

**PUBLIC WORKS CONSTRUCTION CONTRACT
WITH THE City OF MURRIETA (“CITY”)**

FORMAL BIDDING OVER \$200,000

Project Name/Description (“**Project**”): Alderwood Clubhouse Technology Retrofit

Contract Number: [Click or tap here to enter text.](#)

Contractor Name (“Contractor”): Amergroup Inc., dba American Security Group

Contractor Business Type: Corporation

Contractor Address: PO Box 48 Vista CA, 92085

Contractor Representative Name and Title (“**Contractor Representative**”): Chase Keene,
Account Executive

Contractor Representative Work Phone and Email: (760)727-4020; ckeene@amergroup.com

Contract Days: Until completion of the project, not to exceed term date

Liquidated Damages Sum (per day): **\$500**

Termination Date: 6/30/2026

Total Not-To-Exceed Contract Amount (“**Contract Sum**”): \$232,042.60

City Department Contact (“**Project Manager**”): Michael Amado

Department Contact Work Phone and Email: (951)461-6026; MAmado@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 Project is exempt from bidding requirements due to the work being provided is from a sole source Contractor for systems consistent with existing City facilities.

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. **CONTRACT DOCUMENTS.** The complete Contract includes all of the Contract Documents, to wit: Notice Inviting Bids, Instructions to Bidders, Proposal, Performance Bond, Labor and Materials Bond, Plans, General and Special Provisions, Insurance Forms, this Contract, and all modifications and amendments thereto, and the latest version of the Standard Specifications for Public Works Construction, Parts 1 through 6, with the exception of Section 307, "Street Lighting and Traffic Signals," and the addition of the Standard Specifications, Department of Transportation, State of California State Standard Specifications, Section 86, "Signals, Lighting and Electrical Systems," and Section 56, "Signs," dated May 2006.

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

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.

In case of conflict between the Standard Specifications for Public Works Construction or State Standard Specifications, and the remaining Contract Documents, the remaining Contract Documents shall take precedence over and be used in lieu of such conflicting portions.

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.

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

The Contract Documents are complementary, and what is called for by anyone 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.

2. **SCOPE OF WORK.** Contractor shall perform the work as shown on the Contract Drawings, shall furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services required for the completion of the above-referenced Project.

All of said work to be performed and materials to be furnished shall be in strict accordance with the Drawings and Specifications and the provisions of the Contract Documents hereinabove enumerated and adopted by City.

3. **CITY APPROVAL.** 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. **CONTRACT AMOUNT AND SCHEDULE.** 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.

Contractor agrees to complete the work on the Project in a period not to exceed the Contract Days set forth above per Section 6-7 of the Standard Specifications for Public Work Construction, commencing upon the date stated in the Notice to Proceed 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.

5. **CHANGE ORDERS.** All change orders shall be approved by the City Council, except that the City Manager or his designee is hereby authorized by the City Council to make, by written order, changes or additions to the work in an amount not to exceed fifteen (15) percent of this Contract amount and the City Manager or his designee shall notify City Council in a public meeting if changes or additions to the work exceed ten (10) percent of this Contract amount.

6. **PAYMENTS/ACCEPTANCE OF WORK.** The text of Subsection 9-3.2 of the Standard Specifications for Public Works Construction is hereby deleted and replaced with the following:

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. Upon completion of the work, Contractor shall so notify the Project Manager, in writing, submit satisfactory evidence of payment for equipment, materials and labor, submit "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.

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.

7. LIQUIDATED DAMAGES; EXTENSION OF TIME. 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 paragraph 4 of this Contract. Such sum shall be deducted from any payments due to or to become due to Contractor. Contractor will be granted an extension of time and will not be assessed liquidated damages for unforeseeable delays beyond the control of and without the fault or negligence of Contractor, including delays caused by City. Contractor is required to promptly notify City of any such delay.

8. WAIVER OF CLAIMS. Unless a shorter time is specified elsewhere in this Contract, on or before making final request for payment under paragraph 6 above, 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.

9. PREVAILING WAGES. Pursuant to provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract, from Director of the Department of Industrial Relations. These rates are on file with the City Clerk. Copies may be obtained at cost at the City Clerk's office of Murrieta. Contractor shall post a copy of such rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code.

Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to City, as a penalty, the sum of fifty dollars (\$50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Contract, by him or by any subContractor under him, in violation of the provisions of the Contract.

10. WORKERS' COMPENSATION LIABILITY INSURANCE. Contractor, by executing this Agreement, hereby certifies:

"I am aware of the provision of Section 3700 of the Labor Code that requires every employer to be insured against liability for Workers' Compensation or 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."

11. TIME OF THE ESSENCE. Time is of the essence in this Contract.

12. INDEMNIFICATION. 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. Contractor agrees to save, indemnify, hold harmless, and defend City, its officers, employees, and agents against any and all liability, injuries, or death of persons (Contractor's employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor, save and except claims or litigations arising through the sole active negligence or sole willful misconduct of City.

13. CONTRACTOR'S INDEPENDENT INVESTIGATION. 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.

14. GRATUITIES. 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.

15. CONFLICT OF INTEREST. Contractor warrants that he has no blood or marriage relationship, and that he is 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 agreement

16. CONTRACTOR'S AFFIDAVIT. 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.

17. SIGNATURE OF CONTRACTOR

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.

Partnerships: Names of all persons comprising the partnership or co-partnership must be stated. Bid 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 Clerk, in which case the general partner may sign.

Joint Ventures: Bids submitted as joint ventures must so state and be signed by each joint venturer.

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 Clerk's office, 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.

18. **SUBSTITUTED SECURITY.** 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.

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.

19. **RESOLUTION OF CLAIMS.** 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.

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.

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.

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) 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.

20. NOTICE TO CITY OF LABOR DISPUTES. 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.

21. BOOKS AND RECORDS. Contractor's books, records, and plans or such part thereof as may be engaged in the performance of this Contract, shall at all reasonable times be subject to inspection and audit by any authorized representative of City.

22. UTILITY LOCATION. City acknowledges its responsibilities with respect to locating utility facilities pursuant to California Government Code Section 4215.

23. REGIONAL NOTIFICATION CENTERS. Contractor agrees to contact the appropriate regional notification center in accordance with Government Code Section 4216.2.

24. TRENCH PROTECTION AND EXCAVATION. Contractor shall submit its detailed plan for worker protection during the excavation of trenches required by the scope of the work in accordance with Labor Code Section 6705.

25. HAZARDOUS CONDITIONS.

(a) 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:

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

(2) Subsurface or latent physical conditions at the site differing from those indicated in the specifications; or

(3) 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.

(b) 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.

(c) 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.

(d) 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.

26. **CARB COMPLIANCE.** 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.

27. **INSPECTION.** 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.

28. **DISCRIMINATION.** Contractor represents that it has not, and agrees that it will not, discriminate in its employment practices on the basis of race, creed, religion, national origin, color, sex, age, or handicap.

29. **GOVERNING LAW.** This Contract and any dispute arising hereunder shall be governed by the law of the State of California.

30. 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

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

[SIGNATURES ON FOLLOWING PAGE]

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

City:

CITY OF MURRIETA, a California municipal corporation

By: _____

Justin Clifton, City Manager

Date:

ATTEST:

Cristal McDonald, City Clerk

Date:

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Tiffany Israel, City Attorney

Date:

Contractor:

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.

By: _____

Name: Anthony Sparks

Title: President

Date:

By: _____

Name: Sandy Mielke

Title: Service Dispatcher

Date:

EXHIBIT "A"

FEDERAL REQUIREMENTS

(Only applicable if required on cover page of agreement)

1. Debarment and Suspension. The Contractor represents that neither it nor any of its principals has been debarred, suspended, or determined ineligible to receive federally funded contracts.

The Contract is subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986), 2 C.F.R. Part 180, and 2 C.F.R. Part 3000. The Contractor further agrees that it will notify the City immediately if it or any of its principals is placed on the list of parties excluded from federal procurement or nonprocurement programs.

2. During the performance of this contract, the Contractor agrees as follows:

(A) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(B) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(C) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation

conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(D) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(E) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(F) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(G) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(H) The Contractor will include this paragraph 2 and the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. Title VI Civil Rights Act Implementation and Assurances. The Contractor, and its subcontractors, successors, transferees, and assignees shall comply with:

(A). Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d, et seq., 78 stat. 252) and its applicable federal statutory, regulatory authorities, other pertinent directives, circulars, policy, memoranda, and guidance prohibiting discrimination on the

basis of race, color, national origin, age, sex, and disability and give assurance that it will promptly take any measures necessary to ensure such compliance;

1. All applicable provisions governing the City's and applicable federal department's or agency's access to records, accounts, documents, information, facilities, and staff;
2. Any program or compliance reviews, or complaint investigations, or both, conducted by the City or Federal department or agency;
3. Record retention and reporting requirements, maintain and preserve all project Records for a minimum of five (5) years and all requests for documents and materials in a timely, complete, and accurate manner; and
4. All other reporting, data collection, and evaluation requirements, as required by the City, prescribed by law, or detailed in program guidance.

(B). Americans with Disabilities Act. The Subrecipient agrees to comply with the requirements of the Americans with Disabilities Act and the Equal Employment Opportunity Act, and the regulations promulgated pursuant thereto, and to require such compliance in any contractual agreements with subcontractors.

4. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Contractors shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor shall pay wages not less than once a week. Contractor shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

5. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of

40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.