

For City Clerk Use Only

Contract No. \_\_\_\_\_

**PUBLIC WORKS CONSTRUCTION CONTRACT  
WITH THE CITY OF MURRIETA ("CITY")**

**FORMAL BIDDING OVER \$220,000**

Project Name/Description ("Project"): Citywide Sidewalk Replacement Program 2026, MSD  
Project No. 26-003, CIP No. 13064

Contractor Name ("Contractor"): Carter Enterprises Group, Inc. dba Pavement Rehab Company

Contractor Business Type: Corporation

Contractor Address: 22711 La Palma Ave. Yora Linda, CA. 92887

Contractor Representative Name and Title ("Contractor Representative"): Jay Kirschner, Vice  
President

Contractor Representative Work Phone: (714) 238-1444

Contractor Representative Email: BIDS@PAVEMENTREHAB.COM

Contract Days: 45 Working Days

Liquidated Damages Sum (per day): \$750.00 Per Calendar Day

Termination Date: December 31, 2026

Total Not-To-Exceed Contract Amount ("Contract Sum"): \$411,888.00

City Department Contact ("Project Manager"): Garrett P. Strang

Department Contact Work Phone: 951-461-6421

Department Contact Email: gstrang@murrietaca.gov

Is Federal Funding Being Used to Fund Any Part of The Project (Yes/No): No

RECITALS

The City desires to contract with a Contractor to provide services as more further set forth herein.

The City circulated a Notice Inviting Bids for the above-described services.

Contractor submitted a bid and was determined to be the lowest responsible bidder.

Click or tap here to enter text.

This Contract, made and entered into effective on the date executed by the City, by and between the City of Murrieta, a municipal corporation, hereinafter referred to as "City," and the above-referenced Contractor.

The City and Contractor, for the consideration hereinafter named, mutually agree as follows:

1. SCOPE OF WORK.

1.1 The Contractor shall perform all of the work, furnish all labor, materials, equipment, tools, utility services, and transportation, and comply with all of the specifications and requirements in the Bid Documents for the above entitled Project. All such work shall be performed in a good and workmanlike manner, as reasonably determined by the City, and shall be performed in compliance with all local, state, and federal laws and regulations. As used herein, "Bid Documents" refers to all of the documents included in the solicitation of bids for the Project, including but not limited to, the Invitation for Bids, Instructions to Bidders, Bid or Bid Proposal, Contract Documents, Special Provisions, Technical Provisions, Construction Plans, Standard Plans, Drawings, Reference Specifications, all applicable permit requirements, any addenda, any applicable Project Labor Agreement, and any other documents included, referenced, or incorporated therein. The Bid Documents are incorporated into this Contract and made part hereof. In the event of any conflict between the terms of the Bid Documents and this Contract, the terms of this Contract shall govern.

2. CONTRACT DOCUMENTS.

2.1 The provisions of the 2024 Edition of the Standard Specifications for Public Works Construction, as updated by errata, ("Greenbook") are incorporated herein, except as explicitly modified by the Bid Documents or further herein. In the event of any conflict between the provisions of the Greenbook and this Contract, the terms of this Contract and the Exhibits attached hereto shall govern.

2.2 Copies of the Standard Specifications for Public Works Construction are available from the publisher:

Building News, Inc. (BNi)  
990 Park Center Drive, Suite E Vista, CA 92081  
(760) 734-1113  
[www.bnibooks.com](http://www.bnibooks.com)

2.3 The aforementioned Standard Specifications will control the General Provisions, construction materials, and construction methods for this Contract except as amended by the Plans and Specifications of this Contract.

2.4 Where the Plans or Specifications describe portions of the work in general terms, but not in complete detail, it is understood that the item is to be furnished and installed completed and in place and that only the best general practice is to be used.

2.5 Unless otherwise specified, Contractor shall furnish all labor, materials, tools, equipment, and incidentals, and do all the work involved in executing the Contract.

2.6 The Contract Documents include this Contract, the Bid Documents, the Standard Specifications, any and all Exhibits thereto, all design documents, and contract change orders and all bonds and insurance documents. The Contract Documents are complementary, and what is called for by any one document shall be as binding as if called for by all. Any conflict between this Contract and any other Contract Document shall be resolved in favor of this Contract with the exception that any later amendments hereto or change orders shall take precedence over this Contract.

### 3. CITY APPROVAL.

3.1 All labor, materials, tools, equipment, and services shall be furnished and work performed and completed under the direction and supervision and subject to the approval of City or its authorized representatives.

### 4. LICENSES, PERMITS FEES AND ASSESSMENTS

4.1 Contractor shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Contract. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Contract, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

### 5. CONTRACT AMOUNT AND SCHEDULE.

5.1 City agrees to pay and Contractor agrees to receive and accept the prices set forth in their bid as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance, including those for well and faithfully completing the work and the whole thereof in the manner and time specified in the aforesaid contract documents and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work. The total of all payments made to Contractor shall not exceed the Contract Sum set forth above.

5.2 Contractor agrees to complete the work on the Project in a period not to exceed the Contract Days set forth above, commencing upon the date stated in the Notice to Proceed issued by City. Construction shall not commence until bonds and insurance are approved by City. Contract Days shall be computed as calendar days and not as working or business days. Time is of the essence. If the work is not completed within said time period, liquidated damages shall apply. The term of this Agreement shall expire one (1) year following City's acceptance of the Project.

## 6. PAYMENT AND INVOICING.

6.1 All invoices shall include a copy of Contractor's Certified Payroll and proof that Certified Payroll has been submitted to the DIR. Contractor shall also submit a list of the prevailing wage rates (including federal prevailing wage rates, if applicable) for all employees and subcontractors providing services under this Contract, as applicable, with Contractor's first invoice. If these rates change at any time during the term of the Contract, Contractor shall submit a new list of rates to the City with its first invoice following the effective date of the rate change. Additionally, Contractor shall submit the following information with each monthly invoice: (1) an updated Project schedule reflecting all work completed and the percentage completion of all scheduled work; (2) the number of units completed for any work being performed on a unit price basis; (3) a report documenting all issues, concerns, and delays the Contractor's method of addressing said concerns; (4) in the event Contractor is not meeting the approved Project schedule, a resource-loaded recovery schedule demonstrating how Contractor will meet the approved Project schedule; (5) a list of all deliverables in process and the status of each deliverable; (6) a list of any pending requests for information or clarification and change orders and the status of each item on the list; and (7) a log of all pending corrective work and/or warranty items identified by either Party and the status of such work and/or warranty items.

### 6.2 Payment.

a. Payments Made by City. City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Contract. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, City will cause Contractor to be paid any progress payment within thirty (30) days of receipt of Contractor's correct and undisputed invoice; however, Contractor acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event that City does not cause Contractor to be paid any progress payment within thirty (30) days of receipt of an undisputed and properly submitted invoice and provided the Project is for construction, Contractor shall be entitled to the payment of interest to the extent allowed under Public Contract Code § 20104.50. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor, not later than seven (7) days after receipt by the City, for correction and resubmission. Returned invoices shall be accompanied by a document setting forth in writing the reasons why the payment request was rejected. Review and payment by the City of any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

6.3 Payments Made by Contractor to Subcontractors. In accordance with § 7108.5 of the California Business and Professions Code, Contractor shall remit payments owed to subcontractors within seven (7) calendar days after receiving payments by City if payments are owed by Contractor to any subcontractor, unless otherwise agreed to in the applicable subcontract between Contractor and Subcontractor or unless otherwise authorized by California law, but in no event less than fifteen (15) calendar days for any Subcontractor qualifying as a small business enterprise, and within thirty (30) calendar days if payments are owed by Contractor to any Subcontractor other than a small business enterprise.

6.4 Retention. Pursuant to § 9203 of the Public Contract Code, City will deduct a five percent (5%) retention from all progress payments, which shall be released to Contractor no later than sixty (60) days from completion of the work in accordance with § 7107 of the Public Contract Code. In the event of a dispute between City and Contractor, City may withhold from the final payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount.

6.5 Waiver. Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

## 7. ADDITIONAL WORK AND CHANGE ORDERS.

7.1 City shall have the right at any time during the performance of the services, without invalidating this Contract, to order extra work beyond that specified in the Scope of Work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the City to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Contract, which said adjustments are subject to the written approval of the Contractor ("Change Order"). All Change Orders must be signed by the Contractor and City prior to commencing the extra work thereunder.

7.2 Any increase in compensation of up to the amount of contingency approved by the City Council at the time the Project was awarded to Contractor plus any additional subsequent contingency approved by the City Council, if any, taken either separately or cumulatively, or any increase in the time to perform of up to one hundred eighty (180) days and which are not detrimental to the Work or to the interest of the City, may be approved by the City Manager. Any greater increases, taken either separately or cumulatively, must be approved by the City Council.

7.3 Any adjustment in the Contract Sum for a Change Order must be in accordance with the unit prices or rates set forth in the Contractor's Bid. If the rates in the Contractor's Bid do not cover the type of work in the Change Order, the cost of such work shall not exceed an amount agreed upon in writing and signed by Contractor and City. If the cost of the Change Order cannot be agreed upon, the City will pay for actual work of the Change Order completed, to the satisfaction of the City, as follows:

a. Labor: The cost of labor shall be the actual cost for wages of workers and subcontractors performing the work for the Change Order at the time such work is performed. The use of labor classifications that would increase the cost of such work shall not be permitted. For purposes of this Section, wages shall include total compensation, including fringe benefits. For work that is self-performed by the Contractor, a markup not to exceed fifteen percent (15%) of the actual cost of labor for that portion of work is allowable. For work performed by a Subcontractor, a markup of fifteen percent (15%) of the actual cost of labor for work performed by the Subcontractor's own forces is allowable, plus two and one-half percent (2.5%) thereon for Contractor markup regardless of which tier of Subcontractor actually performed the work.

b. Materials and Equipment: The cost of materials and equipment shall be the actual cost to Contractor or the lowest current price which such materials and equipment

are reasonably available at the time the work is performed, whichever is lower. For purposes of this Section, Contractor may include a markup on the cost of materials and equipment of not more than fifteen percent (15%). Material re-stocking charges shall be limited to five percent (5%) and Contractor must provide evidence of any related charges from the supplier. For rental equipment, City will not pay Contractor for the use of tools and equipment that have a replacement value of \$750 or less.

c. If the cost of the extra work cannot be agreed upon, the Contractor must provide a daily report that includes invoices for labor, materials and equipment costs for the work performed under the Change Order. The daily report must include: list of names of workers, classifications, and hours worked; description and list of quantities of materials used; type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; description of other City authorized services and expenditures in such detail as the City may require. Failure to submit a daily report by the close of the next working day may, at the City's sole and absolute discretion, waive the Contractor's rights for that day.

7.4 It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Work. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Work may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

7.5 No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

7.6 Additional work shall not include work performed by any of the following:

- a. Superintendent(s).
- b. Assistant Superintendent(s).
- c. Project Engineer(s).
- d. Project Manager(s).
- e. Scheduler(s).
- f. Estimator(s)
- g. Drafting or detailing
- h. Small tools (with a replacement value under \$500)
- i. Home or field office expenses, including staff, materials, and supplies.
- j. Trailer or storage rental and expenses, whether on the Site or off the Site.

- k. Data processing personnel and equipment
- l. Site fencing
- m. Utilities, including, without limitation, gas, electric, sewer, water, telephones.
- n. Telephone, facsimile, e-mail and copier.
- o. Overhead, administrative, or general expenses of any kind.
- p. Loss of efficiency or productivity, or other impact costs caused by the effects of the Additional Work on the performance of other work or the work of other trades on the Project.
- q. Capital expenses, including interest on capital employed in connection with Additional Work.
- r. Legal costs.
- s. Federal, State, or local income and franchise taxes.
- t. Profit.

7.7 The term "markup" shall be defined as including the full amount of compensation and expenses including overhead and profit not included in the actual allowable costs. For all Change Orders, unless a lump sum amount is approved by the City, Contractor shall submit an itemized breakdown of the Change Order costs with all markups clearly identified.

7.8 City may also, with or without cause, issue deductive Change Orders reducing or removing any portion of the Scope of Work, upon provision of notice to Contractor. In the event the City desires to issue a deductive Change Order. Any adjustment in the Contract sum for a deductive Change Order shall be calculated in the same manner as a Change Order for Additional Work as set forth in this Section.

## 8. PAYMENTS/ACCEPTANCE OF WORK.

8.1 Any conflicting language in the Standard Specifications relating to payments and acceptance of work is hereby replaced with the following:

a. The closure date for the purpose of making partial progress payments will be the last day of each month. Contractor shall prepare the approximate measurement of the work performed through the closure date and submit it to City for approval by the tenth (10th) day of the following month. Payments will be withheld pending receipt of any outstanding reports required by the Contract Documents. A full five percent (5%) retention will be deducted from all progress payments. Partial payments on the Contract price shall not be considered as an acceptance of any part of the work.

b. Upon completion of the work, Contractor shall so notify the Project Manager, in writing, submit satisfactory evidence of payment for equipment, materials and labor, and submit the "Contractor's Affidavit." Upon receipt of the notification, the Project Manager shall promptly, by personal inspection, determine the actual status of the work in accordance with the terms of the Contract. If he finds materials, equipment, or workmanship that do not meet the terms of the Contract, he shall prepare a preliminary punch list of such items and submit it to Contractor. Final determination of acceptability shall be made by City. Upon acceptance of the work, City shall file a Notice of Completion. The conditions of the guarantee shall commence on the date that City files a Notice of Completion. City shall make final payment to Contractor in the manner provided by law following the expiration of thirty-five (35) days after filing the Notice of Completion.

c. The final payment shall include the entire sum found to be due hereunder after deducting all previous payments and such other lawful amounts as the terms of this Contract describe.

## 9. LIQUIDATED DAMAGES; EXTENSION OF TIME.

9.1 In accordance with Government Code Section 53069.85, Contractor agrees to forfeit and pay to City the Liquidated Damages Sum set forth above per day for each calendar day completion is delayed beyond the time allowed pursuant to Section 5 of this Contract. Such sum shall be deducted from any payments due to or to become due to Contractor.

9.2 The time period(s) specified for performance of the services rendered pursuant to this Contract shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Project Manager in writing of the causes of the delay. The Project Manager shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Project Manager such delay is justified. The Project Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

## 10. WAIVER OF CLAIMS.

10.1 Unless a shorter time is specified elsewhere in this Contract, on or before making final request for payment, Contractor shall submit to City, in writing, all claims for compensation under or arising out of this Contract; the acceptance by Contractor of the final payment shall constitute a waiver of all claims against City under or arising out of this Contract except those previously made in writing and request for payment. Contractor shall be required to execute an affidavit, release, and indemnify agreement with each claim for payment.

## 11. PREVAILING WAGES.

11.1 Public Work. The Parties acknowledge that the work to be performed under this Contract is a "public work" as defined in Labor Code § 1720 and that this Contract is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with § 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations ("DIR") implementing such statutes. The work performed under this Contract is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

11.2 Registration with DIR. Pursuant to Labor Code § 1771.1, Contractor and all subcontractors must be registered with, and pay an annual fee to, the DIR prior to and during the performance of any work under this Contract.

11.3 Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code § 1771. Pursuant to Labor Code § 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Contract, Contractor acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where work is performed under this Contract. If this Contract is subject to the payment of federal prevailing wages under the Davis-Bacon Act (40 U.S.C. § 3141 et seq.), then Contractor shall pay the higher of either the state or federal prevailing wage applicable to each person employed on the Project.

11.4 Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code §§ 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Contract by Contractor or by any subcontractor.

11.5 Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code § 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in § 1776; certify and make such payroll records available for inspection as provided by § 1776; and inform the City of the location of the records. Upon request by the City, Contractor shall provide any records to the City pursuant to this subsection within ten (10) days of such request. In the event that the Contractor fails to comply within the 10-day period, Contractor or subcontractor shall, as a penalty to the City, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated.

11.6 Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code §§ 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, §§ 200, et seq. concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned sections for all apprenticeable occupations. Prior to commencing work under this Contract, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Contract, Contractor and each of its subcontractors shall submit

to the City a verified statement of the journeyman and apprentice hours performed under this Contract.

11.7 Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code § 1810.

1.1 Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code § 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code § 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

11.8 Contractor's Responsibility for Subcontractors. For every subcontractor who will perform work under this Contract, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with § 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Contract. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

## 12. WORKERS' COMPENSATION LIABILITY INSURANCE.

12.1 California Labor Code §§ 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees.

12.2 In accordance with the provisions of California Labor Code § 1861, Contractor certifies as follows:

"I am aware of the provisions of § 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

## 13. INDEMNIFICATION.

13.1 All work covered by this Contract done at the site of construction or in preparing or delivering materials to the site shall be at the risk of Contractor alone.

13.2 Contractor shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers (each, an "Indemnitee") from and against all liability, loss, damage, expense, cost (including without limitation reasonable

legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work under this Contract or its failure to comply with any of its obligations contained in this Contract, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and Contractor, or should City otherwise find Contractor's legal counsel unacceptable, then Contractor shall reimburse the City its costs of defense, including without limitation reasonable legal counsels' fees, expert fees and all other costs and fees of litigation. The Contractor shall promptly pay any final judgment rendered against the City (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 Contract.

13.3 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 City under any provision of this Contract, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City'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 City.

13.4 City shall timely notify Contractor of the receipt of any third-party claim relating to the work under this Agreement. City shall be entitled to recover from Contractor its reasonable costs incurred in providing such notification.

#### 14. INSURANCE.

14.1 Without limiting Contractor's indemnification of City, and prior to commencement of any services under this Contract, Contractor shall obtain, provide and maintain at its own expense during the term of this Contract, policies of insurance of the type and amounts described in Exhibit "B" attached hereto and incorporated herein.

#### 15. CONTRACTOR'S INDEPENDENT INVESTIGATION.

15.1 No plea of ignorance of conditions that exist or that may hereafter exist or of conditions of difficulties that may be encountered in the execution of the work under this Contract, as a result of failure to make the necessary independent examinations and investigations, and no plea of reliance on initial investigations or reports prepared by City for purposes of letting this Contract out to bid will be accepted as an excuse for any failure or omission on the part of Contractor to fulfill in every detail all requirements of this Contract. Nor will such reasons be accepted as a basis for any claims whatsoever for extra compensation or for an extension of time.

15.2 By executing this Contract, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of work to be performed, (ii) has carefully

considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Contract. If the services involve work upon any site, Contractor warrants that Contractor has investigated the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder.

## 16. WARRANTY.

16.1 Contractor warrants all work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or non conformance of the work to the Contract, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act as soon as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair, remove and replace any portions of the work (or work of other contractors) damaged by its defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

## 17. CONFLICT OF INTEREST.

17.1 Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Contract. Contractor further covenants that in the performance of this Contract, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Project Manager. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Contract.

17.2 No officer or employee of the City shall have any financial interest, direct or indirect, in this Contract nor shall any such officer or employee participate in any decision relating to the Contract which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Contract.

17.3 Contractor warrants that they have no blood or marriage relationship, and that they are not in any way associated with any City officer or employee, or any architect, engineer, or other preparer of the Drawings and Specifications for this project. Contractor further warrants that no person in his employ has been employed by City within one (1) year of the date of Notice Inviting Bids. Contractor's duties and services under this Contract shall not include preparing or assisting the City with any portion of the City's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the City. The City shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Contractor pursuant to this Contract.

17.4 Contractor warrants that neither it nor any of its employees, agents, or representatives has offered or given any gratuities or promises to City's employees, agents, or representatives with a view toward securing this Contract or securing favorable treatment with respect thereto.

## 18. CONTRACTOR'S AFFIDAVIT.

18.1 After completion of the work contemplated by this Contract, Contractor shall file with the City Manager his affidavit stating that all workmen and persons employed, all firms supplying materials, and all subcontractors upon the project have been paid in full, and that there are no claims outstanding against the project for either labor or materials, except certain items, if any, to be set forth in an affidavit covering disputed claims or items in connection with a Stop Notice that has been filed under the provisions of the laws of the State of California.

## 19. SIGNATURE OF CONTRACTOR

19.1 Corporations: The signature must contain the name of the corporation, must be signed by the President and Secretary or Assistant Secretary, and the corporate seal must be affixed. Other persons may sign for the corporation in lieu of the above if a certified copy of a resolution of the corporate board of directors so authorizing them to do so is on file in the City Clerk's office.

19.2 Partnerships: Names of all persons comprising the partnership or co-partnership must be stated. The Contract must be signed by all partners comprising the partnership unless proof in the form of a certified copy of a certificate of partnership acknowledging signer to be a general partner is presented to the City, in which case the general partner may sign.

19.3 Joint Ventures: Bids submitted as joint ventures must so state and the Contract is to be signed by each joint venturer.

19.4 Individuals: Bids submitted by individuals must be signed by the bidder, unless an up-to-date power of attorney is on file in the City, in which case said person may sign for the individual. The above rules also apply in the case of the use of a fictitious firm name. In addition, however, where the fictitious name is used, it must be so indicated in the signature.

## 20. SECURITY.

20.1 Performance and Payment Bonds. Concurrently with execution of this Agreement, Contractor shall deliver to the City all of the following bonds:

a. A performance bond securing the faithful performance of this Agreement, in an amount not less than 100% of the total compensation for this Contract.

b. A payment bond, securing the payment of all persons furnishing labor and/or materials in connection with the work under this Agreement, in an amount not less than 100% of the total compensation for this Agreement.

20.2 All bonds shall be on the applicable forms provided in Exhibit "C" and Exhibit "D" attached hereto and made part hereof. The bonds shall each contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his/her power of attorney. The bonds shall be unconditional and remain in force during the entire term of the Agreement until released.

20.3 Sufficiency of Insurer or Surety. Insurance and bonds required by this Contract shall be satisfactory only if issued by companies qualified to do business in California, rated "A-" or better in the most recent edition of Best's Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better. If the City determines that the work to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the bonds may be changed accordingly upon receipt of written notice from the City's Risk Manager.

20.4 Release of Securities. City shall release the performance bond and payment bond when the following have occurred:

a. Contractor has made a written request for release and provided evidence of satisfaction of all other requirements under this Contract;

b. the Project has been accepted; and

c. after passage of the time within which lien claims are required to be made pursuant to applicable laws; if lien claims have been timely filed, City shall hold the payment bond until such claims have been resolved, Contractor has provided statutory bond, or otherwise as required by applicable law.

20.5 In accordance with Section 22300 of the Public Contracts Code, Contractor may substitute securities for any monies withheld by City to ensure performance under the Contract.

20.6 At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with City or with a State or Federally chartered bank or an escrow agent who shall pay such monies to Contractor upon notification by City of Contractor's satisfactory completion of the Contract. The type of securities deposited and the method of release shall be approved by the City Attorney's office.

## 21. DEFAULTS.

21.1 Default of Contractor. Contractor's failure to comply with the provisions of this Contract shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate or suspend this Agreement immediately by written notice to Contractor. If the Project Manager determines that Contractor is in default in the performance of any of the terms or conditions of this Contract, the Project Manager shall cause to be served upon Contractor a written notice of the default. Contractor shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance, or such longer time as is approved by the City. In the event that Contractor fails to cure its default within such period of time or if the default reoccurs, the City shall have the right, notwithstanding any other provision of this Contract, to terminate this Contract without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Contract.

### 21.2 Suspension and Termination.

a. The City may at any time, for any reason, with or without cause, suspend this Contract, or any portion hereof, by serving upon Contractor at least ten (10) days prior written notice. Upon receipt of said notice, Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends a portion of this Agreement such suspension shall not make void or invalidate the remainder of this Agreement.

b. This Contract may be terminated by either party for cause. In the event Contractor desires to terminate the Agreement for cause, Contractor shall provide City with notice of the basis for the termination for cause and an opportunity to cure of not less than ten (30) calendar days. The City may terminate this Contract without cause upon thirty (30) days' written notice of termination. Upon termination, Contractor shall be entitled to compensation for completion of any portion of the Project accepted by City up to the effective date of termination unless any portion of the Project is accepted by City after termination in which event Contractor shall be paid for such completed portion.

## 22. RESOLUTION OF CLAIMS.

22.1 In the event of any dispute or controversy with the City over any matter whatsoever, the Contractor shall not cause any delay or cessation in or of work, but shall proceed with the performance of the work in dispute. The Contractor shall retain any and all rights provided that pertain to the resolution of disputes and protests between the Parties. The disputed work will

be categorized as an “unresolved dispute” and payment, if any, shall be as later determined as set forth below. The Contractor shall keep accurate, detailed records of all disputed work, claims and other disputed matters.

22.2 Section 20104 et seq. of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial-supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

22.3 For purposes of these procedures, “claim” means a separate demand by the Contractor, after the City has denied Contractor’s timely and duly made request for payment for extra work and/or a time extension, for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled to, or (C) an amount the payment of which is disputed by the City.

22.4 The following requirements apply to all claims to which this section applies:

a. Claim Submittal. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims governed by this procedure must be filed on or before the date of final payment. Nothing in this section is intended to extend the time limit or supersede notice requirements otherwise provided in the Contract for the filing of claims, including all requirements pertaining to compensation or payment for extra work, disputed work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

b. Supporting Documentation. The Contractor shall submit all claims in the following format:

(i) Summary of the claim, including references to the specific Contract Document provisions upon which the claim is based.

(ii) List of documents relating to claim: (a) Specifications, (b) Drawings, (c) Clarifications (Requests for Information), (d) Schedules, and (e) Other.

(iii) Chronology of events and correspondence related to the claim.

(iv) Statement of grounds for the claim.

(v) Analysis of the claim’s cost, if any.

(vi) Analysis of the claim’s time/schedule impact, if any.

c. City's Response. Upon receipt of a claim pursuant to this section, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 calendar days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 calendar days after the City issues its written statement.

(i) If the City needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council does not meet within the 45 calendar days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(ii) Within 30 calendar days of receipt of a claim, the City may request in writing additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual Contract of City and the Contractor.

(iii) The City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 calendar days (if the claim is less than \$50,000, within 15 calendar days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

d. Meet and Confer. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 calendar days of receipt of the City's response or within 15 calendar days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 calendar days for settlement of the dispute.

e. Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 calendar days after the City issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the Parties agree to select a mediator at a later time.

(i) If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third Party to mediate with

regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

(ii) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the Parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(iii) Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

(iv) All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

f. City's Responses. The City's failure to respond to a claim from the Contractor within the time periods described in this section or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the City's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility of qualifications of the Contractor. City's failure to respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

g. Government Code Claims. If following the mediation, the claim or any portion remains in dispute, the Contractor must comply with the claim procedures set forth in Government Code section 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions, including any required mediation, have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the City may be filed. A Government Code claim must be filed no earlier than the date that Contractor completes all contractual prerequisites to filing a Government Code claim, including any required mediation. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted. For purposes of Government Code section 900 et seq., the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim to the City until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation that does not result in a complete resolutions of all claims.

h. (h) Civil Actions for Claims of \$375,000 or Less. The following procedures are established for all civil actions filed to resolve claims totaling \$375,000 or less:

(i) Within 60 calendar days, but no earlier than 30 calendar days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both Parties or unless mediation was held prior

to commencement of the action in accordance with Public Contract Code section 9204 and the procedures in this Section. The mediation process shall provide for the selection within 15 calendar days by both Parties of a disinterested third person as mediator, shall be commenced within 30 calendar days of the submittal, and shall be concluded within 15 calendar days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both Parties. If the Parties fail to select a mediator within the 15-day period, either Party may petition the court to appoint the mediator.

(ii) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(iii) Upon stipulation of the Parties, arbitrators appointed for these purposes shall be experienced in construction law, and, upon stipulation of the Parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the Parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division.

(iv) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any Party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other Party arising out of the trial de novo.

## 23. NOTICE TO CITY OF CLAIMS OR LABOR DISPUTES.

23.1 Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Contract, Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to City.

## 24. RECORDS, REPORTS, AND RELEASE OF INFORMATION

24.1 Records. Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies, certified and accurate copies of payroll records in compliance with all applicable laws, or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Contract and enable the Project Manager to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Project Manager shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor

in interest. Notwithstanding the above, the Contractor shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

24.2 Reports. Contractor shall periodically prepare and submit to the Project Manager such reports concerning the performance of the services required by this Contract as the Project Manager shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Contract. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein, Contractor shall promptly notify the Project Manager of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

24.3 Ownership of Documents. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Contract shall be the property of City and shall be delivered to City upon request of the Project Manager or upon the termination of this Contract, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

24.4 Confidentiality and Release of Information. Information gained or work product produced by Contractor in performance of this Contract shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Project Manager.

24.5 Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Project Manager or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Contract. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

24.6 If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Contract, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys' fees, caused by or incurred as a result of Contractor's conduct.

24.7 Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Contract and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

25. UTILITY LOCATION.

25.1 To the extent required by Government Code § 4215, City will compensate Contractor for the cost of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating utility facilities not identified by City in the Bid Documents with reasonable accuracy, and for equipment on the project necessarily idled during such work. Nothing herein shall be deemed to require City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the project site can be inferred from the presence of other visible facilities, such as buildings, meters, and junction boxes, on or adjacent to the site of the construction; provided, however, nothing herein shall relieve City from identifying main or trunklines in the plans and specifications. If Contractor, while performing the work, discovers utility facilities not identified by City in the plans or specifications, Contractor shall immediately notify City and the utility in writing. This Contract is subject to Government Code §§ 4126 through 4216.9. Contractor must notify utilities and obtain an identification number before excavation or be subject to liability for damages to subsurface installations.

26. REGIONAL NOTIFICATION CENTERS.

26.1 Contractor agrees to contact the appropriate regional notification center in accordance with Government Code Section 4216.2.

27. TRENCH PROTECTION AND EXCAVATION.

27.1 Pursuant to Labor Code § 6705, if this Project requires the excavation of any trench or trenches five feet or more in depth, Contractor shall submit, in advance of such excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches.

27.2 The plan shall be reviewed and accepted by the City, or a registered civil or structural engineer employed by the City to whom authority has been delegated, prior to the excavation. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

27.3 This Section shall not be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders.

27.4 This Section shall not be construed to impose tort liability on the City or any of its employees.

27.5 Full compensation for sheeting, shoring, bracing, sloping, and all other provisions required for worker protection shall be considered as included in the contract price shown in the appropriate Bid Item, and no additional compensation will be allowed therefor.

## 28. PROTECTION AND CARE OF WORK AND MATERIALS.

28.1 The Contractor shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Contract to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Contractor shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

## 29. HAZARDOUS CONDITIONS.

29.1 Contractor shall, without disturbing the condition, notify City, in writing, as soon as Contractor, or any of Contractor's subcontractors, agents, or employees have knowledge and reporting is possible, of the discovery of any of the following conditions:

a. The presence of any material that Contractor believes is hazardous waste, as defined in Section 25117 of the Health and Safety Code;

b. Subsurface or latent physical conditions at the site differing from those indicated in the specifications; or

c. Unknown physical conditions at the site of any unusual nature, different materially for those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

29.2 Pending a determination by City of appropriate action to be taken, Contractor shall provide security measures (e.g., fences) adequate to prevent the hazardous waste or physical conditions from causing bodily injury to any person.

29.3 City shall promptly investigate the reported conditions. If City, through and in the exercise of its sole discretion, determines that the conditions do materially differ or do involve hazardous waste, and will cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, then City shall issue a change order.

29.4 In the event of a dispute between City and Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date, and shall proceed with all work to be performed under the contract. Contractor shall retain any and all rights that pertain to the resolution of disputes and protests between the parties.

## 30. CARB COMPLIANCE.

30.1 For a project involving the use of in-use off-road diesel-fueled vehicles, as defined by 13 CCR 2449, Contractor shall obtain copies of the valid Certificates of Reported Compliance, as described in 13 CCR 2449(n), for the fleet performing services pursuant to this contract and all listed subcontractors, if applicable, prior to commencing any work pursuant to this Contract or any renewed contract with that fleet. Contractor shall indemnify, defend and hold harmless the District, its officers, agents, employees and directors from any liability imposed arising from Contractor's violation of any regulation set forth in 13 CCR 2449.

### 31. INSPECTION.

31.1 The work shall be subject to inspection and testing by City and its authorized representatives during manufacture and construction and all other times and places, including, without limitation, the plans of Contractor and any of its suppliers. Contractor shall provide all reasonable facilities and assistance for the safety and convenience of inspectors. All inspections and tests shall be performed in such manner as to not unduly delay the work. The work shall be subject to final inspection and acceptance notwithstanding any payments or other prior inspections. Such final inspection shall be made within a reasonable time after completion of the work.

### 32. CONTRACTOR STATUS.

32.1 Contractor shall have no authority to bind City in any manner, or 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 Contract or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

32.2 Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor, and Contractor shall make no representation to that effect.

32.3 The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Contract. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. All subcontractors shall obtain, at its or Contractor's expense, such licenses, permits, registrations and approvals (including from the City) as may be required by law for the performance of any services or work

under this Contract. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

### 33. GENERAL TERMS.

33.1 Waiver. Waiver by any party to this Contract of any term, condition, or covenant of this Contract shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Contract shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Contract. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Contract. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

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

33.3 Unfair Business Practices Claims. Pursuant to Public Contract Code § 7103.5, in entering into this Contract, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under § 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor without further acknowledgment by the Parties.

33.4 Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class in the performance of this Contract. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class.

33.5 Unauthorized Aliens. Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein.

Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Contract, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

33.6 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Contract.

33.7 Governing Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Riverside, State of California.

33.8 Provisions Required By Law. Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the contract shall forthwith be physically amended to make such insertion or correction.

33.9 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Contract shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Contract which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Contract meaningless.

33.10 Interpretation. The terms of this Contract shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Contract or any other rule of construction which might otherwise apply.

33.11 Counterparts. This Contract may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, whether the signatures are originals, electronic, facsimiles or digital. All such counterparts shall together constitute but one and the same Contract. All signatures on bonds must be originals.

33.12 Written Notice. Any written notice required to be given in any part of the Contract Documents shall be performed by depositing the same in the U.S. Mail, postage prepaid,

directed to the address of Contractor as set forth above, and to City addressed to the Project Manager as follows:

City of Murrieta  
1 Town Square  
Murrieta, CA 92562

34. CONTRACT MODIFICATIONS

34.1 Additional terms and conditions of this Contract, if any, or any modifications or revisions to the standard terms and conditions herein are made a part hereof as set forth in the "Contract Modifications" attached hereto as Exhibit A and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit A and any other provisions of this Contract, the provisions of Exhibit A shall govern.

35. FEDERAL FUNDING.

35.1 If federal funding is being utilized to fund any part of the Project, as indicated on the Cover Page of this Contract, the terms of Exhibit E are hereby incorporated herein by this reference. If no federal funding is being utilized, Exhibit may be omitted.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date and year set forth below.

**CITY OF MURRIETA**

**ATTEST:**

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

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

Jon Levell, Mayor

Cristal McDonald, City Clerk

Date: \_\_\_\_\_

Date: \_\_\_\_\_

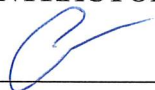
**APPROVED AS TO FORM**


ALESHIRE & WYNDER, LLP

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

Tiffany Israel, City Attorney

**CONTRACTOR:**

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

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

Name: Corey Kirschner

Name: Jay Kirschner

Title: Chief Executive Officer

Title: Secretary

Date: 5-6-26 \_\_\_\_\_

Date: 5-6-27 \_\_\_\_\_

Two corporate officer signatures required when Contractor is a corporation, with one signature required from each of the following groups: 1) Chairperson of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. (Cal. Corp. Code § 313.) Appropriate attestations shall be included as may be required by the bylaws, articles of incorporation or other rules or regulations applicable to Contractor's business City.

**EXHIBIT A**

**CONTRACT MODIFICATIONS  
(Superseding Contract Boilerplate)**

The insurance requirements set forth in Exhibit B are revised as follows:

The requirement in Section 5 for Cyber insurance is eliminated and replaced with the requirement for "Contractor's Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate."

## EXHIBIT B

### INSURANCE REQUIREMENTS

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.

#### MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

**1. Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000 per occurrence**. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

**2. Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000 per accident for bodily injury and property damage**.

**3. Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000 per accident for bodily injury or disease**. (Not required if Contractor provides written verification it has no employees)

**5. Cyber:** Vendor/Contractor shall procure and maintain for the duration of the contract insurance against claims for security breaches, system failures, injuries to persons, damages to software, or damages to property (including computer equipment) which may arise from or in connection with the performance of the work hereunder by the Vendor, its agents, representatives, or employees. Vendor shall procure and maintain for the duration of the contract insurance claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

**Cyber Liability** Insurance, with limits not less than **\$2,000,000 per occurrence or claim, \$2,000,000 aggregate**. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall

provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

**If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or 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 City.**

#### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### **Additional Insured Status**

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

#### **Primary Coverage**

For any claims related to this contract, the Contractor's **insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

#### **Umbrella or Excess Policy**

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

#### **Notice of Cancellation**

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

### **Waiver of Subrogation**

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

### **Self-Insured Retentions**

Self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by City. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City reserves the right to obtain a copy of any policies and endorsements for verification.

### **Acceptability of Insurers**

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

### **Claims Made Policies (note – should be applicable only to professional liability, see below)**

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**
3. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior** to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of **five (5) years after completion of work.**

### **Verification of Coverage**

Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements.** All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's

obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**Subcontractors**

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

**Duration of Coverage**

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**

**Special Risks or Circumstances**

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

EXHIBIT C

PERFORMANCE BOND

We, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the City of Murrieta ("City") for payment of the penal sum of \_\_\_\_\_ U.S. Dollars and \_\_\_\_\_ Cents (\$\_\_\_\_\_). City and Principal have entered into an contract, or are about to enter into the contract attached hereto and incorporated by reference herein, for completion of public works for the property(ies) referenced in said contract. Surety herein approves of the terms and conditions of said contract and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the contract herein referenced shall be that document as executed by City and Principal.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall in all things stand to and abide by, and well and truly keep and perform all of the covenants, conditions, and provisions in said agreement, and any alteration thereof made as therein provided, on Principal's part to be kept and performed at the time and in the manner therein specified, and shall indemnify and save harmless the City, City's engineer, and their consultants, and each of their officials, directors, officers, employees and agents, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Surety agrees that should it fail to take over and diligently perform the contract upon Principal's default after notice and within the time specified in the agreement, Surety will promptly on demand deposit with City such amount as City may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall exist, notwithstanding any controversy between Principal and City regarding Principal's failure under the agreement, and payment by Surety should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligations herein and shall be deemed proper payment as between Principal and Surety.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the contract, or the work to be performed thereunder or the plans and specifications, or any matters unknown to Surety which may affect Surety's risk shall in any wise affect its obligation on this bond, and it does thereby waive notice thereof.

Principal and Surety agree that if the City is required to engage the services of an attorney in connection with the enforcement of this bond, each shall pay City's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Seal of Corporation

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

Authorized Representative of Principal

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

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVES)

Any claims under this bond may be addressed to:

_____	_____
Name	Address
_____	
City and State	
_____	
Telephone Number	

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

Attorney in Fact or other Representative

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)

Furnish the name, address and phone number of the company agent as well as the surety company.

Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of the agreement.

EXHIBIT D  
PAYMENT BOND

We, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the City of Murrieta ("City") and those for whose benefit this bond insures in the sum of \_\_\_\_\_ U.S. Dollars and \_\_\_\_\_ Cents (\$\_\_\_\_\_). City and Principal have entered into a contract, or are about to enter into the contract attached hereto and incorporated by reference herein, for completion of public works for the property(ies) referenced in said agreement. Surety herein approves of the terms and conditions of said contract and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the contract herein referenced shall be that document as executed by City and Principal. If Principal or any of Principal's contractors or subcontractors, fails to pay any of the persons named in §§ 9000, et seq. of the California Civil Code employed in the performance of the agreement for materials furnished or for labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, then Surety shall pay the same in an amount not exceeding the sum specified above, and also shall pay, in case suit is brought upon this bond, such reasonable attorneys' fees as shall be fixed by the court.

Surety agrees that it shall pay the amounts due the persons above named and diligently perform the contract upon Principal's default after notice and within the time specified in the agreement. If Surety fails to perform within the times specified in the agreement, Surety shall promptly on demand deposit with City such amount as City may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall extend, notwithstanding any controversy between Principal and City regarding Principal's failure under the contract. Principal and Surety agree that any payment by Surety pursuant to this paragraph should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligation herein and shall be deemed proper payment as between Principal and Surety.

This bond shall insure to the benefit of any and all of the persons named in §§ 9000, et seq. of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the agreement, or the work to be performed thereunder, or the plans and specifications, or any matters unknown to Surety which might affect Surety's risk, shall in any way affect its obligation on this bond, and it does hereby waive notice thereof.

Principal and Surety agree that should City become a party to any action on this bond, that each will also pay City's reasonable attorneys' fees incurred therein in addition to the above sums.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Seal of Corporation

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

Authorized Representative of Principal

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

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVES)

Any claims under this bond may be addressed to:

\_\_\_\_\_  
Name Address

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Telephone Number

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

Attorney in Fact or other Representative

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)

Furnish the name, address and phone number of the company agent as well as the surety company.

Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of the agreement.