endorsements in favor of the City of Redondo Beach or by blanket policy/endorsement language having the same effect as separate endorsements:

1.2.1 Include the City of Redondo Beach, its elected officials, officers, employees, agents and representatives, as Additional Insureds with the Named Insured for the activities and operations under the Agreement. Additional insured endorsement form shall be as approved in writing by the City.

1.2.2 A Severability-of-Interest, or Cross-Liability Clause, or Separation of Insured Clause such as: "The policy to which this endorsement is attached shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the company's liability."

1.3 Excess Liability. The Design-Builder may use Umbrella or Excess Liability coverage to meet the coverage limits specified in this Exhibit E. The Design-Builder shall require the carrier(s) for Umbrella or Excess Liability to properly schedule and to identify the underlying policies including, as appropriate: Commercial General Liability, Commercial Automobile Liability, Professional Liability, Employer's Liability, Pollution Liability, or other applicable insurance coverages.

1.4 Workers' Compensation Insurance. The Design-Builder shall provide Workers' Compensation Insurance covering all of the Design-Builder's employees in accordance with the laws of the State of California and including Employer's Liability Insurance. The limit for Employer's Liability coverage shall be not less than \$1,000,000 each accident and shall be a separate policy if not included with Workers' Compensation coverage. Such insurance shall include a Waiver of Subrogation in favor of the City of Redondo Beach. Workers' Compensation coverage may be self-insured by Design-Builders, provided that the City of Redondo Beach is furnished with a copy of a currently-dated and manually-signed Certifications of Self-Insurance issued by the State of California authorizing the Design-Builder to self-insure. Design-Builder shall notify the City of Redondo Beach by 'return receipt delivery' as soon as possible of the State withdrawing authority to self-insure.

1.5 Professional Liability Insurance. The Design-Builder shall provide Professional Liability Insurance, Redondo Beach covering the Design-Builder's liability arising from professional negligent acts and omissions made directly or indirectly during the performance of the Agreement and shall provide coverage for the total limits actually arranged by the Design-Builder, but not less than \$2,000,000 combined single limit and in the annual aggregate. Such policy/coverage shall be endorsed to provide an extended reporting period as required below.

1.6 Design-Builder's Equipment Floater. The Design-Builder will obtain and maintain an All-Risk Property Insurance Policy in the form of a Design-Builder's Equipment Floater or Tool Floater, for the full replacement cost of any loss to Design-Builder's or Sub-Design-Builder's equipment or tools, whether owned, leased or rented. Design-Builder shall bear all deductibles and co-insurance penalties, if any.

1.7 Pollution Liability Insurance. The Design-Builder shall provide Pollution Liability Insurance, with Additional Insured status and a Waiver of Subrogation in favor of the City of Redondo Beach included, covering the Design-

Builder's liability arising from Pollution or Environmental Damage or Liability caused during the execution of the Agreement and shall provide coverage for the total limits actually arranged by the Design-Builder, but not less than \$4,000,000 combined single limit and in the annual aggregate. Such policy/coverage shall be maintained for not less than one (1) after the date of final acceptance and completion of the work performed under the Agreement. Design-Builder may elect to carry such coverage as a sublimit on its Commercial General Liability Insurance.

2. Change in Requirements. Redondo Beach's Risk Manager is authorized to reduce or increase the requirements set forth herein in the event he determines that such reduction is in Redondo Beach's best interest. Additional Requirements. Except to the extent that such condition, requirement or provision, below, is otherwise specifically provided for elsewhere in this Exhibit, with respect to the requirements set forth in Section 1 above, the following conditions shall apply:

(a) Prior to the start of Work, but not later than thirty (30) days after the date of award of contract, the Design-Builder shall furnish Redondo Beach with evidence of coverage from insurers acceptable to Redondo Beach and in a form acceptable to Redondo Beach. Such evidence shall include certificate(s) with original endorsements reflecting and effecting all required insurance. With respect thereto:

i. The required evidence of insurance shall contain a provision that the policy/policies cannot be canceled, or reduced in coverage or amount, provided, however, that claims filed that deplete the aggregate limits of a policy of insurance shall not be considered to constitute a reduction in coverage or the amount of coverage, without first giving thirty (30) calendar day's written notice thereof (ten [10] days for non-payment of premium) by registered mail to Redondo Beach, except that automobile liability, professional liability, pollution liability and workers' compensation / employers' liability notices will be sent via first class U.S. Mail. Should an insurer or insurers be unwilling or unable to agree to this provision, then Design-Builder shall provide written notice (either by registered mail or by email, read notice/receipt confirmation) to Redondo Beach of such developments within three (3) business days of the date that Design-Builder has knowledge of such developments.

ii. The required evidence of insurance shall further contain a provision that the policy/policies provide for a Waiver of Subrogation in favor of the Additionally Insured Parties and also on the Workers' Compensation/Employer's Liability policy. Design-Builder shall, on its own behalf and on behalf of its insurers, waive any and every claim for recovery from the Additionally Insured Parties for any and all loss or damage resulting from or arising out of the performance of the Agreement by Design-Builder, which loss or damage is covered by insurance policies (or deductibles or self-insurance in lieu thereof). Design-Builder agrees (a)



to give to such insurance company which has issued, or may issue in the future, policies of insurance, written notice of the terms of this waiver of subrogation, and (b) to have said insurance policies properly endorsed, as applicable, and provide proof to Redondo Beach thereof.

(b) The insurance coverages required in this Exhibit shall not limit or qualify the liability and obligations of Design-Builder assumed under the Agreement. In addition, the City of Redondo Beach shall not, by reason of its inclusion under Design-Builder's policies, incur liability to the insurance carrier for payment of premium for these policies.

(c) Any insurance maintained by Design-Builder and Subcontractors pursuant to the Agreement shall be primary to, and not contribute with, any insurance or self-insurance maintained by the City of Redondo Beach, and such insurance is primary to Redondo Beach's for all purposes, despite any conflicting provision in the Design-Builder's or Subcontractors' policies to the contrary.

(d) All required insurance coverage shall be written on occurrence forms (except for microbial matter) unless Design-Builder secures the City of Redondo Beach's prior written permission allowing a specific coverage to be written on a claims-made form. Should any portion of the required insurance be on a 'Claims Made' policy, the Design-Builder shall, prior to the policy expiration date following completion of work, provide evidence that a five (5) year extended reporting/discovery period has been purchased on the expiring policy at least for the contract under which the Work was performed; and provided that, the retroactive date shall not be changed to any date that is more current than that which was on the expiring policy.

(e) In the event that a claim or other legal action is filed against the City of Redondo Beach, and if the City of Redondo Beach, in its good faith opinion, believes it may have coverage under any of the insurance required herein, then the City of Redondo Beach has the right to demand, and to receive within a reasonable time period, copies of the insurance policies related to such required insurance; provided, however, that this provision shall not apply if the parties agree that Design-Builder shall fully defend, hold harmless and indemnify the City of Redondo Beach against any such claim or other legal action. As a condition of such demand and receipt, Design-Builder may require the City of Redondo Beach to provide to Contactor a confidentiality statement, drafted by the City of Redondo Beach and consistent with the City of Redondo Beach's customary confidentiality language. Such confidentiality statement shall include, at a minimum, language to the effect that the City of Redondo Beach shall not disclose said insurance policy unless required to do so by applicable law, rule or regulation, or a court or other governmental authority of competent jurisdiction; provided, however, that the City of Redondo Beach shall provide Design-Builder prior written notice of any such request for disclosure and exercise its best efforts to afford Design-Builder an

opportunity to contest the disclosure and/or limit the extent of the disclosure to the maximum extent practicable.

(f) All insurers carrying risk for the Work shall be Admitted Carriers in the State of California and shall have a minimum A.M. Best Rating of at least "A: VII," or equivalent. Such policies shall comply with all terms conditions and requirements set forth herein.

(g) Nothing herein contained in this Exhibit shall be construed as limiting in any way the extent to which Design-Builder may be held responsible for payments of damages to persons or property resulting from Design-Builder's (or Subcontractors') work under the Agreement.

(h) Failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of contract, upon which the City of Redondo Beach may immediately terminate or suspend the Agreement. Alternatively, in order to keep the Work progressing, the City of Redondo Beach may, at City's sole discretion, purchase the coverages which Design-Builder has failed to purchase and deduct the premium for such coverage(s) from payments due Design-Builder.

Understanding that Design-Builder is liable to the City of Redondo Beach for the acts, errors and omissions of all Subcontractors, of any tier, it is up to the Design-Builder to determine the proper insurance coverages, limits, terms and conditions to be carried by all Subcontractors, of any tier. However, should the Design-Builder elect to be named as an additional insured on any Subcontractor's required policies or insurance, Design-Builder shall ensure that the City of Redondo Beach is so named as well.

EXHIBIT F

PROPOSAL

[ATTACHED BEHIND THIS PAGE]