

6. AWARD OF EMERGENCY MINOR CONSTRUCTION AGREEMENT TO SUPERIOR AWNING TO REPLACE WINDSTORM DAMAGED PUBLIC WORKS WASH BAY AWNING COVER IN THE AMOUNT OF \$51,760

Recommendation: Staff recommends the City Council approve an award of an emergency minor construction agreement in the amount of \$51,760 to Superior Awning for the removal of the damaged wash bay awning cover and installation of a new wash bay awning cover, and approve a budget adjustment in the amount of \$51,760 in account #101-08-4376-2025. If the Council concurs with staff's recommendation, an appropriate motion would be:

"I move to approve an award of an emergency minor construction agreement in the amount of \$51,760 to Superior Awning for the removal of the damaged wash bay awning cover and installation of a new wash bay awning cover, approve the necessary budget adjustments, and authorize the City Manager to execute the agreement on behalf of the City."



14555 Titus Street • Van Nuys, CA 91402
(800) 780-0201 phone • (818) 780-7993 fax
Contractor's License #589431 (D03 Awnings)
www.SuperiorAwning.com

Document No. 25012201-35
Revision No. 0
Proposal Date 1/22/2025
ppv240405GLA

CONSTRUCTION CONTRACT

You are entitled to a fully completed copy of this agreement, signed by both you and the contractor before work is started.

Customer/Contact: **City Of San Marino (Chris Gutierrez)**
Billing Address:

Phone: **(626) 476-7057**
Site Address: **2200 Huntington Dr San Marino Ca.**
E-Mail: **cgutierrez@cityofsanmarino.org**

Description of the Project, Significant Materials to be Used and Product to be Installed:

Aluminum Patio Cover - Freestanding

Width: **32 0** Projection: **32 0** \$33,676.36 x **1** -----> \$ **33,676.36**
feet inches feet inches unit price quantity

Material: **White**

Additional Specifications:

Fabricate and install an aluminum carport using customers existing 6x steel posts and 7" I-beams. Order with extra rigid W pan to cantilever 12' beyond existing 32' W x 20' P frame (See BH) no additional posts will be needed.

Priced as prevailing wage

Product Option Adjustments:

12" Pans

Standard Roof

Installation Included

Prevailing Wage 12500.00

Item Subtotal: \$ **46,176.36**

Custom Product (see specs)

0 0 0 0 \$0.00 x Qty -----> \$
feet inches feet inches unit price quantity

Material:

Additional Specifications:

Demo and disposal of existing 32'x 20' aluminum patio

Product Option Adjustments:

2500.00
Item Subtotal: \$ **2,500.00**



Subtotal Primary Items \$ **48,676.36**

Total Accessories: \$

Subtotal Pre-Tax: \$ **48,676.36**

Sales Tax: \$ **3,082.84**

Total Contract Price Including Sales Taxes: \$ 51,759.20

Start of work commences with the above design layout.

Completion **estimated** to be **2-4 Weeks** from deposit date.
Permits and related fees and drawings are not included unless expressly and separately itemized. Gore™ Tenara® thread carries a lifetime warranty against defect or deterioration and all steel is galvanized and rust resistant. Other warranties as itemized above. See warranty literature for details/limitations.

Down Payment/Schedule of Progress Payments as follows:

Execution of this contract requires payment made now in the amount of: -----> \$ **18,815.34**

Representing initial deposit in accordance with contract regulation plus progress payment for design layout and custom materials procurement.

via check or credit card #

Final payment of remaining contract balance is due upon installation. **exp.**

Billing zip code

Date:

Superior Awning, by: X **Christopher Garcia (818) 512-9769 chris@superiorawning.com**

ACCEPTANCE: I, the undersigned, acknowledge that I have read and understood the terms of this agreement including the Terms, Conditions & Notices enclosed herewith.

Purchaser Signature: **X** Date:

**AGREEMENT FOR
MINOR CONSTRUCTION SERVICES**

Between

**THE CITY OF SAN MARINO,
a municipal corporation**

and

Superior Awning

Dated: February 28, 2025

AGREEMENT FOR MINOR CONSTRUCTION SERVICES

This Agreement for Minor Construction Services ("**Agreement**") is entered into as of the date referenced on the cover page ("**Effective Date**") between the City of San Marino, a California municipal corporation ("**City**") and Superior Awning ("**Contractor**") (collectively the "**Parties**"). In consideration of the mutual promises and covenants made by the parties and contained here and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 Identification of Contractor

Name: Superior Awning

Address: 14555 Titus Street, Van Nuys, CA 91402

Type of Entity: [Type of Entity]

License Numbers: Contractor's License #589431

1.2 Term. Subject to the provisions of Section 8 [Termination] of this Agreement, the term of this Agreement is for 6 months commencing on the Effective Date, as referenced on the cover page.

If this Agreement is for four (4) or more years, City may exercise up to two (2) 1-year extensions contingent on an annual appropriation of a budget by the City Council and Contractor's satisfactory performance of Contractor's Services as documented by the City Engineer.

1.3 Description of Contractor's Services. Subject to the terms and conditions of this Agreement, Contractor agrees to perform for City those maintenance / repair / minor construction services specified in the Scope of Services attached hereto and incorporated herein by reference as Exhibit "A" [Scope of Services] ("**Services**"). Contractor agrees to furnish, for the compensation provided for herein, all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform and complete the Services. The Services shall be subject to inspection and approval by City. Contractor agrees to work closely with City staff in the performance of the Services and shall be available to City's staff and Contractors at all reasonable times.

1.4 Performance of Services. Contractor represents that it possesses the requisite training, licenses and permits necessary to perform the Services, and that its performance of the Services shall conform to the standard of practice of a professional

having specific experience and expertise in professional services of like nature and complexity of the Services.

1.5 **Compensation for Contractor's Services.**

Compensation for the Services shall be (select one):

_____ Lump Sum of \$51,760 With progress payments;

1.6 **Extra Work.** Contractor shall not be compensated for any work or services rendered in connection with its performance of this Agreement, which are in addition to or outside of the Services ("**Extra Work**"), except as expressly provided for herein. It shall be Contractor's responsibility to ensure that the scope and price of any Extra Work to be performed by Contractor is approved by City in writing in advance of Contractor's commencement of the Extra Work in accordance with Section 9.10 [Amendments] and Section 9.18 [Administration and Implementation]. City shall not be obligated to pay for or otherwise be liable for unauthorized Extra Work performed by Contractor.

1.7 **Schedule of Performance.** Contractor agrees to diligently perform and complete the Services in accordance with the schedule of performance attached hereto and incorporated herein by reference as Exhibit "B" [Schedule of Performance] ("**Schedule of Performance**"). Modifications to the Schedule of Performance must be agreed upon in writing in advance by the City Manager pursuant to Section 9.18 [Administration and Implementation] and Contractor.

1.8 **Progress and Coordination.** Upon City's request, Contractor shall provide City with progress submittals showing status of Services, at times and increments as City may reasonably request, and shall provide City with a progress schedule for performance of the Services, at times and in a level of detail as City may reasonably request. Contractor shall coordinate with City and authorities with jurisdiction as necessary to perform the Services. Time is of the essence in the performance of the Services.

1.9 **General Warranty.** Contractor warrants all Services under this Agreement (which for purposes of this Section shall be deemed to include unauthorized Extra Work which has not been removed and any non-conforming materials incorporated into the Services) to be of good quality and free from any defective or faulty material and workmanship. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Services, whether express or implied, are deemed to be obtained by Contractor for the benefit of City, regardless of whether or not such warranties and guarantees have been transferred or assigned to City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of City.

1.10 **Repair of Defects.** Contractor agrees that for a period of one (1) year from and after final acceptance of the Services, or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Services, whichever is later, Contractor shall within ten (10) days after being notified in writing by

City of any defect in the Services or non-conformance of the Services, commence and prosecute with due diligence all work and services necessary to fulfill the terms of the warranty at its sole cost and expense. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work, facilities, fixtures, or materials damaged by its defective Services or which becomes damaged in the course of repairing or replacing defective Services. For any Services so corrected, Contractor's obligation hereunder to correct defective Services shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Services. Contractor shall perform such tests as City may require to verify that any corrective actions are adequate to remedy the defective condition. In the event that Contractor fails to perform its obligations under this Section to the reasonable satisfaction of City, then City shall have the right to correct and replace any defective, non-conforming, or damaged Services at Contractor's sole expense. Contractor shall be obligated to fully reimburse City for any expenses incurred hereunder upon demand.

1.11 Contractor's Representative. Contractor hereby designates the representative named in Exhibit "D" [Representatives], or his or her designee, to act as its representative for the performance of this Agreement ("**Contractor's Representative**"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. Contractor's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

SECTION 2. COMPENSATION AND METHOD OF PAYMENT

2.1 Compensation. City shall pay to Contractor for non-disputed Services rendered, the compensation set forth in Exhibit "C" [Compensation] attached hereto and incorporated herein by reference. Total compensation to Contractor for the Services shall not exceed the total price or "not to exceed" amount set forth in Exhibit "C," without the prior written approval of City in accordance with Section 9.10 [Amendments] and Section 9.19 [Administration and Implementation].

2.2 Payment of Compensation. Contractor shall submit periodic (monthly or quarterly as specified in Exhibit "C") invoices together with an itemized statement of Services provided. The statement shall describe the Services provided, the percent of work completed by item, together with such other reasonable detail and supporting documentation as may be required by the City Manager, or his/her designee. City will review the statement and pay, with the exception of any charges for work performed or expenses incurred by Contractor which are disputed by City, within 30 days of receiving such statement, all approved charges thereon. Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defect in work performed by Contractor.

2.3 Prior to execution of the Agreement, the State of California declared a state

of emergency and issued a stay at home order in connection with the COVID-19 pandemic, and the County of Los Angeles ("County") issued numerous orders relating to COVID-19, including without limitation an Order to Shelter in Place, originally dated March 17, 2020 (as subsequently extended and amended, including after the date of the Agreement, the "County Order"). In no event shall Contractor be entitled to any additional compensation in connection with any delay or costs associated with the COVID 19 pandemic, the County Order, or any other governmental requirements or regulations in connection therewith, whether currently existing or hereinafter enacted. In the event of any conflict between the terms of this Section and any other provision of the Agreement, in all events, the terms of this Section shall control.

SECTION 3. RESPONSIBILITIES OF CONTRACTOR

3.1 Control and Payment of Subordinates; Independent Contractor. Contractor agrees that all Services shall be performed by Contractor or under its supervision. The personnel performing the Services under this Agreement on behalf of Contractor shall at all times be under the Contractor's exclusive direction and control. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Contractor is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Contractor shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor is not entitled to any benefits that Owner provides to Owner employees, including, without limitation, worker's compensation benefits or payments, pension benefits, health benefits or insurance benefits. Contractor expressly waives any claim Contractor may have to any such rights. Contractor shall pay all payroll taxes imposed by any governmental entity and shall pay all other required taxes.

3.2 Standard of Care and Licenses. Contractor agrees that all Services shall be performed in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and warrants that it, its employees and subcontractors shall have sufficient skill and experience to perform the Services and that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained in good standing throughout the term of this Agreement.

3.3 Required Corrections. Contractor shall perform, at its own expense and without reimbursement from the City, any work necessary to correct errors or omissions that are caused by the Contractor's failure to comply with the standard of care provided for herein.

3.4 Law and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner

affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services.

3.5 **Safety.** Contractor shall perform the Services, and maintain its work area, so as to avoid injury or damage to any person or property and shall otherwise exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.6 **Labor Code and Prevailing Wage Requirements.**

3.6.1 Prevailing Wage Laws. Contractor represents and warrants that it is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("**Prevailing Wage Laws**"), which require the payment of prevailing wage rates and the compliance with other requirements on "Public Works" and "Maintenance" projects. Contractor shall pay prevailing wages to its employees on any agreement in excess of \$1,000.00. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Agreement, as determined by the Director of the State of California Department of Industrial Relations, may be obtained from the California Department of Industrial Relations website [<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>]. Contractor shall comply with the 8-hours per day/40 hours per week/overtime/working hours restrictions for all employees, pursuant to the California Labor Code. Contractor and all subconsultants shall keep and maintain accurate employee payroll records for Work performed under the Agreement. The payroll records shall be certified and submitted as required by law, including Labor Code Sections 1771.4 (if applicable) and 1776, including to the Labor Commissioner no less frequently than monthly. Contractor shall comply fully with Labor Code Section 1777.5 in the hiring of apprentices for work relating to the Agreement.

3.6.2 **Equal Opportunity Employment.** Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sexual orientation, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

SECTION 4. INDEMNIFICATION

4.1 **Indemnity.** Contractor shall indemnify, defend with legal counsel approved by Agency, and hold harmless Agency, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorney's fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this agreement, except such loss or damage which is caused by

the sole or active negligence or willful misconduct of the Agency. Should conflict of interest principles preclude a single attorney from representing both Agency and Contractor, or should Agency otherwise find Contractor's attorney unacceptable, then Contractor shall reimburse the Agency its costs of defense, including without limitation reasonable attorney's fees, expert fees and all other costs and fees of litigation. The Contractor shall promptly pay any final judgment rendered against the Agency (and its officers, officials, employees, and volunteers) with respect to claims determined by a trier of fact to have been the result of the Contractor's negligent, reckless, or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Contractor obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of Agency under any provision of this agreement, Contractor shall not be required to indemnify and hold harmless Agency for liability attributable to the sole or active negligence of Agency, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where Agency is shown to have been actively negligent and where Agency's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of Agency.

4.2 Action. For purposes of this Agreement, "**Action**" shall mean any suit (whether legal, equitable, or declaratory in nature), proceeding or hearing (whether administrative or judicial), arbitration or mediation (whether voluntary, court-ordered, binding, or non-binding), or other alternative dispute resolution process, and the filing, recording, or service of any process, notice, claim, demand, lien, or other instrument which is a prerequisite or prelude to commencement of the Action.

4.3 Costs and Expenses. For purposes of this Agreement, "**Costs and Expenses**" shall mean all costs and expenses, to the extent reasonable in amount, actually and necessarily incurred by a Party in good faith in the investigation, prosecution or defense of an Action, including, but not limited to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorney's fees, Contractor fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs, and any other costs or expenses, the award of which a court of competent jurisdiction may determine to be just and reasonable.

4.4 Hazardous Substances. For purposes of this Agreement, "Hazardous Substances" shall mean any and all of the following:

a. any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability arises for misuse, pursuant to the Comprehensive Environmental Response Compensation and Liability Act

("CERCLA"), 42 U.S.C. §9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901, *et seq.*; the Toxic Substances Control Act, 15 U.S.C.S. §2601, *et seq.*; the Clean Water Act, 33 U.S.C. §1251, *et seq.*; the Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. §136, *et seq.*; the Superfund Amendments and Reauthorization Act, 42 U.S.C. §6901, *et seq.*; the Clean Air Act, 42 U.S.C. §7401, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §300f, *et seq.*; the Solid Waste Disposal Act, 42 U.S.C. §6901, *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §1201, *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §§655 and 657; the Hazardous Waste Control Act, California Health and Safety Code ("H.&S.C.") §25100, *et seq.*; the Hazardous Substance Account Act, H.&S.C. §25330, *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act, H.&S.C. §25249.5, *et seq.*; the Underground Storage of Hazardous Substances, H.&S.C. §25280, *et seq.*; the Carpenter-Presley-Tanner Hazardous Substance Account Act, H.&S.C. §25300, *et seq.*; the Hazardous Waste Management Act, H.&S.C. §25170.1, *et seq.*; the Hazardous Materials Response Plans and Inventory, H.&S.C. §25001, *et seq.*; the Porter-Cologne Water Quality Control Act, Water Code §13000, *et seq.*, all as they may from time to time be amended; and

b. any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability for misuse arises pursuant to any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree due to its hazardous, toxic or dangerous nature.

SECTION 5. RECORDS AND AUDIT

5.1 **Records and Audit.** At Owner's request, Contractor shall make available to Owner, its authorized agents, officers, or employees, for audit, photocopy or compilation, any and all ledgers, books of accounts, invoices, payrolls, vouchers, cancelled checks, correspondence, internal memoranda, calculations, drafts, and other records or documents evidencing or relating to the performance of the Services (hard copy or electronic), expenditures and disbursements charged to Owner in connection with the Services. Contractor shall maintain such documents for at least three (3) years following completion of the Services. Such rights shall be specifically enforceable.

SECTION 6. INSURANCE

6.1 **Duration of coverage.** Contractor shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Contractor, their agents, representatives, employees, or subconsultants. Contractor must maintain general liability and umbrella or excess liability insurance for as long as there is a statutory exposure to completed operations claims. Agency and its officers, officials, employees, and agents shall continue as additional insureds under such policies.

6.2 Pass through clause. Contractor agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by Contractor (hereinafter collectively “subcontractor”), provide the same minimum insurance coverage and endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Contractor’s subcontractor cannot comply with this requirement, which proof must be submitted to the Agency, Contractor shall be required to ensure that its subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with subcontractor’s scope of work and services, with limits less than required of the Contractor, but in all other terms consistent with the Contractor’s requirements under this agreement. This provision does not relieve the Contractor of its contractual obligations under the agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Contractor with the ability to utilize a subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Contractor under this agreement given the limited scope of work or services provided by the subcontractor. Contractor agrees that upon request, all agreements with subcontractors, and others engaged in the project, will be submitted to Agency for review.

6.3 Agency’s right to revise requirements. The Agency reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor a ninety (90)-day advance written notice of such change. If such change results in substantial additional cost to the Contractor, the Agency and Contractor may renegotiate Contractor’s compensation.

SECTION 7. BONDS

7.1 Per Payment and performance bonds

Within the time period set forth in the contract documents and prior to commencing the work on the project, the contractor shall file with the Agency good and sufficient labor and material payment bond and performance bond in the amount of one hundred percent (100%) of the contract sum covering performance of the work other than the professional design services portion of the work. The performance bond and payment bond shall be in the form required by the contract documents. The amounts of the payment bond and performance bond shall be increased as, when and in the amount of any change orders that are executed increasing the contract sum, the contractor shall, upon request by the Agency, provide evidence of such increases. Should the payment bond or performance

bond or any surety on such bond become or be determined by the Agency to be insufficient, it shall be replaced within ten days by a bond that fully complies with the requirements of this paragraph. No further payments to the contractor for the work performed shall be made or due until the contractor has fully complied with the requirements of this paragraph.

Other provisions and requirements

7.2 Duration. The payment bond shall remain in effect until acceptance of the work and payment of all stop notices and claims by the contractor or the subcontractors, of any tier, have been satisfied. The performance bond shall remain in effect and assure faithful performance of all the contractor's obligations under the contract documents, including, without limitation, all obligations that survive final completion or termination, such as, but not limited to, the contractor's warranty, commissioning, and indemnity obligations.

7.3 Surety. At the time the contract is signed and at all times thereafter until final payment has been made by the Agency, the surety on the payment and performance bond shall be an admitted surety and the surety on the performance bond shall be licensed in the State of California and in good standing with the California Department of Insurance.

7.4 Premiums. The premiums for all bonds are included in the contract sum and shall be paid by the contractor. It is California law that the premium (cost) of the bond should appear in the right-hand corner of the original bond, so the obligee knows the true cost of the bond.

7.5 Obligatee. The payment bond and performance bond shall each name the Agency as obligee. This can be a requirement if the Agency is paying for the subcontract bonds, which is usually not the case.

7.6 No exoneration. Changes, change orders, unilateral change orders, field orders, modifications and adjustments to the contract sum or contract time shall in no way release or exonerate the contractor or its surety from their obligations, and notice thereof shall be waived by the surety. The foregoing provision shall be included in the terms of the payment bond, performance bond and any bonds obtained by the subcontractors.

7.7 Communications. The Agency shall have the right to communicate with the contractor's sureties with respect to matters that are related to the contractor's performance of its obligations under the contract documents. The contractor shall be provided with a copy of all such written communications. Such communications shall not create, or be interpreted as creating, any contractual relationship between the Agency and the surety. The name, address and phone number of the surety contact should be required in the bond; this makes communication easier for the obligee and to know how to submit a claim.

7.8 **No limitation.** The requirements shall be without limitation to any other obligations the contractor may have under applicable law to provide bonding for the benefit of and to assure payment to the subcontractors or subconsultants performing the work for the project.

SECTION 8. TERMINATION

8.1 **Termination and Suspension.** City may, with or without cause, direct Contractor to suspend, delay or interrupt Services, in whole or in part, for such periods of time as City may determine in its sole discretion. City may terminate performance of the Services under this Agreement in whole, or from time to time in part, for default, should Contractor commit a material breach of this Agreement, or part thereof, and not cure such breach within ten (10) calendar days of the date of City's written notice to Contractor demanding such cure, in which case Contractor shall be liable to City for all loss, cost, expense, damage and liability resulting from such breach and termination. City may terminate performance of the Services under this Agreement in whole, or from time to time in part, for convenience, whenever City determines that such termination is in City's best interests, in which case Contractor shall be entitled to recover its costs expended up to the termination date plus reasonable profit thereon to the termination date as this Agreement would otherwise provide, but may recover no other cost, damage or expense. Contractor shall continue its work throughout the course of any dispute, and Contractor's failure to continue work during a dispute shall be a material breach of this Purchase Order.

SECTION 9. GENERAL PROVISIONS

9.1 **Assignment or Transfer.** Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

9.2 **Loss and Damage.** Contractor shall be responsible for all loss and damage which may arise out of the nature of the Services agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Services until the same is fully completed and accepted by City.

9.3 **Conflict of Interest.** Contractor represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of work and services required under this Agreement. Without limitation, Contractor represents to and agrees with City that Contractor has disclosed any potential conflict of interest, and will have no future conflict of interest, in providing City services hereunder, including but not limited to, any interest (financial, shared ownership, shared management, shared directors, or reporting responsibilities) Contractor may presently have, or will have in the future, with respect to any other person or entity (including but not limited to potential suppliers, vendors, Contractors, contractors, or regulatory agency) which may have an interest in the subject matter of the Services.

9.4 **Confidentiality.** Any information, whether proprietary or not, made known to or discovered by Contractor during the performance of or in connection with this Agreement for City, will be kept confidential and not be disclosed to any other person. Contractor will immediately notify City in writing if it is requested to disclose any information made known to or discovered by Contractor during the performance of or in connection with this Agreement. These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services to City hereunder.

9.5 **Cooperation; Further Acts.** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of the Agreement.

9.6 **Governing Law.** This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles.

9.7 **Integration.** This Agreement, including the attached Exhibits "A" through "F", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other prior agreements or understandings, whether oral or written, or entered into between Contractor and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding.

9.8 **Severability.** If a term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

9.9 **Prohibited Interests.** Contractor represents and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

9.10 **Amendments.** No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Contractor and City. The City Manager shall have the authority to approve any amendment to this Agreement if the total compensation under this Agreement, as amended, would not exceed the City Manager's contracting authority under the San Marino Municipal Code. All other amendments shall be approved by the City Council. The Parties agree that the requirement for amendments

or modifications to be in writing cannot be waived and that any attempted waiver shall be void.

9.11 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

9.12 Delivery of Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be given to the respective parties at the addresses listed in Exhibit "D", or at such other address as the respective parties may provide in writing for this purpose. Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

9.13 Binding Effect. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

9.14 Waiver. Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party or any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any Services by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

9.15 Subcontracting. Contractor shall not subcontract any portion of the Services, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

9.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

9.17 Authority to Execute. The person or persons executing this Agreement on behalf of Contractor represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Contractor to the performance of its obligations hereunder.

9.18 Administration and Implementation. This Agreement shall be administered and executed by the City Manager or his or her designated representative. The City Manager shall have the authority to issue interpretations and to make amendments to this Agreement, including amendments that commit additional funds, consistent with Section 9.10 [Amendment] and the City Manager's contracting authority under the City's Municipal Code.

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

“CITY”

CITY OF San Marino

Philippe Eskandar,
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Joe Montes, City Attorney

“CONTRACTOR”

Superior Awning

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT "A"
SCOPE OF SERVICES

Found on following page

EXHIBIT “B”

SCHEDULE OF PERFORMANCE

EXHIBIT “C”
COMPENSATION

- Total contract price is not to exceed \$51,760

EXHIBIT "D"

REPRESENTATIVES

CITY'S REPRESENTATIVE

City of San Marino
Public Works Department
Attn: **Chris Gutierrez**
2200 Huntington Dr
San Marino, CA 91108
[Type in Fax Number]

CONTRACTOR'S REPRESENTATIVE

Superior Awning
14555 Titus St
Van Nuys, CA 91402

EXHIBIT “E”
BONDS REQUIRED

See Section 7 of Agreement

DRAFT

EXHIBIT “F”

INSURANCE REQUIREMENTS FOR CITY OF SAN MARINO

Contractor’s Duty to Show Proof of Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

Coverage shall be at least as broad as:

Commercial General Liability (CGL)

Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000 per occurrence, \$5,000,000 general aggregate, for bodily injury, personal injury, and property damage, and a \$5,000,000 completed operations aggregate. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted.

Automobile Liability

Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than \$4,000,000 combined single limit for each accident.

Umbrella or Excess Liability

Contractor shall obtain and maintain an umbrella liability insurance policy with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, automobile liability, and employer’s liability. Such policy or policies shall include the following terms and conditions:

- A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;
- “Pay on behalf of” wording as opposed to “reimbursement”;
- Concurrency of effective dates with primary policies.

Should Contractor obtain and maintain an excess liability policy, such policy shall be excess over commercial general liability, automobile liability, and employer’s liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

Workers’ Compensation Insurance

Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000) for Contractor's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, Contractor shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subcontractor's employees.

Contractor shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees, and volunteers.

Other Insurance Provisions

Proof of insurance. Contractor shall provide certificates of insurance and required endorsements to Agency as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by Agency's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Agency for the contract period and any additional length of time required thereafter. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Primary/noncontributing. Coverage provided by Contractor shall be primary and any insurance or self-insurance procured or maintained by Agency shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Agency before the Agency's own insurance or self-insurance shall be called upon to protect it as a named insured.

Products/completed operations coverage. Products liability coverage shall extend for a minimum of three years (3) after project completion, and completed operations coverage for construction agreements shall extend for 10 years from the date of substantial completion of the project or the statute of repose, whichever is longer. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the Policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer. The Agency, its officials, officers, agents, and employees, shall be included as additional insureds under the Products and Completed Operations coverage.

Agency's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced,

Agency has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by Agency will be promptly reimbursed by Contractor or Agency will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, Agency may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Agency's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Agency, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against Agency and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Contractor acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Contractor of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

Notice of cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide the Agency with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Contractor's insurers are unwilling to provide such notice, then Contractor shall have the responsibility of notifying the Agency immediately in the event of Contractor's failure to renew any of the required insurance coverages, or insurer's cancellation or non-renewal.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that Agency and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Agency and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Self-insured retentions. Any self-insured retentions must be declared to and approved by Agency. Agency reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

Timely notice of claims. Contractor shall give Agency prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.