

# CONTRACT

This Contract is made and entered into on July 5,, 19 89, by and between the CITY OF REDLANDS hereinafter called "Owner", and Kershaw Construction, hereinafter called "Contractor". This Contract is for that Work described in the Contract Documents entitled CONSTRUCTING 18" CITRUS AVENUE TRUNK SEWER AND 12" ROOSEVELT ROAD TRUNK SEWER.

## A. Recitals

1. Contractor, in response to a Notice Inviting Bids issued by Owner, has submitted a bid proposal for the above entitled Work.
2. Owner has duly opened and considered said bid proposal, and has duly awarded said bid to Contractor in accordance with said Notice Inviting Bids, and has given written notice of said award to Contractor on July 6,, 19 89.

Contractor has obtained and delivers concurrently herewith specified Performance and Payment Bonds and the Certificate of Insurance as required by the Contract Documents.

## B. Terms

### 1. Incorporation of Documents

This Contract includes and hereby incorporates in full by this reference the Contract Documents for the above entitled Work.

### 2. Contractor's Basic Obligation

Contractor agrees to provide the Work specified in the following bid schedules and/or bid items:

Schedule I - 18" Citrus Avenue Trunk Sewer  
Schedule II - 12" Roosevelt Road Trunk Sewer  
for Six Hundred Fifty Three Thousand Seven Hundred Seventy Eight dollars  
(\$ 653,778), said amount being subject to adjustment in accordance with the applicable terms of the Contract Documents.

Contractor agrees to perform said Work, at said Contract amount, in accordance with the following Contract Completion Schedule:

Schedule I - 60 calendar days from issuance of the Notice to Proceed  
Schedule II - 120 calendar days from issuance of the Notice to Proceed

Contractor agrees that if the aforesaid Contract Completion Schedule is not met, liquidated damages will apply as provided by the Contract Documents, in the following amounts and under the following conditions:

\$1,000 per calendar day for each schedule not completed in accordance  
with the contract completion schedule.

### 3. Owner's Basic Obligation

Owner agrees to engage and does hereby engage said Contractor as an independent Contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum aforesaid and hereby contracts to pay said sum at the time, in the manner, and in accordance with the conditions set forth in the Contract Documents.

### 4. Contractor's Labor Certification

Contractor states that it is aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self insurance in accordance with provisions of that Code, and Contractor agrees to comply with such provisions before commencing the performance of the Work of this Contract.

### 5. Litigation Costs to Enforce or Interpret Contract

In the event suit is brought to enforce or interpret any part of this Contract, the prevailing party shall be entitled to recover as an element of the costs of suit, and not as damages, reimbursement of costs and reasonable attorney's fees plus expenses (including the cost and expense of Engineer and Owner's representatives and experts and investigators) to be fixed by the Court. The "prevailing party" shall be the party who is entitled to recover costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover costs shall not recover attorney's fees. No sum for attorney's fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to recover costs or attorney's fees.

6. Litigation or Enforcement Action Costs Arising from Contractor's Operations

If the Owner and/or its Officials, Officers, Employees, Agents, Consultants, and Engineers are named, or are required to testify or contribute time and expense in any other way, in any suit or enforcement action of any kind brought to recover alleged damages or remedy alleged violations resulting from the acts or omissions (including negligent acts or omissions) in connection with, or accidents arising from, the acts, operations, and responsibilities of the Contractor, its Subcontractors, or others associated with or working under Contractor, in direct or indirect relation to the performance of the Work, the Owner and/or its Directors, Officers, Employees, Agents, Consultants, and Engineers shall be held financially harmless and they shall be legally defended (with counsel acceptable to the named party) by the Contractor from any claims for damages and they shall be reimbursed for any reasonable costs incurred by them for lost time, expert assistance, and incidental expenses in connection with their need to defend themselves against such claims, or to contribute time and expense in any other such way, whether or not the suit or enforcement action proceeds to final judgment. This section shall apply and be enforceable for the full time of any applicable statute of limitations.

7. Successors

The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions herein contained. Contractor may not, either voluntarily or by action of law, assign any obligation assumed by Contractor hereunder without the prior written consent of Owner.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

CITY OF REDLANDS

(Owner)

Kershaw CONSTRUCTION COMPANY  
(Contractor)

By

Carole Beswick

Carole Beswick, Mayor

(Title)

By

John R. Klea  
owner

(Title)

Corporate Seal

ATTEST:

Janie Pappas  
Clerk/Secretary

APPROVED AS TO FORM AND EXECUTION

Counsel for Owner

By

Subscribed and sworn to before me

This \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Notary Public in and for the

(Notary Seal)

State of \_\_\_\_\_