

1 AGREEMENT

2 **30963**

3 THIS AGREEMENT is made and entered, in duplicate, as of  
4 December 5, 2008 for reference purposes only, pursuant to a minute order  
5 adopted by the City Council of the City of Long Beach at its meeting held on October 21,  
6 2008 by and between MIKE BUBALO CONSTRUCTION COMPANY, INC., whose  
7 business address is 5102 Gayhurst Avenue, Baldwin Park, California 91706  
8 ("Contractor"), and the CITY OF LONG BEACH, a municipal corporation ("City").

9 WHEREAS, the City requires specialized design-build skills for the Stream  
10 Restoration Project at El Dorado Nature Center ("Project"); and

11 WHEREAS, City has selected Contractor in accordance with City's  
12 administrative procedures and City has ascertained that Contractor and its employees  
13 are qualified, licensed, if so required, and experienced in performing such work; and

14 WHEREAS, City desires to have Contractor perform this work, and  
15 Contractor is willing and able to do so on the terms and conditions stated in this  
16 Agreement;

17 NOW, THEREFORE, in consideration of the mutual terms covenants, and  
18 conditions in this Agreement, the parties agree as follows:

19 1. SCOPE OF WORK OR SERVICES.

20 A. Contractor shall perform design-build, stream restoration work at the El  
21 Dorado Nature Center, in accordance with the standards of the profession and Exhibit A  
22 which is attached. City shall pay for these services in the manner described below, in an  
23 amount not to exceed \$700,000.00.

24 B. Contractor may select the time and place of its performance provided,  
25 however, that access to City documents, records, and the like, if needed by Contractor,  
26 shall be available only during City's normal business hours and provided that milestones  
27 for performance, if any, are met.

28 C. Contractor has requested to receive regular payments. City shall pay

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1 Contractor in due course of payments following receipt from Contractor and approval by  
2 City of invoices showing the services or task performed, the time expended (if billing is  
3 hourly), and the name of the Project. Contractor shall certify on the invoices that  
4 Contractor has performed the services in full conformance with this Agreement and is  
5 entitled to receive payment. Each invoice shall be accompanied by a progress report  
6 indicating the progress to date of services performed and covered by the invoice,  
7 including a brief statement of any Project problems and potential causes of delay in  
8 performance, and listing those services that are projected for performance by Contractor  
9 during the next invoice cycle. Where billing is done and payment is made on an hourly  
10 basis, the parties acknowledge that this arrangement is either customary practice for  
11 Contractor's profession, industry, or business, or is necessary to satisfy audit and legal  
12 requirements which may arise due to the fact that City is a municipality.

13 D. Contractor represents that Contractor has obtained all necessary  
14 information on conditions and circumstances that may affect its performance and has  
15 conducted site visits, if necessary.

16 E. **CAUTION:** Contractor shall not begin work until this Agreement has  
17 been signed by both parties and until Contractor's evidence of insurance has been  
18 delivered to and approved by the City.

19 2. TERM. The term of this Agreement shall commence on  
20 12/16/2008 and shall terminate on 12/16/2009, unless  
21 sooner terminated as provided in this Agreement, or unless the services or the Project is  
22 completed sooner. It is further agreed between the parties that Contractor shall complete  
23 the project within ninety (90) working days. Liquidated damages shall be paid by  
24 Contractor to City in the amount of Two Hundred Fifty (\$250.00) per day, for each day the  
25 project is delayed beyond the agreed upon ninety day completion period.

26 3. COORDINATION AND ORGANIZATION.

27 A. Contractor shall coordinate its performance with City's representative.  
28 Contractor shall advise and inform City's representative of the work in progress on the

1 Project in sufficient detail so as to assist City's representative in making presentations  
2 and in holding meetings on the Project.

3 4. INDEPENDENT CONTRACTOR. In performing its services, Contractor  
4 is and shall act as an independent contractor and not an employee, representative, or  
5 agent of City. Contractor shall have control of Contractor's work and the manner in which  
6 it is performed. Contractor shall be free to contract for similar services to be performed for  
7 others during this Agreement provided, however, that Contractor acts in accordance with  
8 Section 9 and Section 11 of this Agreement. Contractor acknowledges and agrees that a)  
9 City will not withhold taxes of any kind from Contractor's compensation, b) City will not  
10 secure workers' compensation or pay unemployment insurance to, for or on Contractor's  
11 behalf, and c) City will not provide and Contractor is not entitled to any of the usual and  
12 customary rights, benefits or privileges of City employees. Contractor expressly warrants  
13 that neither Contractor nor any of Contractor's employees or agents shall represent  
14 themselves to be employees or agents of City.

15 5. INSURANCE. As a condition precedent to the effectiveness of this  
16 Agreement, Contractor shall procure and maintain at Contractor's expense for the  
17 duration of this Agreement from insurance companies that are admitted to write  
18 insurance in California or from authorized non-admitted insurance companies that have  
19 ratings of or equivalent to A:VIII by A.M. Best Company the following insurance:

20 (a) Commercial general liability insurance (equivalent in scope to ISO form  
21 CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than \$1,000,000 per each  
22 occurrence and \$2,000,000 general aggregate. This coverage shall include but not be  
23 limited to broad form contractual liability, cross liability, independent contractor's liability,  
24 and products and completed operations liability. The City, its officials, employees and  
25 agents shall be named as additional insureds by endorsement (on City's endorsement  
26 form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or to both  
27 CG 20 10 10 01 and CG 20 37 10 01), and this insurance shall contain no special  
28 limitations on the scope of protection given to the City, its officials, employees and

1 agents.

2 (b) Workers' Compensation insurance as required by the California Labor  
3 Code and employer's liability insurance in an amount not less than \$1,000,000.

4 (c) Professional liability or errors and omissions insurance in an amount not  
5 less than \$1,000,000 per claim.

6 (d) Commercial automobile liability insurance (equivalent in scope to ISO  
7 form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than  
8 \$500,000 combined single limit per accident.

9 Any self-insurance program, self-insured retention, or deductible must be  
10 separately approved in writing by City's Risk Manager or designee and shall protect City,  
11 its officials, employees and agents in the same manner and to the same extent as they  
12 would have been protected had the policy or policies not contained retention or  
13 deductible provisions. Each insurance policy shall be endorsed to state that coverage  
14 shall not be reduced, non-renewed, or canceled except after thirty (30) days prior written  
15 notice to City, and shall be primary and not contributing to any other insurance or self-  
16 insurance maintained by City. Contractor shall notify the City in writing within five (5) days  
17 after any insurance has been voided by the insurer or cancelled by the insured. If this  
18 coverage is written on a "claims made" basis, it must provide for an extended reporting  
19 period of not less than one year, commencing on the date this Agreement expires or is  
20 terminated, unless Contractor guarantees that Contractor will provide to the City evidence  
21 of uninterrupted, continuing coverage for a period of not less than three (3) years,  
22 commencing on the date this Agreement expires or is terminated.

23 Contractor shall require that all subcontractors and contractors which  
24 Contractor uses in the performance of services maintain insurance in compliance with  
25 this Section unless otherwise agreed in writing by City's Risk Manager or designee.

26 Prior to the start of performance, Contractor shall deliver to City certificates  
27 of insurance and endorsements for approval as to sufficiency and form. In addition,  
28 Contractor, shall, within thirty (30) days prior to expiration of the insurance furnish to City

1 certificates of insurance and endorsements evidencing renewal of the insurance. City  
2 reserves the right to require complete certified copies of all policies of Contractor and  
3 Contractor's subcontractors and consultants, at any time. Contractor shall make available  
4 to City's Risk Manager or designee all books, records and other information relating to  
5 the insurance, during normal business hours.

6 Any modification or waiver of these insurance requirements shall only be  
7 made with the approval of City's Risk Manager or designee. Not more frequently than  
8 once a year, the City's Risk Manager or designee may require that Contractor,  
9 Contractor's subcontractors and change the amount, scope or types of coverages if, in  
10 his or her sole opinion, the amount, scope, or types of coverages are not adequate.

11 The procuring or existence of insurance shall not be construed or deemed  
12 as a limitation on liability relating to Contractor's performance or as full performance of or  
13 compliance with the indemnification provisions of this Agreement.

14 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
15 contemplates the personal services' of Contractor and Contractor's employees, and the  
16 parties acknowledge that a substantial inducement to City for entering this Agreement  
17 was and is the professional reputation and competence of Contractor and Contractor's  
18 employees. Contractor shall not assign its rights or delegate its duties under this  
19 Agreement, or any interest in this Agreement, or any portion hereof, without the prior  
20 approval of City, except that Contractor may with the prior approval of the City, Manager  
21 of City, assign any moneys due or to become due the Contractor under this Agreement.  
22 Any attempted assignment or delegation shall be void, and any assignee or delegate  
23 shall acquire no right or interest by reason of an attempted assignment or delegation.  
24 Furthermore, Contractor shall not subcontract any portion of its performance without the  
25 prior approval of the City Manager or designee or substitute a subcontractor or contractor  
26 without the prior approval to the substitution. Nothing stated in this Section shall prevent  
27 Contractor from employing as many employees as Contractor deems necessary for  
28 performance, of this Agreement.

1                   7. CONFLICT OF INTEREST. Contractor, by executing this Agreement,  
2 certifies that, at the time Contractor executes this Agreement and for its duration,  
3 Contractor does not and will not perform services for any other client which would create  
4 a conflict, whether monetary or otherwise, as between the interests of City under this  
5 Agreement and the interests of that other client. And, Contractor shall obtain similar  
6 certifications from Contractor's employees, subcontractors.

7                   8. MATERIALS. Contractor shall furnish all labor and supervision, supplies,  
8 material, tools, machinery, equipment, appliances, transportation, and services  
9 necessary to or used in the performance of Contractor's obligations hereunder.

10                  9. OWNERSHIP OF DATA. All materials, information and data prepared,  
11 developed, or assembled by Contractor or furnished to Contractor in connection with this  
12 Agreement, including but not limited to documents, estimates, calculations, studies,  
13 maps, graphs, charts, computer disks, computer source documentation, samples,  
14 models, reports, summaries, drawings, designs, notes, plans, information, material, and  
15 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,  
16 and City shall have the unrestricted right to use and disclose the Data in any manner and  
17 for any purpose without payment of further compensation to Contractor. Copies of Data  
18 may be retained by Contractor but Contractor warrants that Data shall not be made  
19 available to any person or entity for use without the prior approval of City. This warranty  
20 shall survive termination of this Agreement for five (5) years.

21                  10. TERMINATION. Either party shall have the right to terminate this  
22 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days  
23 prior notice to the other party. In the event of termination under this Section, City shall  
24 pay Contractor for services satisfactorily performed and costs incurred up to the effective  
25 date of termination for which Contractor has not been previously paid. The procedures for  
26 payment in Section 1.C. with regard to invoices shall apply. On the effective date of  
27 termination, Contractor shall deliver to City all Data developed or accumulated in the  
28 performance of this Agreement, whether in draft or final form, or in process.

1                   11. CONFIDENTIALITY. Contractor shall keep the Data confidential and  
2 shall not disclose the Data or use the Data directly or indirectly other than in the course of  
3 performing its services during the term of this Agreement and for five (5) years following  
4 expiration or termination of this Agreement. In addition, Contractor shall keep confidential  
5 all information, whether written, oral, or visual, obtained by any means whatsoever in the  
6 course of performing its services for the same period of time. Contractor shall not  
7 disclose any or all of the Data to any third party or use it for Contractor's own benefit or  
8 the benefit of others except for the purpose of this Agreement.

9                   12. BREACH OF CONFIDENTIALITY. Contractor shall not be liable for a  
10 breach of confidentiality with respect to Data that: (a) Contractor demonstrates Contractor  
11 knew prior to the time City disclosed it; or (b) Is or becomes publicly available without  
12 breach of this Agreement by Contractor; or (c) A third party who has a right to disclose  
13 does so to Contractor without restrictions on further disclosure; or (d) Must be disclosed  
14 pursuant to subpoena or court order.

15                   13. ADDITIONAL COSTS AND REDESIGN.

16                   A. Any costs incurred by the City due to Contractor's failure to meet the  
17 standards required by the Scope of Work or Contractor's failure to perform fully the tasks  
18 described in the Scope of Work which, in either case, causes the City to request that  
19 Contractor perform again all or a part of the Scope of Work shall be at the sole cost of  
20 Contractor and City shall not pay any additional compensation to Contractor for its re-  
21 performance.

22                   B. If the Project involves construction and the scope of work requires  
23 Contractor to prepare plans and specifications with an estimate of the cost of  
24 construction, then Contractor may be required to modify the plans and specifications, any  
25 construction documents relating to the plans and specifications, and Contractor's  
26 estimate, at no cost to City, when the lowest bid for construction received by City  
27 exceeds by more than ten percent (10%) Contractor's estimate. This modification shall be  
28 submitted in a timely fashion to allow City to receive new bids within four (4) months of

1 the date on which the original plans and specifications were submitted by Contractor.

2 14. AMENDMENT. This Agreement, including all Exhibits, shall not be  
3 amended, nor any provision or breach waived, except in writing signed by the parties  
4 which expressly refers to this Agreement.

5 15. LAW. This Agreement shall be governed by and construed pursuant to  
6 the laws of the State of California (except those provisions of California law pertaining to  
7 conflicts of laws). Contractor shall comply with all laws, ordinances, rules and regulations  
8 of and obtain all permits, licenses, and certificates required by all federal, state and local  
9 governmental authorities.

10 16. ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
11 constitutes the entire understanding between the parties and supersedes all other  
12 agreements, oral or written, with respect to the subject matter in this Agreement.

13 17. INDEMNITY. Contractor shall indemnify and hold harmless the City, its  
14 Boards, Commissions, and their officials, employees and agents (collectively in this  
15 Section "City") from and against any and all liability, claims, demands, damage, causes of  
16 action, proceedings, penalties, loss, costs, and expenses (including attorney's fees, court  
17 costs, and expert and witness fees) (collectively "Claims or individually "Claim"). Claims  
18 include allegations and include by way of example but are not limited to: Claims for  
19 property damage, personal injury or death arising in whole or in part from any negligent  
20 act or omission of Contractor, its officers, employees, agents, sub-Contractors, or anyone  
21 under Contractor's control (collectively "Indemnitor"); Contractor's breach of this  
22 Agreement; misrepresentation; willful misconduct; and Claims by any employee of  
23 Indemnitor relating in any way to worker's compensation. Independent of the duty to  
24 indemnify and as a free-standing duty on the part of Contractor, Contractor shall defend  
25 City and shall continue such defense until the Claim is resolved, whether by settlement,  
26 judgment or otherwise. Contractor shall notify the City of any claim within ten (10) days.  
27 Likewise, City shall notify Contractor of any claim, shall tender the defense of such claim  
28 to Contractor, and shall assist Contractor, as may be reasonably requested, in such



1 defense.

2 18. AMBIGUITY. In the event of any conflict or ambiguity between this  
3 Agreement and any Exhibit, the provisions of this Agreement shall govern.

4 19. COSTS. If there is any legal proceeding between the parties to enforce  
5 or interpret this Agreement or to protect or establish any rights or remedies under this  
6 Agreement, the prevailing party shall be entitled to its costs and expenses, including  
7 reasonable attorneys' fees and court costs (including appeals).

8 20. NONDISCRIMINATION. In connection with performance of this  
9 Agreement and subject to applicable rules and regulations, Contractor shall not  
10 discriminate against any employee or applicant for employment because of race, religion,  
11 national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status,  
12 handicap, or disability. Contractor shall ensure that applicants are employed, and that  
13 employees are treated during their employment, without regard to these bases. These  
14 actions shall include, but not be limited to, the following: employment, upgrading,  
15 demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of  
16 pay or other forms of compensation, and selection for training, including apprenticeship.

17 It is the policy of City to encourage' the participation of Disadvantaged,  
18 Minority and Women-owned Business Enterprises in City's procurement process, and  
19 Contractor agrees to use its best efforts to carry out this policy in the hiring of Contractors  
20 to the fullest extent consistent with the efficient performance of this Agreement.  
21 Contractor may rely on written representations by Consultants and Subcontractors  
22 regarding their status. Contractor shall report to City in May and in December or, in the  
23 case of short-term agreements, prior to invoicing for final payment, the names of all  
24 subconsultants and contractors hired by Contractor for this Project and information on  
25 whether or not they are a Disadvantaged, Minority or Women-owned Business  
26 Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

27 21. NOTICES. Any notice or approval required under this Agreement shall  
28 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,

1 postage prepaid, addressed to Contractor at the address first stated above, and to the  
2 City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager.  
3 Notice of change of address shall be given in the same manner as stated for other  
4 notices. Notice shall be deemed given on the date deposited in the mail or on the date  
5 personal delivery is made, whichever first occurs.

6           22. COVENANT AGAINST CONTINGENT FEES. Contractor warrants that  
7 Contractor has not employed or retained any entity or person to solicit or obtain this  
8 Agreement and that Contractor has not paid or agreed to pay any entity or person any  
9 fee, commission, or other monies based on or from the award of this Agreement. If  
10 Contractor breaches this warranty, City shall have the right to terminate this Agreement  
11 immediately notwithstanding the provisions of Section 10 hereof or, in its discretion, to  
12 deduct from payments due under this Agreement or otherwise recover the full amount of  
13 the fee, commission, or other monies.

14           23. WAIVER. The acceptance of any services or the payment of any money  
15 by City shall not operate as a waiver of any provision of this Agreement, or of any right to  
16 damages or indemnity stated in this Agreement. The waiver of any breach of this  
17 Agreement shall not constitute a waiver of any other or subsequent breach of this  
18 Agreement.

19           24. CONTINUATION. Termination or expiration of this Agreement shall not  
20 affect rights or liabilities of the parties which accrued pursuant to Sections 7, 9, 10, 11,  
21 16, 18, 21, and 27 prior to termination or expiration of this Agreement.

22           25. TAX REPORTING. As required by federal and state law, City is  
23 obligated to and will report the payment of compensation to Contractor on Form 1099-  
24 Misc. Contractor shall be solely responsible for payment of all federal and state taxes  
25 resulting from payments under this Agreement. Contractor's Employer Identification  
26 Number is [REDACTED]. If Contractor has a Social Security Number rather than an  
27 Employer Identification Number, then Contractor shall submit that, Social Security  
28 Number in writing to City's Accounts Payable, Department of Financial Management.

1 Contractor acknowledges and agrees that City has no obligation to pay Contractor until  
2 Contractor provides one of these numbers.

3 26. ADVERTISING. Contractor shall not use the name of City, its officials or  
4 employees in any advertising or solicitation for business, nor as a reference, without the  
5 prior approval of the City Manager or designee.

6 27. AUDIT. City shall have the right at all reasonable times during the term  
7 of this Agreement and for a period of five (5) years after termination or expiration of this  
8 Agreement to examine, audit, inspect, review, extract information from, and copy all  
9 books, records, accounts, and other documents of Contractor relating to this Agreement.

10 28. THIRD PARTY BENEFICIARY. This Agreement is intended by the  
11 parties to benefit themselves only and is not in any way intended or designed to or  
12 entered for the purpose of creating any benefit or right for any person or entity of any kind  
13 that is not a party to this Agreement.

14 29. PREVAILING WAGE RATES. Contractor is directed to the prevailing  
15 wage rates. Contractor shall forfeit, as a penalty to the City, Fifty Dollars (\$50) for each  
16 laborer, worker or mechanic employed for each calendar day, or portion thereof, that  
17 such laborer, worker or mechanic is paid less than the prevailing wage rates for any work  
18 done by Contractor, or any subcontractor, under this Contract.

19 30. BONDS. Contractor shall, simultaneously with the execution of this  
20 Contract, execute and deliver to City a good and sufficient corporate surety bond,  
21 conditioned upon the faithful performance of this Contract by Contractor, and a good and  
22 sufficient corporate surety bond, conditioned upon the payment of all labor and material  
23 claims incurred in connection with this Contract.

24 ///

25 ///

26 ///


27 ///

28

1 IN WITNESS WHEREOF, the parties have caused this document to be  
2 duly executed with all formalities required by law as of the date first stated herein.

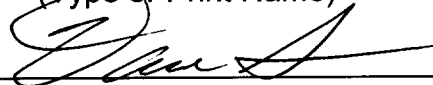
3 MIKE BUBALO CONSTRUCTION CO., INC.

4 12-5-, 2008

By   
President

6 Mike BUBALO  
(Type or Print Name)

7 12-5-, 2008

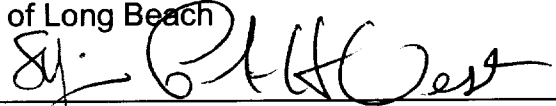
By   
Secretary

9 DAVE SOREM  
(Type or Print Name)

10 "Contractor"

11 City of Long Beach

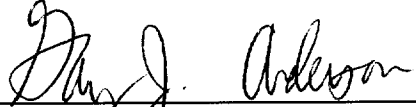
12 12.15.08, 2008

By   
City Manager

14 "City"

15 This Agreement is approved as to form on 12/11, 2008.

16 ROBERT E. SHANNON, CITY ATTORNEY

17 By   
18 Deputy  
19  
20  
21  
22  
23  
24

25 GJA:ikm 08-03347

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }  
County of Los Angeles } ss.

On December 5, 2008 , before me, **Heidi S. Granic, Notary Public**, personally appeared **Mike Bubalo**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

Witness my hand and official seal.

*Heidi S. Granic*

Heidi S. Granic, Notary Public

(Notary Seal)



Type of Document:

**Contract Documents**

Capacity Claimed By Signer: Individual  Corporate Officer(s) President

Partner(s) Limited Trustee(s) Attorney-in-Fact Other: \_\_\_\_\_  
General

Signer is representing: Mike Bubalo Construction Company, Inc.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California } ss.  
County of Los Angeles }

On December 5, 2008, before me, **Heidi S. Granic, Notary Public**, personally appeared **Dave Sorem**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

Witness my hand and official seal.

*Heidi S. Granic*

Heidi S. Granic, Notary Public (Notary Seal)



Type of Document:

**Contract Documents**

Capacity Claimed By Signer: Individual  Corporate Officer(s) V.P./Sec.  
Treasurer

Partner(s) Limited Trustee(s) Attorney-in-Fact Other: \_\_\_\_\_  
General

Signer is representing: Mike Bubalo Construction Company, Inc.

## Exhibit A

### El Dorado Nature Center Stream Restoration

SCOPE OF WORK AND SERVICES: The type and variety of construction services envisioned as Task Orders under this contract include, but shall not be limited to:

- *Dredging of Stream*
- *Temporary Construction Access*
- *Miscellaneous Tree Removal & Composting*
- *Removal of Existing Bridges*
- *Clearing and Grubbing*
- *New Stream Alignment*
- *New Pedestrian Bridge*
- *New Trail Alignment and Modifications*
- *New Maintenance Access*
- *New Landscaping & Vegetation*

The Contractor shall provide all labor, materials, tools, machinery, equipment, and other items and services necessary to properly perform the work (hereinafter referred to as the "Work") as set forth in each individual Task Order agreed to and released under this Contract. The Work shall be carried out in accordance with the Contract Documents in a diligent and workman-like manner, utilizing qualified personnel and good and sufficient materials and equipment. Further, the Contractor shall perform only those work assignments authorized by the Owner's assigned Project Manager.

Task Order Award Method: the Owner will notify the Contractor and request commencement of improvements, for which the Contractor's costs will be incurred on a time and materials basis. Concurrently, the Owner will authorize the Contractor as to the "not-to-exceed" level of funding assigned to said authorization to proceed. The Contractor's costs incurred against said authorization will reflect the rates established within Exhibit A of this contract and the Contractor's actual expenses incurred for all equipment, materials and supplies provided, plus the material handling burden established within the Contract. Subsequent to completion of the improvements, the Contractor will submit a summary of all charges/expenses incurred in conjunction with the assignment to the Owner's Project Manager for review and approval. Upon mutual agreement between the two parties as to total costs incurred, the Owner will subsequently issue an "after the fact" written Task Order release to the Contractor which establishes a firm fixed price for the total Task Order effort and authorizes the Contractor to submit its lump sum invoice consistent with said amount.

Negotiation of Task Orders: Owner and Contractor each reserve and retain the right to negotiate the Work, price, and term of any specific Task Order. However, both parties agree that the various proposed labor and expense rates used to develop each Task Order's price will be consistent with those specified within Exhibit A – Schedule of Rates.

Task Order Price: The final firm fixed price for each Task Order will be addressed and authorized via the content of each specific Task Order.

Task Orders: Each Task Order issued under this Contract will include items as shown in Exhibit B – Task Orders.

COMPENSATION AND CHANGES: As compensation for the Work satisfactorily performed against Task Order releases under this Contract, Owner shall pay Contractor the firm-fixed price established for each executed Task Order. Owner may, at any time, make changes to the Scope

of Work, including additions, reductions, and changes to any or all of the Work, as directed in writing via a Task Order Change Order issued by the Owner and executed by both Parties. The Task Order Change Order will, if warranted, convey any associated change to the established Task Order price and/or schedule.

**CONTROL OF THE WORK:** Contractor shall perform the Work in compliance with the Task Order specified Work Schedule. If performance of the Work falls behind schedule, the Contractor shall accelerate the performance of the Work to comply with the Work Schedule as directed by the Project Manager. If the nature of the Work is such that Contractor is unable to accelerate the Work, Contractor shall promptly notify the Project Manager of the delay, the causes of the delay, and submit a proposed revised Work Schedule for consideration by the Project Manager.



## **Exhibit A**

Labor and Equipment Rates shall be established in accordance with the "Greenbook" standard for Public Works Construction for the determination of rates for extra work. Accordingly markups for Labor shall be 20%, Equipment and Materials shall be 15% and work performed by Subcontractors shall be 10% for invoices less than \$5,000. and 5% for those above \$5,000. Bonding fees shall be 1%. Daily Work Reports shall follow the format as shown in the sample form.

# DAILY WORK REPORT

REPORT NO.: Task Order #00-00

OWNER / CLIENT : City of Long Beach

PROJECT TITLE : El Dorado Park Stream Restoration

PERFORMED BY MIKE BUBALO CONSTRUCTION CO., INC.

TODAY'S COST

DESCRIPTION OF WORK THIS REPORT :

DATE OF WORK :

LOCATION :

No. Of	Equipment Description	Hours Oper	Hourly Rate	Extended Amount	No. Of	LABOR Description Classification	Hours Worked	Hourly Rate	Extended Amount
						Reg.			
						O.T.			
						Reg.			
						O.T.			
						Reg.			
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Units Of	Material Description	# Of Units	Unit Cost	Extended Amount	LABOR SUB-TOTAL 20% MARKUP				
					SUBCONTRACTS :				
					< \$5000.00 @ 10% MARKUP				
					> \$5000.00 @ 5% MARKUP				
Equipment, Material, Special Fees		Subtotal			⇒ ADD 15% MARK-UP @ ⇒ ⇒				
							TOTAL LABOR COSTS		
							REPORT SUBTOTAL		
							1% BOND ADJUSTMENT		
<b>TOTAL THIS REPORT</b>									

LABOR Rates

SKILL CODE	SKILL LEVEL	SKILL DESCRIPTION	TOTAL LABOR COST	BASE SCALE	VACATION	TOTAL FIELD PAYROLL	UNION BENEFITS	WORKMAN'S COMP	7.65%	7.49%	9.14%
									Taxes	GENERAL LIABILITY	UMBRELLA LIABILITY
300	10	GRP 1 LABOR	\$49.88	\$26.33	\$3.60	\$29.93	\$10.49	\$2.20	\$2.29	\$2.24	\$2.74
		Overtime	\$66.25	\$39.50	\$3.60	\$43.10	\$10.49	\$2.20	\$3.30	\$3.23	\$3.94
		Premium	\$82.61	\$52.66	\$3.60	\$56.26	\$10.49	\$2.20	\$4.30	\$4.21	\$5.14
300	11	GRP 2 LABOR	\$50.61	\$26.88	\$3.60	\$30.48	\$10.49	\$2.24	\$2.33	\$2.28	\$2.79
		Overtime	\$67.31	\$40.32	\$3.60	\$43.92	\$10.49	\$2.24	\$3.36	\$3.29	\$4.02
		Premium	\$84.01	\$53.76	\$3.60	\$57.36	\$10.49	\$2.24	\$4.39	\$4.30	\$5.24
300	20	GRP 3 LABOR	\$51.33	\$27.43	\$3.60	\$31.03	\$10.49	\$2.28	\$2.37	\$2.32	\$2.84
		Overtime	\$68.38	\$41.15	\$3.60	\$44.75	\$10.49	\$2.28	\$3.42	\$3.35	\$4.09
		Premium	\$85.42	\$54.86	\$3.60	\$58.46	\$10.49	\$2.28	\$4.47	\$4.38	\$5.34
300	50	GRP 4 LABOR	\$53.37	\$28.98	\$3.60	\$32.58	\$10.49	\$2.39	\$2.49	\$2.44	\$2.98
		Overtime	\$71.38	\$43.47	\$3.60	\$47.07	\$10.49	\$2.39	\$3.60	\$3.52	\$4.30
		Premium	\$89.39	\$57.96	\$3.60	\$61.56	\$10.49	\$2.39	\$4.71	\$4.61	\$5.63
300	50	LAB FOREMAN	\$55.68	\$30.73	\$3.60	\$34.33	\$10.49	\$2.52	\$2.63	\$2.57	\$3.14
		Overtime	\$74.77	\$46.10	\$3.60	\$49.70	\$10.49	\$2.52	\$3.80	\$3.72	\$4.54
		Premium	\$93.87	\$61.46	\$3.60	\$65.06	\$10.49	\$2.52	\$4.98	\$4.87	\$5.95
400	20	OPER GRP VIII	\$67.70	\$38.17	\$2.82	\$40.99	\$13.75	\$3.01	\$3.14	\$3.07	\$3.75
		Overtime	\$91.42	\$57.26	\$2.82	\$60.08	\$13.75	\$3.01	\$4.60	\$4.50	\$5.49
		Premium	\$115.14	\$76.34	\$2.82	\$79.16	\$13.75	\$3.01	\$6.06	\$5.93	\$7.24
400		OPER GRP Foreman	\$70.33	\$40.17	\$2.82	\$42.99	\$13.75	\$3.16	\$3.29	\$3.22	\$3.93
		Overtime	\$95.30	\$60.26	\$2.82	\$63.08	\$13.75	\$3.16	\$4.83	\$4.72	\$5.77
		Premium	\$120.26	\$80.34	\$2.82	\$83.16	\$13.75	\$3.16	\$6.36	\$6.23	\$7.60
400		Mechanic	\$67.83	\$38.27	\$2.82	\$41.09	\$13.75	\$3.02	\$3.14	\$3.08	\$3.76
		Overtime	\$91.61	\$57.41	\$2.82	\$60.23	\$13.75	\$3.02	\$4.61	\$4.51	\$5.51
		Premium	\$115.40	\$76.54	\$2.82	\$79.36	\$13.75	\$3.02	\$6.07	\$5.94	\$7.25
400		Mechanic 2	\$68.03	\$38.42	\$2.82	\$41.24	\$13.75	\$3.03	\$3.15	\$3.09	\$3.77
		Overtime	\$91.90	\$57.63	\$2.82	\$60.45	\$13.75	\$3.03	\$4.62	\$4.53	\$5.53
		Premium	\$115.78	\$76.84	\$2.82	\$79.66	\$13.75	\$3.03	\$6.09	\$5.97	\$7.28
400		OPER Grp VII App B	\$72.26	\$41.63	\$2.82	\$44.45	\$13.75	\$3.26	\$3.40	\$3.33	\$4.06
		Overtime	\$98.12	\$62.45	\$2.82	\$65.27	\$13.75	\$3.26	\$4.99	\$4.89	\$5.97
		Premium	\$123.99	\$83.26	\$2.82	\$86.08	\$13.75	\$3.26	\$6.59	\$6.45	\$7.87

<b>Equipment Category</b>	<b>Make</b>	<b>Model (Yr. Disc.)</b>	<b>Power Mode</b>	<b>Operated Total</b>	<b>Stand-By /Hr.</b>
AIR COMPRESSORS	INGERSOLL-RAND	750 cfm	Diesel 275 hp	<b>\$63.70</b>	\$25.00
AIR COMPRESSORS	INGERSOLL-RAND	175 cfm	Diesel 55 hp	<b>\$18.50</b>	\$7.00
ARROWBOARDS	LITE GUIDE		Diesel	<b>\$5.95</b>	\$4.00
ARROWBOARDS	LITE GUIDE		Solar	<b>\$3.50</b>	\$3.00
ASPHALT STOMPER	ARROW		Diesel	<b>\$59.30</b>	\$35.00
BARRICADES	TYPE III			<b>\$0.38</b>	\$0.38
BOB TAIL END DUMP	GMC	7000	Diesel	<b>\$48.45</b>	\$24.00
END DUMP	Peterbuilt		Diesel	<b>\$78.25</b>	\$35.00
CHIPPING HAMMER			Air	<b>\$3.45</b>	\$3.00
COMPACTION WHEEL		35"	Excavator Mounted	<b>\$9.85</b>	\$8.00
COMPACTORS	BOMAG	BW6AS (1989)	Diesel	<b>\$30.85</b>	\$20.00
COMPACTORS	DYNAPAC	CA121PDB	Diesel	<b>\$51.55</b>	\$33.00
COMPACTORS	INGERSOLL-RAND	DA28 (1987)	Diesel	<b>\$26.05</b>	\$18.00
COMPACTORS	INGERSOLL-RAND	DA30 (1987)	Diesel	<b>\$28.35</b>	\$20.00
CRANES	P & H	790B-TC (1987)	Diesel	<b>\$185.90</b>	\$125.00
CRANES	P & H	OMEGA 20 (1983)	Diesel	<b>\$110.15</b>	\$68.00
CRANES	FORD	H-3	Diesel	<b>\$30.40</b>	\$20.00
CRAWLER TRACTORS	CATERPILLAR	D3B LGP (1989)	Diesel	<b>\$49.10</b>	\$29.00
DELINEATORS				<b>\$0.04</b>	\$0.04
EMULSION POT	LEEBOY	100 gal.	Diesel	<b>\$21.50</b>	\$16.00
EXCAVATORS	CATERPILLAR	225 LC (1987)	Diesel	<b>\$106.35</b>	\$68.00
EXCAVATORS	CATERPILLAR	235 (1985)	Diesel	<b>\$191.85</b>	\$125.00
EXCAVATORS	CATERPILLAR	245 (1988)	Diesel	<b>\$268.75</b>	\$170.00
EXCAVATORS	CATERPILLAR	312 (1996)	Diesel	<b>\$75.50</b>	\$47.00
EXCAVATORS	CATERPILLAR	325B (1998)	Diesel	<b>\$158.40</b>	\$100.00

<b>Equipment Category</b>	<b>Make</b>	<b>Model (Yr. Disc.)</b>	<b>Power Mode</b>	<b>Operated Total</b>	<b>Stand-By /Hr.</b>
EXCAVATORS	CATERPILLAR	330 (1998)	Diesel	<b>\$173.30</b>	\$115.00
EXCAVATORS	CATERPILLAR	350 (1999)	Diesel	<b>\$244.85</b>	\$160.00
EXCAVATORS	KOEHRING	1066/1066E (1990)	Diesel	<b>\$312.90</b>	\$190.00
EXCAVATORS	KOMATSU	PC650-3A (1993)	Diesel	<b>\$300.75</b>	\$190.00
FLATBED TRUCK	CHEVROLET	4X2 15,000 GVW	GAS	<b>\$34.20</b>	\$11.00
FORKLIFT	TAYLOR	30000 lbs	152.3	<b>\$62.20</b>	\$37.00
FORKLIFT	TAYLOR	25000 lbs	147.9	<b>\$52.00</b>	\$32.00
FORKLIFT	WIGGINS	15000 lbs	109.3	<b>\$45.10</b>	\$28.00
FUEL TRUCK	Conventional	4X2	Diesel	<b>\$37.00</b>	\$19.00
GENERATOR	MAGNETEX	TPX750 65 kW	Diesel	<b>\$36.20</b>	\$14.00
GENERATOR		45 kW	Diesel	<b>\$25.80</b>	\$11.00
GENERATOR	Honda	5 kW	Gas	<b>\$5.90</b>	\$2.00
GRADERS	CATERPILLAR	12G (1959)	Diesel	<b>\$74.95</b>	\$47.00
GRADERS	FIATALLIS	FG85A (1991)	Diesel	<b>\$64.70</b>	\$36.00
MECHANIC TRUCK			Diesel	<b>\$37.00</b>	\$19.00
PAVEMENT MILLER	ASPHALT ZIPPER	AZ36	Diesel	<b>\$153.25</b>	\$86.00
PICKUP	Conventional	4X2	1/2 ton	<b>\$15.15</b>	\$6.00
PICKUP	Crew	4X2	3/4 ton	<b>\$18.55</b>	\$8.00
PICKUP	Crew	4X2 Diesel	1 ton	<b>\$24.25</b>	\$10.00
PLATES		8' X 16'		<b>\$1.25</b>	\$1.25
PUMP (w/ suction hose)	Submersible	2"	115 VOLT	<b>\$3.45</b>	\$2.30
PUMP (w/ suction hose)	Trash	4"	Gas	<b>\$34.80</b>	\$11.60
Suction Hose		2"		<b>\$0.30</b>	\$0.30
Suction Hose		4"		<b>\$0.60</b>	\$0.60
SHIELDS		10'X30'		<b>\$12.94</b>	\$12.94

<b>Equipment Category</b>	<b>Make</b>	<b>Model (Yr. Disc.)</b>	<b>Power Mode</b>	<b>Operated Total</b>	<b>Stand-By /Hr.</b>
SHIELDS		8' X 20'		<b>\$11.25</b>	\$11.25
SPEED SHORES		7' RAIL	Hydraulic	<b>\$1.30</b>	\$1.00
SWEeper	FMC	3205	Diesel	<b>\$92.00</b>	\$54.00
SWEeper	TERRAMITE	TSS38	Diesel	<b>\$24.85</b>	\$15.00
VENTILATION BLOWERS	IRC	2000 cfm	Diesel	<b>\$20.90</b>	\$17.00
WATER TRUCK	CHEVY/FORD	2500 gal	Diesel	<b>\$35.80</b>	\$19.00
WATER TRUCK	FORD	4000 gal	Diesel	<b>\$67.10</b>	\$38.00
WELDER	MILLER	300	Diesel	<b>\$17.50</b>	\$3.00
WHEEL LOADERS	CATERPILLAR	936F (1995)	Diesel	<b>\$57.05</b>	\$34.00
WHEEL LOADERS	CATERPILLAR	950B (1987)	Diesel	<b>\$61.85</b>	\$36.00
WHEEL LOADERS	CATERPILLAR	966F (1993)	Diesel	<b>\$92.35</b>	\$56.00
WHEEL LOADERS	CATERPILLAR	980G	Diesel	<b>\$160.40</b>	\$105.00
WHEEL LOADERS	BOBCAT	SKID STEER LOADER	Diesel	<b>\$30.90</b>	\$20.00
WHEEL LOADERS	FORD	410	Diesel	<b>\$25.80</b>	\$15.00
WHEEL TRACTORS	CASE	780B (1985)	Diesel	<b>\$66.95</b>	\$40.00
WHEEL TRACTORS	CATERPILLAR	416B (1996)	Diesel	<b>\$43.45</b>	\$27.00
WHEEL TRACTORS	CATERPILLAR	436B (1996)	Diesel	<b>\$54.95</b>	\$35.00
WHEEL TRACTORS	CATERPILLAR	446B	Diesel	<b>\$79.25</b>	\$53.00
WHEEL TRACTORS	JOHN DEERE	710D	Diesel	<b>\$86.75</b>	\$57.00
10 WHEELER	MACK w/ BOMAX	4X2 11 TN TRAIL.	Diesel	<b>\$88.50</b>	\$43.00

EXHIBIT B  
TASK ORDERS

**El Dorado Nature Center Stream Restoration Project  
Proposed Scope of Services**

**Task I.**

Provide labor and equipment to remove specific vegetation and trees along the stream pathway, located between the north and south lake.. All items to be removed will be tagged by others in advance of the work. In addition, remove all dredge materials from the stream bed to the depth noted on the plans dated 7/14/2008. Dredge materials will be stockpiled at a designated location and may be blended with other materials to provide stream bed fill. All organic materials that are removed will be stockpiled and trees will be shredded and the materials placed as specified by City of Long Beach Parks Staff. All work performed in this task will be on a time and material basis, not to exceed \$190,000.00, including allowable "Greenbook" markups for labor and equipment.

**Task II.**

Provide labor, equipment, design and materials to replace five (5) pedestrian bridges located along the stream. Replacement bridges shall be prefabricated units manufactured to pre-approved specifications with all materials approved in advance by the City of Long Beach. Work under this task shall include design and installation of required foundations for each bridge structure. All work performed in this task will be on a time and material basis, not to exceed \$75,000.00, including allowable "Greenbook" markups for labor and equipment.

**Task III.**

Provide labor, materials and equipment to install approximately 200 tons of smooth river rock ranging in size from 8" in diameter to 20". Rock shall be placed as directed by others along the stream bed. In addition, provide lodge pole pine logs to be placed along the stream bed as directed by others. The allowance for the rock shall not exceed \$30,000.00. The log allowance shall not exceed \$20,000,00. All work performed in this task will be on a time and material basis, not to exceed the noted allowances, including allowable "Greenbook" markups for labor and equipment.

**Task IV.**

Provide labor, equipment and materials to place/plant willow cutting along specific areas of the stream bed. All locations to be planted shall be designated by others. Cuttings shall be from local, pre-approved sources, suitable for the intended use. All work performed in this task will be on a time and material basis, not to exceed \$20,000.00, including allowable "Greenbook" markups for labor and equipment.

**Task V.**

Provide labor, materials and equipment for stream bank stabilization directed by others. Stabilization shall include the importing of pre-approved soil materials, possibly mixed with stream dredge materials and placement along the stream bed. All work performed in this task will be on a time and material basis, not to exceed \$50,000.00, including allowable "Greenbook" markups for labor and equipment.

**Task VI.**

Provide trees and shrubs as specified by the City of Long Beach parks Staff. These items shall be selected by staff and delivered to the site. Contractor to place all plantings in approximate locations along the stream. Placement/planting of these items shall be by others. Allowance for this item to be \$225,000.00

**Summary**

<b>Task I</b>	<b>\$190,000.00</b>
<b>Task II</b>	<b>\$75,000.00</b>
<b>Task III</b>	<b>\$50,000.00</b>
<b>Task IV</b>	<b>\$20,000.00</b>
<b>Task V</b>	<b>\$50,000.00</b>
<b>Task VI</b>	<b>\$225,000.00</b>
<b>Total Contract</b>	<b><u>\$610,000.00</u></b>



Bond No. 7604716  
Premium: \$4,341.00  
Executed in Duplicate

LABOR AND MATERIAL BOND

KNOW ALL MEN BY THESE PRESENTS: That we, Mike Bubalo Construction Co., Inc.

as PRINCIPAL, and Fidelity and Deposit Company of Maryland, located at 801 N Brand Blvd., Penthouse, Glendale, California 91203, a corporation, incorporated under the laws of the State of Delaware, admitted as a surety in the State of California, and authorized to transact business in the State of California, as SURETY, are held and firmly bound unto the CITY OF LONG BEACH, CALIFORNIA, a municipal corporation, in the sum of Six Hundred and Ten Thousand Dollars and No Cents (\$610,000), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, our respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, said Principal has been awarded and is about to enter the annexed contract (incorporated herein by this reference) with said City of Long Beach for the El Dorado Nature Center Stream Restoration Project and is required by law and by said City to give this bond in connection with the execution of said contract;

NOW, THEREFORE, if said Principal, as Contractor of said contract, or any subcontractor of said Principal, fails to pay for any materials, provisions, equipment, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Act, during the original term of said contract and any extensions thereof, and during the life of any guaranty required under the contract, or shall fail to pay for any materials, provisions, equipment, or other supplies, used in, upon, for or about the performance of the work to be done under any authorized modifications of said contract that may hereafter be made, or for any work or labor done of any kind, or for amounts due under the Unemployment Insurance Act, under said modification, said Surety will pay the same in an amount not exceeding the sum of money hereinabove specified and, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court; otherwise this obligation shall be void;

PROVIDED, that any modifications, alterations, or changes which may be made in said contract, or in any of the work or labor required to be done thereunder, or in any of the materials, provisions, equipment, or other supplies required to be furnished pursuant to said contract, or the giving by the City of any extension of time for the performance of said contract, or the giving of any other forbearance upon the part of either the City or the Principal to the other, shall not in any way release the Principal or the Surety, or either of them, or their respective heirs, administrators, executors, successors or assigns, from any liability arising hereunder, and notice to the Surety of any such modifications, alterations, changes, extensions or forbearances is hereby waived. No premature payment by said City to said Principal shall release or exonerate the Surety, unless the officer of the City ordering the payment shall have actual notice at the time the order is made that the payment is in fact premature, and then only to the extent that such payment shall result in actual loss to the Surety, but in no event in an amount more than the amount of such premature payment.

This bond shall inure to the benefit of any and all persons, companies and corporations entitled by law to file claims so as to give a right of action to them or their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, the above named Principal and Surety have executed, or caused to be executed, this instrument with all of the formalities required by law on this 6th day of November, 2008

Mike Bubalo Construction Co., Inc.  
CONTRACTOR/PRINCIPAL  
By: \_\_\_\_\_  
Name: Mike Bubalo  
Title: President  
By: \_\_\_\_\_  
Name: Dave Borem  
Title: Secretary

Fidelity and Deposit Company of Maryland  
SURETY admitted in California  
By: \_\_\_\_\_  
Name: C. Michael Henley  
Title: Attorney-in-fact  
Telephone: (818) 704-0700

Approved as to form this \_\_\_\_\_ day  
of \_\_\_\_\_, NOV. 2008  
ROBERT E. SHANNON, City Attorney

Approved as to sufficiency this 10 day  
of December, NOV. 2008

By: \_\_\_\_\_  
Senior Deputy

By: \_\_\_\_\_  
City Manager/City Engineer

NOTE: 1. Execution the bond must be acknowledged by both PRINCIPAL and SURETY before a Notary Public and a Notary's certificate of acknowledgment must be attached.  
2. A corporation must execute the bond by 2 authorized officers and, if executed by a person not listed in Sec. 313, Calif. Corp. Code, then a certified copy of a resolution of its Board of Directors authorizing execution must be attached.

**Power of Attorney**  
**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by PAUL C. ROGERS, Vice President, and T. E. SMITH, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **C. Michael HENLEY, of Canoga Park, California**, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed, ~~any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons.~~ This power of attorney revokes that issued on behalf of C. Michael HENLEY, dated January 14, 2003.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 15th day of April, A.D. 2003.

ATTEST:

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



*T. E. Smith*

T. E. Smith

Assistant Secretary

By:

*Paul C. Rogers*

Paul C. Rogers

Vice President

State of Maryland }  
City of Baltimore } ss:

On this 15th day of April, A.D. 2003, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came PAUL C. ROGERS, Vice President, and T. E. SMITH, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



*Sandra Lynn Mooney*

Sandra Lynn Mooney

Notary Public

My Commission Expires: January 1, 2004

## EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

### CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 6 day of November, 2008.

  
Assistant Secretary

**State of California  
County of Los Angeles**

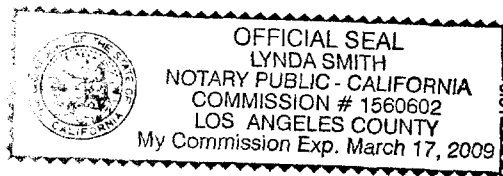
On, 11-6-08 before me, **Lynda Smith**, Notary Public, personally appeared **C. Michael Henley** who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.



Lynda Smith  
Notary Public



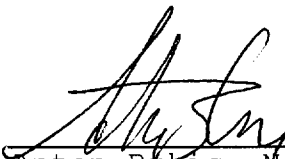
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

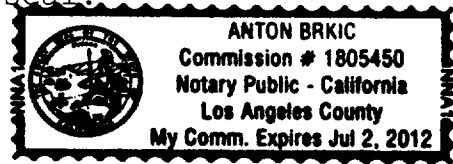
State of California }  
County of Los Angeles } ss.

On November 18, 2008, before me, Anton Brkic, Notary Public, personally appeared Mike Bubalo, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

Witness my hand and official seal.

  
\_\_\_\_\_  
Anton Brkic, Notary Public



(Notary Seal)

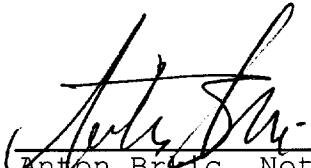
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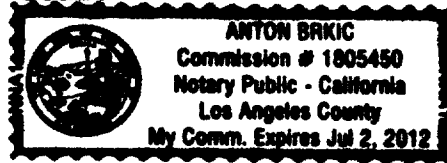
State of California }  
County of Los Angeles } ss.

On November 18, 2008 , before me, Anton Brkic, Notary Public, personally appeared Dave Sorem, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

Witness my hand and official seal.

  
Anton Brkic, Notary Public



(Notary Seal)