

Agreement No. _____

AGREEMENT

PROJECT NO. 807 0062 GATEWAY PARK REVITALIZATION DOG PARK

THIS Agreement, effective as of the date signed by the Moreno Valley Community Services District by and between the Moreno Valley Community Services District, a municipal corporation, County of Riverside, State of California, hereinafter called the "City" and **We R Builders, Inc.**, hereinafter called the "Contractor."

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

1. CONTRACT DOCUMENTS. The Contract Documents consist of the following, which are incorporated herein by this reference:

- A. This Agreement
- B. Any and all Contract Change Orders and Construction Change Directives issued after execution of this Agreement
- C. Addenda Nos. _____ inclusive, issued prior to the Bid Deadline
- D. Federal Provisions and Requirements
- E. Any Federal Certifications, documentation, and reports as required
- F. The bound Contract Documents that includes City Special Provisions, General Provisions, and Technical Provisions
- G. Standard Specifications for Public Works Construction ("Greenbook") – latest edition in effect at the Bid Deadline, as modified by the City Special Provisions
- H. Reference Specifications/Reference Documents other than those listed in paragraph 2, below
- I. Project Plans
- J. City Standard Plans
- K. Caltrans Standard Plans
- L. Governmental approvals, including, but not limited to, permits required for the Work
- M. Contractor's Labor and Materials Payment Bond (for reference only)
- N. Contractor's Faithful Performance Bond (for reference only)
- O. Contractor's Certificates of Insurance and Additional Insured Endorsements

In the event of conflict between any of the Contract Documents, the provisions placing a more stringent requirement on the Contractor shall prevail. The Contractor shall provide the better quality or greater quantity of Work and/or materials unless otherwise directed by City in writing. In the event none of the Contract Documents place a more stringent requirement or greater burden on the Contractor, the controlling provision shall be that which is found in the document with higher precedence in accordance with the above order of precedence.

2. REFERENCE DOCUMENTS. The following Reference Documents are not considered Contract Documents and are made available to the Contractor for informational purposes:

- A. None

3. SCOPE OF WORK. The Contractor shall perform and provide all materials, tools, equipment, labor, and services necessary to complete the Work described in the Contract

Documents, except as otherwise provided in the Plans, Standard Specifications, or City Special Provisions to be the responsibility of others.

4. PAYMENT.

4.1. **Contract Price and Basis for Payment.** In consideration for the Contractor's full, complete, timely, and faithful performance of the Work required by the Contract Documents, the City shall pay Contractor for the actual quantity of Work required under the Bid Items awarded by the City performed in accordance with the lump sum prices and unit prices for Bid Items and Additive Alternate Bid Items, if any, set forth the Bid Schedule submitted with the Bid. The sum of the unit prices and lump sum prices for the Base Bid Items and Additive Alternate Bid Items, if any, awarded by the City is **One Million Five Hundred Thirty Three Thousand Three Hundred Nine Dollars and Zero Cents** and **(\$1,533,309.00)** ("Contract Price"). It is understood and agreed that the quantities set forth in the Bid Schedule for which unit prices are fixed are estimates only and that City will pay and Contractor will accept, as full payment for these items of Work, the unit prices set forth in the Bid Schedule multiplied by the actual number of units performed, constructed, or completed as directed and measured by the City Engineer.

4.2. **Payment Procedures.** Based upon applications for payment submitted by the Contractor to the City, the City shall make payments to the Contractor in accordance with Section 7 of the Standard Specifications, as modified by Section 7 of the City Special Provisions.

5. CONTRACT TIME.

A. **Contract Time.** The Contract Time shall be **One Hundred Fifty (150) working days.**

B. **Initial Notice to Proceed.** After the Agreement has been fully executed by the Contractor and the City, the City shall issue the "Notice to Proceed to Fulfill Preconstruction Requirements." The date specified in the Notice to Proceed to Fulfill Preconstruction Requirements constitutes the date of commencement of the Contract Time of **One Hundred Fifty (150) Working Days.** The Contract Time includes the time necessary to fulfill preconstruction requirements and to complete construction of the Project (except as adjusted by subsequent Change Orders).

The Notice to Proceed to Fulfill Preconstruction Requirements shall further specify that Contractor must complete the preconstruction requirements within **Ten (10) Working Days** after the date of commencement of the Contract Time; this duration is part of the Contract Time.

Preconstruction requirements include, but are not limited to, the following:

- Submitting and obtaining approval of critical required submittals
- Obtaining an approved no fee Encroachment Permit

If the City's issuance of a Notice to Proceed to Fulfill Preconstruction Requirements is delayed due to Contractor's failure to return the fully executed Agreement and insurance and bond documents within ten (10) Working Days after Contract award, then Contractor agrees to the deduction of one (1) Working Day from the number of days to complete the Project for every Working Day of delay in the City's receipt of said documents. This right is in addition to and does not affect the City's right to demand forfeiture of Contractor's Bid Security if Contractor persistently delays in providing the required documentation.

C. Notice to Proceed with Construction. After all preconstruction requirements are met and materials have been ordered in accordance with the Notice to Proceed to Fulfill Preconstruction Requirements, the City shall issue the "Notice to Proceed with Construction," at which time the Contractor shall diligently prosecute the Work, including corrective items of Work, day to day thereafter, within the remaining Contract Time.

6. LIQUIDATED DAMAGES AND CONTROL OF WORK.

6.1. Liquidated Damages. The Contractor and City (collectively, the "Parties") have agreed to liquidate damages with respect to Contractor's failure to complete the Work within the Contract Time, which includes the time necessary to fulfill preconstruction requirements and to complete construction of the Project (except as adjusted by subsequent Change Orders) in accordance with **Article 5** above. The Parties intend for the liquidated damages set forth herein to apply to this Contract as set forth in Government Code Section 53069.85 and in Public Contract Code Section 7203. Contractor acknowledges and agrees that the liquidated damages are intended to compensate the City solely for Contractor's failure to meet the deadlines for completion of the Work and will not excuse Contractor from liability from any other breach, including any failure of the Work to conform to the requirements of the Contract Documents.

In the event that Contractor fails to complete the Work within the Contract Time, Contractor agrees to pay the City **\$500.00 per Calendar Day** that completion of the each such portion of the Work is delayed beyond the Contract Time. The Contractor will not be assessed liquidated damages for delays occasioned by the failure of the City or of the owner of a utility to provide for the removal or relocation of utility facilities.

The Contractor and City acknowledge and agree that the foregoing liquidated damages have been set based on an evaluation of damages that the City will incur in the event of late completion of portions of the Work. The Contractor and City acknowledge and agree that the amount of such damages are impossible to ascertain as of the date of execution hereof and have agreed to such liquidated damages to fix the City's damages and to avoid later disputes. It is understood and agreed by Contractor that liquidated damages payable pursuant to this Agreement are not a penalty and that such amounts are not manifestly unreasonable under the circumstances existing as of the date of execution of this Agreement.

It is further mutually agreed that the City will have the right to deduct liquidated damages against progress payments or retainage and that the City will issue a Change Order or Construction Change Directive and reduce the Contract Price accordingly. In the event the remaining unpaid Contract Price is insufficient to cover the full amount of liquidated damages, Contractor shall pay the difference to the City.

Liquidated damages are owed automatically and without notice of any kind upon the accrual of each day of delay. City may at any time deduct liquidated damages as are payable hereunder from money due or to become due to Contractor, or pursue any other legal remedy to collect such liquidated damages from Contractor and/or its Surety. Neither the City's failure or delay in deducting liquidated damages from payments otherwise due Contractor, nor City's failure or delay in notifying Contractor of the accrual of liquidated damages, shall be deemed a waiver of City's right to liquidated damages.

City's rights under this Section shall not be interpreted as precluding or limiting: (1) any right or remedy of City arising from an event of Contractor default other than a failure to complete the

Work within the Contract Time; or (2) City's right to order an acceleration, at Contractor's expense, of performance of the Work to overcome delay, including, without limitation, a delay for which City has the right to assess and/or accrue liquidated damages. The availability of liquidated damages shall not limit City's right to terminate the Contractor's performance and accrual and/or assessment of liquidated damages does not constitute a waiver of such rights.

6.2. **Owner is Exempt from Liability for Early Completion Delay Damages.** While the Contractor may schedule completion of all of the Work, or portions thereof, earlier than the Contract Time, the Owner is exempt from liability for and the Contractor will not be entitled to an adjustment of the Contract Sum or to any additional costs, damages, including, but not limited to, claims for extended general conditions costs, home office overhead, jobsite overhead, and management or administrative costs, or compensation whatsoever, for use of float time or for Contractor's inability to complete the Work earlier than the Contract Time for any reason whatsoever, including but not limited to, delay cause by Owner or other Excusable Compensable Delay. See Section 6-4 of the Standard Specifications and City Special Provisions regarding compensation for delays.

6.3. Any work completed by the Contractor after the issuance of a Stop Work Notice by the City shall be rejected and/or removed and replaced as specified in Section 3-5 of the City Special Provisions.

7. **INSURANCE.**

7.1. **General.** The Contractor shall procure and maintain at its sole expense and throughout the term of this Agreement, any extension thereof, Commercial General Liability, Automobile Liability, and Workers' Compensation Insurance with such coverage limits as described herein.

7.2. **Additional Insured Endorsements.** The Contractor shall cause the insurance required by the Contract Document to include the City of Moreno Valley, the City Council and each member thereof, the Moreno Valley Housing Authority, and the Moreno Valley Community Services District, and their respective officials, employees, commission members, officers, directors, agents, employees, volunteers and representatives as an additional insureds. The Contractor shall cause the insurance required by the Contract Document to include the County of Riverside, its Agencies, Districts, Departments and Special Districts, Board of Supervisors, elected and appointed officials, and each of their respective directors, members officers, employees, agents, volunteers and representatives as an additional insureds. For the Commercial General Liability coverage, said parties shall be named as additional insureds utilizing either:

1. Insurance Services Office ("ISO") Additional Insured endorsement CG 20 10 (11/85); or
2. ISO Additional Insured endorsement CG 20 10 (10/01) and Additional Insured Completed Operations endorsement CG 20 37 (10/01); or
3. Substitute endorsements providing equivalent coverage, approved by the City.

The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. The coverage shall contain no special limitations on the scope of protection afforded to such additional insureds. Coverage for such additional insureds does not extend to liability to the extent prohibited by Insurance Code Section 11580.4.

7.3. **Waivers of Subrogation.** All policies of insurance required by the Contract Documents shall include or be endorsed to provide a waiver by the insurers of any rights of recovery or subrogation that the insurers may have at any time against the City of Moreno Valley, the City Council and each member thereof, the Moreno Valley Housing Authority, and the Moreno Valley Community Services District and their respective officials, employees, commission members, officers, directors, agents, employees, volunteers, and representatives.

7.4. **Primary Coverage.** All policies and endorsements shall stipulate that the Contractor's (and the Subcontractors') insurance coverage shall be primary insurance as respects the City of Moreno Valley, the City Council and each member thereof, the Moreno Valley Housing Authority, and the Moreno Valley Community Services District and their respective officials, employees, commission members, officers, directors, agents, employees, volunteers, and representatives, and shall be excess of the Contractor's (and its Subcontractors') insurance and shall not contribute with it.

7.5. **Coverage Applies Separately to Each Insured and Additional Insured.** Coverage shall state that the Contractor's (and its Subcontractors') insurance shall apply separately to each insured or additional insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage shall apply to any claim or suit brought by an additional insured against a named insured or other insured.

7.6. **Self-Insurance.** Any self-insurance (including deductibles or self-insured retention in excess of \$50,000) in lieu of liability insurance must be declared by Contractor and approved by the City in writing prior to execution of the Agreement. The City's approval of self-insurance, if any, is within the City's sole discretion and is subject to the following conditions:

1. Contractor must, at all times during the term of the Agreement and for a period of at least **one (1)** year after completion of the Project and any extension of the one-year correction guarantee period in accordance with Section 3-13.3 of the City Special Provisions, maintain and upon Owner's reasonable request provide evidence of:
 - (a) Contractor's "net worth" (defined as "total assets" [defined as all items of value owned by the Contractor including tangible items such as cash, land, personal property, and equipment, and intangible items such as copyrights and business goodwill]) minus total outside liabilities must be reflected in a financial statement for the prior fiscal year reflecting sufficient income and budget for Contractor to afford at least one loss in an amount equal to the amount of self-insurance;
 - (b) Financial statements showing that Contractor has funds set aside/budgeted to finance the self-insured fund (i.e., Contractor has a program that fulfills functions that a primary insurer would fill); and
 - (c) A claims procedure that identifies how a claim is supposed to be tendered to reach the financing provided by the self-insured fund.

2. If at any time after such self-insurance has been approved, the Contractor fails to meet the financial thresholds or otherwise fails to comply with the provisions set forth in this Paragraph 7, at the option of the City:
 - (a) The Contractor shall immediately obtain and thereafter maintain the third party insurance required under this Paragraph 7 and otherwise on the terms required above; or
 - (b) The insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees, and volunteers; or
 - (c) The Contractor shall procure a bond guaranteeing payment of losses and related investigation, claim administration, and defense expenses.

7.7. **Insurer Financial Rating.** Insurance companies providing insurance hereunder shall be rated A-VII or better in Best's Insurance Rating Guide and shall be legally licensed and qualified to conduct insurance business in the State of California.

7.8. **Notices to City of Cancellation or Changes.** Each insurance policy described in this Paragraph 7 shall contain a provision or be endorsed to state that coverage will not be cancelled without **thirty (30) days'** prior written notice by certified or registered mail to the City (this obligation may be satisfied in the alternative by requiring such notice to be provided by Contractor's insurance broker and set forth on its Certificate of Insurance provided to the City), except that cancellation for non-payment of premium shall require (10) days prior written notice by certified or registered mail. If an insurance carrier cancels any policy or elects not to renew any policy required to be maintained by Contractor pursuant to the Contract Documents, Contractor agrees to give written notice to the City at the address indicated on the first page of the Agreement. Contractor agrees to provide the same notice of cancellation and non-renewal to the City that is required by such policy(ies) to be provided to the First Named Insured under such policy(ies). Contractor shall provide confirmation that the required policies have been renewed not less than seven (7) days prior to the expiration of existing coverages and shall deliver renewal or replacement policies, certificates and endorsements to the City Clerk within fourteen (14) days of the expiration of existing coverages. Contractor agrees that upon receipt of any notice of cancellation or alteration of the policies, Contractor shall procure within five (5) days, other policies of insurance similar in all respects to the policy or policies to be cancelled or altered. Contractor shall furnish to the City Clerk copies of any endorsements that are subsequently issued amending coverage or limits within fourteen (14) days of the amendment.

7.9. **Commercial General Liability.** Coverage shall be written on an ISO Commercial General Liability "occurrence" form CG 00 01 (10/01 or later edition) or equivalent form approved by the City for coverage on an occurrence basis. The insurance shall cover liability, including, but not limited to, that arising from premises operations, stop gap liability, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The policy shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 (11/85). Coverage shall contain no contractors' limitation or other endorsement limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground (x, c, u) property damage. Contractor shall provide Products/Completed Operations coverage to be maintained continuously for a minimum of **one (1) year** after Final

Acceptance of the Work, and any extension of the one-year correction guarantee period in accordance with Section 3-13.3 of the City Special Provisions.

Contractor shall maintain Commercial General Liability insurance with the following minimum limits: \$1,000,000 per occurrence / \$2,000,000 aggregate / \$2,000,000 products-completed operations.

7.10. **Business Automobile Liability.** Coverage shall be written on ISO form CA 00 01 (12/93 or later edition) or a substitute form providing equivalent coverage for owned, hired, leased and non-owned vehicles, whether scheduled or not, with \$1,000,000 combined single limit per accident for bodily injury and property damage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

7.11. **Workers' Compensation.** Contractor shall comply with the applicable sections of the California Labor Code concerning workers' compensation for injuries on the job. Compliance is accomplished in one of the following manners:

1. Provide copy of permissive self-insurance certificate approved by the State of California; or
2. Secure and maintain in force a policy of workers' compensation insurance with statutory limits and Employer's Liability Insurance with a minimal limit of **\$1,000,000** per accident; or
3. Provide a "waiver" form certifying that no employees subject to the Labor Code's Workers' Compensation provision will be used in performance of this Contract.

7.12. **Subcontractors' Insurance.** The Contractor shall include all Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to all of the requirements stated herein.

8. **BONDS.** The Contractor shall provide two surety bonds. The Contractor shall furnish a satisfactory Performance Bond meeting all statutory requirements of the State of California on the form provided by the City. The bond shall be furnished as a guarantee of the faithful performance of the requirements of the Contract Documents as may be amended from time to time, including, but not limited to, liability for delays and damages (both direct and consequential) to the City and the City's Separate Contractors and consultants, warranties, guarantees, and indemnity obligations, in an amount that shall remain equal to one hundred percent (100%) of the Contract Price.

The Contractor shall furnish a separate satisfactory Labor and Materials Payment Bond meeting all statutory requirements of the State of California on the form provided by the City in an amount that shall remain equal to one hundred percent (100%) of the Contract Price to secure payment of all claims, demands, stop payment notices, or charges of the State of California, of material suppliers, mechanics, or laborers employed by the Contractor or by any Subcontractor, or any person, firm, or entity eligible to file a stop payment notice with respect to the Work.

All bonds shall be executed by a California-admitted surety insurer. Bonds issued by a California-admitted surety insurer listed on the latest version of the U.S Department of Treasury Circular 570 shall be deemed accepted unless specifically rejected by the City. Bonds issued by sureties

not listed in Treasury Circular 570 must be accompanied by all documents enumerated in California Code of Civil Procedure Section 995.660(a). The bonds shall bear the same date as the Contract. The attorney-in-fact who executes the required bonds on behalf of the surety shall affix thereto a certified and current copy of the power of attorney. In the event of changes that increase the Contract Price, the amount of each bond shall be deemed to increase and at all times remain equal to the Contract Price. The signatures shall be acknowledged by a notary public. Every bond must display the surety's bond number and incorporate the Contract for construction of the Work by reference. The terms of the bonds shall provide that the surety agrees that no change, extension of time, alteration, or modification of the Contract Documents or the Work to be performed thereunder shall in any way affect its obligations and shall waive notice of any such change, extension of time, alteration, or modification of the Contract Documents. The surety further agrees that it is obligated under the bonds to any successor, grantee, or assignee of the City.

Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

Should any bond become insufficient, or should any of the sureties, in the opinion of the City, become non-responsible or unacceptable, the Contractor shall, within ten (10) Calendar Days after receiving notice from the City, provide written documentation to the Satisfaction of the City that Contractor has secured new or additional sureties for the bonds; otherwise the Contractor shall be in default of the Contract. No further payments shall be deemed due or will be made under Contract until a new surety(ies) qualifies and is accepted by the City.

Contractor agrees that the Labor and Materials Payment Bond and Faithful Performance Bond attached to this Agreement are for reference purposes only, and shall not be considered a part of this Agreement. Contractor further agrees that said bonds are separate obligations of the Contractor and its Surety, and that any attorney's fee provision contained in any payment bond or performance bond shall not apply to this Agreement. In the event there is any litigation between the parties arising from the breach of this Agreement, each party will bear its own attorneys' fees in the litigation.

9. RECORDS. The Contractor and its Subcontractors shall maintain and keep books, payrolls, invoices of materials, and Project records current, and shall record all transactions pertaining to the Contract in accordance with generally acceptable accounting principles. Said books and records shall be made available to the City of Moreno Valley, Riverside County, the State of California, the Federal Government, and to any authorized representative thereof for purposes of audit and inspection at all reasonable times and places. All such books, payrolls, invoices of materials, and records shall be retained for at least five (5) years after Final Acceptance.

10. INDEMNIFICATION.

10.1. General. To the fullest extent permitted by law, the Contractor assumes liability for and agrees, at the Contractor's sole cost and expense, to promptly and fully indemnify, protect, hold harmless and defend (even if the allegations are false, fraudulent, or groundless), the City of Moreno Valley, its City Council, the Moreno Valley Housing Authority, and the Moreno Valley Community Services District, and all of their respective officials, officers, directors, employees, commission members, representatives and agents ("Indemnitees"), from and against any and all claims, allegations, actions, suits, arbitrations, administrative proceedings, regulatory

proceedings, or other legal proceeds, causes of action, demands, costs, judgments, liens, stop payment notices, penalties, liabilities, damages, losses, anticipated losses of revenues, and expenses (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, or investigation expenses), or losses of any kind or nature whatsoever, whether actual, threatened or alleged, arising out of, resulting from, or in any way (either directly or indirectly), related to the Work, the Project or any breach of the Contract by Contractor or any of its officers, agents, employees, Subcontractors, Sub-subcontractors, or any person performing any of the Work, pursuant to a direct or indirect contract with the Contractor ("Indemnity Claims"). Such Indemnity Claims include, but are not limited to, claims for:

- A. Any activity on or use of the City's premises or facilities;
- B. Any liability incurred due to Contractor acting outside the scope of its authority pursuant to the Contract, whether or not caused in part by an Indemnified Party;
- C. The failure of Contractor or the Work to comply with any Applicable Law, permit or orders;
- D. Any misrepresentation, misstatement or omission with respect to any statement made in the Contract Documents or any document furnished by the Contractor in connection therewith;
- E. Any breach of any duty, obligation or requirement under the Contract Documents, including, but not limited to any breach of Contractor's warranties, representations or agreements set forth in the Contract Documents;
- F. Any failure to coordinate the Work with City's Separate Contractors;
- G. Any failure to provide notice to any party as required under the Contract Documents;
- H. Any failure to act in such a manner as to protect the Project from loss, cost, expense or liability;
- I. Bodily or personal injury, emotional injury, sickness or disease, or death at any time to any persons including without limitation employees of Contractor;
- J. Damage or injury to real property or personal property, equipment and materials (including, but without limitation, property under the care and custody of the Contractor or the City) sustained by any person or persons (including, but not limited to, companies, corporations, utility company or property owner, Contractor and its employees or agents, and members of the general public);
- K. Any liability imposed by Applicable Law including, but not limited to criminal or civil fines or penalties;
- L. Any dangerous, hazardous, unsafe or defective condition of, in or on the Site, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the Site by Contractor, its officers, agents, employees, or Subcontractors;
- M. Any operation conducted upon or any use or occupation of the Site by the Contractor, its officers, agents, employees, or Subcontractors under or pursuant to the provisions of the Contract or otherwise;
- N. Any acts, errors, omission or negligence of Contractor, its officers, agents, employees, or Subcontractors;
- O. Infringement of any patent rights, licenses, copyrights, or intellectual property which may be brought against the Contractor or Owner arising out of Contractor's Work, for which the Contractor is responsible; and
- P. Any and all claims against the City seeking compensation for labor performed or materials used or furnished to be used in the Work or alleged to have been furnished

on the Project, including all incidental or consequential damages resulting to the City from such claims.

10.2. Effect of Indemnitees' Active Negligence. Contractor's obligations to indemnify and hold the Indemnitees harmless **exclude** only such portion of any Indemnity Claim which is attributable to the active negligence or willful misconduct of the Indemnitee, provided such active negligence or willful misconduct is determined by agreement of the parties or by findings of a court of competent jurisdiction. In instances where an Indemnitee's active negligence accounts for only a percentage of the liability for the Indemnity Claim involved, the obligation of Contractor will be for that entire percentage of liability for the Indemnity Claim not attributable to the active negligence or willful misconduct of the Indemnitee(s). Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 10. Subject to the limits set forth herein, the Contractor, at its own expense, shall satisfy any resulting judgment that may be rendered against any Indemnitee resulting from an Indemnity Claim. The Indemnitees shall be consulted with regard to any proposed settlement.

10.3. Independent Defense Obligation. The duty of the Contractor to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by Contractor of the tender of any Indemnity Claim from an Indemnitee. The Contractor's obligation to defend the Indemnitee(s) shall be at Contractor's sole expense, and not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines that the Contractor is not liable. This duty to defend shall apply whether or not an Indemnity Claim has merit or is meritless, or which involves claims or allegations that any or all of the Indemnitees were actively, passively, or concurrently negligent, or which otherwise asserts that the Indemnitees are responsible, in whole or in part, for any Indemnity Claim. The Contractor shall respond within thirty (30) Calendar Days to the tender of any Indemnity Claim for defense and/or indemnity by an Indemnitee, unless the Indemnitee agrees in writing to an extension of this time. The defense provided to the Indemnitees by Contractor shall be by well qualified, adequately insured and experienced legal counsel acceptable to the City.

10.4. Intent of Parties Regarding Scope of Indemnity. It is the intent of the parties that the Contractor and its Subcontractors of all tiers shall provide the Indemnitees with the broadest defense and indemnity permitted by Applicable Law. In the event that any of the defense, indemnity, or hold harmless provisions in the Contract Documents are found to be ambiguous or in conflict with one another, it is the parties' intent that the broadest and most expansive interpretation in favor of providing defense and/or indemnity to the Indemnitees be given effect.

10.5. Waiver of Indemnity Rights Against Indemnitees. With respect to third party claims against the Contractor, to the fullest extent permitted by law, the Contractor waives any and all rights to any type of express or implied indemnity against the Indemnitees.

10.6. Subcontractor Requirements. In addition to the requirements set forth hereinabove, Contractor shall ensure, by written subcontract agreement, that each of Contractor's Subcontractors of every tier shall protect, defend, indemnify and hold harmless the Indemnitees with respect to Indemnity Claims arising out of, in connection with, or in any way related to each such Subcontractors' Work on the Project in the same manner in which Contractor is required to

protect, defend, indemnify and hold the Indemnitees harmless. In the event Contractor fails to obtain such defense and indemnity obligations from others as required herein, Contractor agrees to be fully responsible to the Indemnitees according to the terms of this Paragraph 10. Contractor further agrees to ensure that each subcontractor will execute a separate Letter of Assent to the terms of the CWA if the total project cost is \$1,000,000 or more and will fully indemnify the City for any claims or losses which result from a Subcontractor's failure to adhere to the terms of the CWA on this project.

10.7. **No Limitation or Waiver of Rights.** Contractor's obligations under this Paragraph 10 are in addition to any other rights or remedies which the Indemnitees may have under the law or under the Contract Documents. Contractor's indemnification and defense obligations set forth in this Paragraph 10 are separate and independent from the insurance provisions set forth in the Contract Documents, and do not limit, in any way, the applicability, scope, or obligations set forth in such insurance provisions. The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations. In any and all claims against the Indemnitees by any employee of the Contractor, any Subcontractor, any supplier of the Contractor or Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the obligations under this Paragraph 10 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor or any supplier of either of them, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Failure of the City to monitor compliance with these requirements imposes no additional obligations on the City and will in no way act as a waiver of any rights hereunder.

10.8. **Withholding to Secure Obligations.** In the event an Indemnity Claim arises prior to final payment to Contractor, the City may, in its sole discretion, reserve, retain or apply any monies due Contractor for the purpose of resolving such Indemnity Claims; provided, however, the City may release such funds if the Contractor provides the City with reasonable assurances of protection of the Indemnitees' interests. The City shall, in its sole discretion, determine whether such assurances are reasonable.

10.9. **Survival of Indemnity Obligations.** Contractor's obligations under this Paragraph 10 are binding on Contractor's and its Subcontractors' successors, heirs, and assigns and shall survive the completion of the Work or termination of the Contractor's performance of the Work.

10.10. **CalPERS Indemnity.** To the fullest extent permitted by law, in addition to obligations set forth in this section, in the event that any person providing services under this Agreement is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, to the fullest extent of the law, CONTRACTOR shall indemnify, defend, and hold harmless City for any costs and expenses incurred by City, including without limitation, payment that City is required as a result to make to CalPERS, whether in the form of employee and/or employer contributions, taxes, or any similar obligations, as well as for the payment of any penalties and interest.

11. SUCCESSORS AND ASSIGNS. The Parties bind themselves, their heirs, executors, administrators, successors and assigns the covenants, agreements and obligations contained in

the Contract Documents. The Contractor shall not, either voluntarily or by action of law, assign any right or obligation of the Contractor under the Contract Documents without prior written consent of the City.

12. PREVAILING WAGES: All work or services performed within the State of California pursuant to this Agreement by CONTRACTOR, CONTRACTOR's employees and independent contractors, or CONTRACTOR's subcontractors and its subcontractors' employees and independent contractors shall be performed by individuals lawfully permitted to perform such work or services in the State of California and/or the United States of America pursuant to all applicable State and/or Federal labor laws, rules and regulations including, but not limited to, any State or Federal law, rule or regulation prohibiting the employment of undocumented workers or any other person not lawfully permitted to perform said work or services in the State of California or the United States of America.

CONTRACTOR represents that it is an equal opportunity employer and shall not discriminate against any subcontractor, employee, or applicant ("person") for employment because of race, denial of family and medical care leave, religious creed (including religious dress and grooming practices), color, national origin (including language use restrictions), ancestry, physical disability or mental disability (including HIV and Aids), medical condition (cancer and genetic characteristics), genetic information, military or veteran status, marital status, gender, gender identity, gender expression, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), age or sexual orientation. Unless otherwise permitted under the law, CONTRACTOR shall not refuse to hire or employ any such person or refuse to select any such person for a training program leading to employment, or bar or discharge any such person from employment or from a training program leading to employment, or otherwise discriminate against any such person in compensation or in terms, conditions, or privileges of employment.

CONTRACTOR and all of CONTRACTOR's subcontractors, if any, shall pay each employee engaged in all applicable trades or occupation not less than the prevailing hourly wage rate for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. In accordance with the provisions of Section 1770 of the California Labor Code ("Labor Code"), the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code Section 1773.8, apprenticeship or other training programs authorized by Labor Code Section 3093 and similar purposes applicable to the work to be done. Said wages are available through the California Department of Industrial Relations' Internet website at <http://www.dir.ca.gov/dlsr/PWD/index.htm> and are on file at City Hall, as provided in Section 1773.2 of the Labor Code. Said rates shall be posted at the project site where work is to be performed, in accordance with Labor Code Section 1773.2. CONTRACTOR shall access a copy of the wage rate determination and shall make all subcontractors, if any, aware of the determination. As the wage determination for each craft reflects an expiration date, it shall be the CONTRACTOR's responsibility to ensure that the prevailing wage rates of concern are current and paid. Subject to the safe harbor provisions of Labor Code Section 1775, CONTRACTOR shall forfeit to the CITY an amount not to exceed two hundred dollars (\$200) for each calendar day or portion thereof, as set by the Labor Commissioner in accordance with the terms of Labor Code section 1775, for each laborer, workmen or mechanics employed that is paid less than the general prevailing rate of wages herein referred to and stipulated for any work done under the

proposed contract, by him, or by any subcontractor under him, in violation of the provisions of the Labor Code, and in particular, Sections 1770 to 1781 inclusive. CONTRACTOR and any and all or its subcontractors shall forfeit to the CITY twenty-five dollars (\$25) for each worker employed in the performance of this Agreement for each calendar day during which the 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 Section 1813 of the Labor Code. In the event the total cost of the Project is thirty thousand dollars (\$30,000.00) or more, Contractor shall further comply with provisions set forth in Labor Code Section 1777.5 pertaining to employment of properly registered apprentices, including without limitation the obligation to (i) pay employed apprentices the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of craft or trade to which he or she is registered; (ii) employ apprentices in at least the ratio as set forth in said section; (iii) submit contract award information to an applicable apprenticeship program; and (iv) contribute to California Apprenticeship Council.

CONTRACTOR and all subcontractors hired to perform any work for the subject project shall keep accurate payroll records, including the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each worker, in accordance with Section 1776 of the Labor Code. Payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") or in a manner containing the same information as the forms provided by the DLSE. Failure to comply with the above may result in monetary penalties to the CONTRACTOR or affected subcontractor. Payroll records shall be verified by written declaration made under penalty of perjury, that the information contained in the records is true and correct. CONTRACTOR and any and all subcontractors shall make a certified copy of all payroll records available for inspection by DLSE, the CITY or any member of the public and otherwise provide certified copies of such records to any of the foregoing within ten (10) days of CONTRACTOR's and subcontractor's receipt of written request therefor. Failure to comply with the above may result in monetary penalties, in accordance with Labor Code Section 1776(d) and (h).

Notwithstanding anything else to the contrary, Contractor hereby acknowledges that all contractors and subcontractors must be registered with the Department of Industrial Relations ("Department") pursuant to Labor Code Section 1725.5 in order to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract, including this Agreement, that is subject to the payment of prevailing wages. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In accordance with Section 3700 of the Labor Code, Contractor must secure payment of compensation to all Contractor's employees. Contractor represents and warrants that Contractor is registered with the Department in the manner prescribed by the Department and has paid the requisite application fee, as required by Labor Code Section 1725.5. Moreover, prior to Contractor entering into any contracts with any subcontractor, Contractor shall obtain proof that all such subcontractors have also registered with the Department in accordance with Section 1725.5.

13. Civil Code Section 1542 Waiver. Consultant expressly waives any and all rights and benefits conferred upon it by the provisions of section 1542 of the California Civil Code which reads as follows:

“A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

This waiver shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind that are known or unknown, or suspected or unsuspected, including, without limitation, claims of entitlements under the California Public Employees' Retirement System (CalPERS) that are only afforded to employees and not independent contractors. Consultant further represents and warrants that it understands this waiver and that if it does not understand this waiver, it shall seek the advice of a qualified attorney before executing this Agreement.

Initials

14. CalPERS Participation. As set forth in this Agreement and in the Request for Qualifications, City has an obligation to treat all persons working for or under the direction of CONTRACTOR as an independent contractor of City and agents and employees of CONTRACTOR, and not as agents or employees of City. CONTRACTOR and City acknowledge and agree that City participates in a defined benefit plan (“CalPERS”), and that it is possible that CalPERS may find that persons providing services pursuant to this Agreement are employees of City and should be registered with the CalPERS as employees of City.

15. CalPERS Retiree Disclosure. CONTRACTOR hereby expressly agrees to clearly and conspicuously disclose to City in writing any and all persons working for CONTRACTOR who are retirees under the California Public Employees' Retirement System (CalPERS) whom receives a monthly CalPERS retirement allowance, and whom are, subject to City approval, assigned by CONTRACTOR to provide services to City under the Agreement, prior to such person performing any services hereunder. Nothing herein shall be deemed or interpreted to limit a CalPERS retiree's obligations under applicable law, rules or regulations.

16. Joint Cooperation. In the event that CalPERS initiates an inquiry that includes examination of whether individuals providing services under this Agreement to City are City's employees, CONTRACTOR shall within five days and share all communications and documents from CalPERS that it may legally share. In the event that either CONTRACTOR or City files an appeal or court challenge, CONTRACTOR and City each agree to cooperate with each other in responding to the inquiry and any subsequent administrative appeal or court challenge of an adverse determination.

17. Entire Agreement. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations of warranties, expressed or implied, not specified in this Agreement. This Agreement applies only to the current proposal as attached. This Agreement may be modified or amended only by a subsequent written Agreement signed by both parties. Assignment of this Agreement is prohibited without prior written consent. This Agreement shall be the controlling instrument, in the event of a dispute between this agreement and the attached proposal, this Agreement shall control and supersede the proposal in all aspects.

(SIGNATURE PAGE FOLLOWS)

CITY OF MORENO VALLEY, a Municipal Corporation

CONTRACTOR

BY: _____
Mike Lee, Executive Director

License No./
Classification: _____

DATE: _____

Expiration Date: _____

Federal I.D. No.: _____

<u>INTERNAL USE ONLY</u>
APPROVED AS TO LEGAL FORM:

City Attorney

Date
RECOMMENDED FOR APPROVAL:

Parks & Community Services Director

Date

PRINT NAME: _____

SIGNATURE: _____

TITLE: _____

DATE: _____

PRINT NAME: _____

SIGNATURE: _____

TITLE: _____

DATE: _____

SIGNING INSTRUCTIONS TO THE CONTRACTOR:

Signature(s) must be accompanied by a completed notary certificate of acknowledgement attached hereto. A general partner must sign on behalf of a partnership. **Two (2)** corporate officers must sign on behalf of a corporation unless the corporation has a corporate resolution that allows one person to sign on behalf of the corporation; if applicable, said resolution must be attached hereto. The corporate seal may be affixed hereto.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

SAMPLE

State of California

County of _____

On _____ before me, _____,
(Here insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledgement to me that he/she they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly appears above in the notary section or a separate acknowledgment form must property completed and attached to that document. The only exception is if a document is recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they~~, is/~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
- Indicate title or type of attached document, number of pages and date.
- Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document.

DESCRIPTION OF THE ATTACHED DOCUMENT

AGREEMENT SIGNATURE PAGE

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____

Document Date _____

Additional Information

CAPACITY CLAIMED BY THE SIGNER

- Individual(s)
- Corporate Officer

(Title)

- Partner (s)
- Attorney-in-Fact
- Other _____

EXHIBIT A

PROJECT NO. 807 0062

GATEWAY PARK REVITALIZATION DOG PARK

BID SCHEDULE

BID ITEM	DESCRIPTION	QTY	UNIT OF MEASURE	UNIT COST	TOTAL
1	Mobilization	1	LS	\$105,000.00	\$105,000.00
2	Grading (Cut)	5094	CY	\$34.00	\$173,196.00
3	12" Area Drain per NDS #1230 (or Approved Equal)	4	EA	\$3,000.00	\$12,000.00
4	VCP Pipe – 4"	309	LF	\$50.00	\$15,450.00
5	6" SDR 35 PVC Storm Drain	108	LF	\$120.00	\$12,960.00
6	PVC C-900 – 1"	320	LF	\$50.00	\$16,000.00
7	Aggregate Base (A.B.) Class II 0.5'	28	TON	\$190.00	\$5,320.00
8	Asphalt Concrete (A.C.) 0.33'	14	TON	\$785.00	\$10,990.00
9	New Sidewalk (per MVSI-115 Series)	4503	SF	\$7.50	\$33,772.50
10	Replace Sidewalk (per MVSI-115 Series)	1011	SF	\$15.00	\$15,165.00
11	New Permeable Pavement	7520	SF	\$20.00	\$150,400.00
12	Access Ramp per Detail A	473	SF	\$20.00	\$9,460.00
13	Detectable Warning Surface	15	SF	\$175.00	\$2,625.00
14	Cross Gutter & Spandrel	27	SF	\$165.00	\$4,455.00
15	Bollard	2	EA	\$1,500.00	\$3,000.00
16	"International Symbol of Accessibility Marking" Pavement Marking (9SF)	1	EA	\$900.00	\$900.00
17	"No Parking" Pavement Marking (2SF)	1	EA	\$800.00	\$800.00
18	4" Thermoplastic Traffic Stripes	169	SF	\$33.00	\$5,577.00
19	Remove Cross Gutter and Spandrel	27	SF	\$135.00	\$3,645.00
20	Remove / Dispose Existing Pavement / Base	1173	SF	\$9.00	\$10,557.00
21	Remove Existing Curb & Gutter	18	LF	\$315.00	\$5,670.00
22	Remove Existing Sidewalk	1011	SF	\$9.50	\$9,604.50
23	Remove Street Tree	1	EA	\$5,000.00	\$5,000.00

Contractor's Bond
00600

24	Grind & Pave Existing Pavement (2" min.)	189	SF	\$36.00	\$6,804.00
25	Cleanout – Lateral	1	EA	\$5,000.00	\$5,000.00
26	Sand Blasted Dog Footprints	1	LS	\$3,500.00	\$3,500.00
27	Sand Blasted Dog Bones	1	LS	\$3,500.00	\$3,500.00
28	Precast Concrete Bench	6	EA	\$1,250.00	\$7,500.00
29	Precast Concrete Dual Trash and Recycling Receptacles	2	EA	\$3,750.00	\$7,500.00
30	6' Tall Black Tubular Steel Fence	12	LF	\$559.00	\$6,708.00
31	6' Tall by 6' Wide Black Tubular Steel Walk Gate	2	EA	\$3,500.00	\$7,000.00
32	6' Tall Black Vinyl Voated Chain Link Fence	1375	LF	\$50.00	\$68,750.00
33	6' Tall by 6' Wide Black Vinyl Coated Chain Link Walk Gate	2	EA	\$8,000.00	\$16,000.00
34	6' Tall by 16' Wide Black Vinyl Coated Chain Double Swing Gate	3	EA	\$6,000.00	\$18,000.00
35	Rectangular Hip Roof 15' x 30' Shade Structure	2	EA	\$25,250.00	\$50,500.00
36	Custom Dog Park Arch with Stone Veneer Pilasters	1	EA	\$6,800.00	\$6,800.00
37	Drinking Fountain with Pet Bowl	2	EA	\$6,000.00	\$12,000.00
38	Dog Rinse Stations	2	EA	\$8,000.00	\$16,000.00
39	Dog Waste Station	5	EA	\$2,300.00	\$11,500.00
40	Dog Agility Equipment	1	LS	\$25,000.00	\$25,000.00
41	Tree Guard	6	EA	\$2,500.00	\$15,000.00
42	Tree Planting	6	EA	\$2,750.00	\$16,500.00
43	Hydroseed Lawn Planting	1	LS	\$60,200.00	\$60,200.00
44	Irrigation System	1	LS	\$200,000.00	\$200,000.00
45	Maintenance and Plant Establishment (90 Calendar Days)	1	LS	\$50,000.00	\$50,000.00
46	Electrical	1	LS	\$308,000.00	\$308,000.00
				TOTAL	\$1,533,309.00

CONTRACTOR'S BONDS

BOND No. _____

**FAITHFUL PERFORMANCE BOND
(100% of Total Contract Price)
PROJECT NO. 807 0062
GATEWAY PARK REVITALIZATION DOG PARK**

KNOW ALL MEN AND WOMEN BY THESE PRESENTS:

THAT WHEREAS, the City Council of the City of Moreno Valley, State of California, known as "City," has awarded to _____, as Principal hereinafter designated as "Contractor" and have entered into an Agreement whereby the Contractor agrees to construct or install and complete certain designated public improvements, which said Agreement, effective on the date signed by the City of Moreno Valley, and identified as **Project No. 807 0062**, and all Contract Documents are hereby referred to and made a part hereof; and

WHEREAS, said Contractor under the terms of said Contract Documents is required to furnish a bond guaranteeing the faithful performance of said Agreement;

NOW THEREFORE, we the undersigned Contractor and _____, as Surety, are held and firmly bound unto the City of Moreno Valley, County of Riverside in the penal sum of _____ dollars, (\$ _____), lawful money of the United States, to be paid to the said City or its certain attorney, its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, and assigns, jointly and severally liable (CCP 995.320 (a)(1)), firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bound Contractor, his or her or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and provisions in said Contract Documents and any alterations thereof made as therein provided, on his or her or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City of Moreno Valley, its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect. In the event suit is brought upon this bond by the City and judgement is recovered, the Surety shall pay all costs incurred by the City in such suit, including a reasonable attorney fee to be fixed by the court.

Contractor and Surety agree that this Faithful Performance Bond shall not be considered a part of this Agreement between Contractor and the City ("Agreement"). Contractor and Surety further agree that this Faithful Performance Bond is a separate obligation of the Contractor and its Surety, and that any attorney's fee provision contained in this Faithful Performance Bond shall not apply to the Agreement. In the event there is any litigation between the parties arising from the breach of the Agreement, each party will bear its own attorneys' fees in the litigation.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Documents or to the Work to be performed thereunder, or the Provisions accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract Documents or to the Work or the Provisions.

(SIGNATURE PAGE FOLLOWS)

BOND No. _____

IN WITNESS WHEREOF, we have hereunto set our hands, and seals on this _____ day
of _____ 20____.

CONTRACTOR (Principal)

SURETY

Contractor Name: _____

Name: _____

Address: _____

Address: _____

Telephone No.: _____

Telephone No.: _____

Print Name: _____

Print Name: _____

Attorney-in-Fact

Signature: _____

Signature: _____

Approved as to Form this

_____ day of _____ 20____

City Attorney
City of Moreno Valley

NOTE:

- The bond shall be executed by a California admitted surety insurer (CCP 995.311).
- The bond shall include an attached Notary Certificate for the Attorney-in-Fact.
- The bond shall include an attached Notary Certificate for the Contractor.
- The bond shall include an attached original Power of Attorney only authorizing the Attorney-in-Fact to act for the Surety.
- The bond shall include the address at which the Principal (Contractor) and Surety may be served with notices, papers and other documents.
- The Contractor's and Surety's corporate seal may be affixed hereto.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

SAMPLE

State of California

County of _____

On _____ before me, _____,
(Here insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledgement to me that he/she they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly appears above in the notary section or a separate acknowledgment form must property completed and attached to that document. The only exception is if a document is recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/~~she~~/~~they~~, ~~is~~/~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
- Indicate title or type of attached document, number of pages and date.
- Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document.

DESCRIPTION OF THE ATTACHED DOCUMENT

PERFORMANCE BOND SIGNATURE PAGE

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____

Document Date _____

Additional Information

CAPACITY CLAIMED BY THE SIGNER

- Individual(s)
- Corporate Officer

(Title)

- Partner (s)
- Attorney-in-Fact
- Other _____

BOND No. _____

**LABOR AND MATERIALS PAYMENT BOND
(100% of Total Contract Amount)**

**PROJECT NO. 807 0062
GATEWAY PARK REVITALIZATION DOG PARK**

KNOW ALL MEN AND WOMEN BY THESE PRESENTS:

THAT WHEREAS, the City Council of the City of Moreno Valley, State of California, known as "City", has awarded to _____, as Principal hereinafter designated as "Contractor" and have entered into an Agreement whereby the Contractor agrees to construct or install and complete certain designated public improvements, which said Agreement, effective on the date signed by the City of Moreno Valley, and identified as **Project No. 807 0062**, and Contract Documents are hereby referred to and made a part hereof; and

WHEREAS, said Contractor under the terms of said Contract Documents is required to furnish a bond to secure the payment of claims of laborers, mechanics, materialmen, and other persons, as provided by law;

NOW, THEREFORE, we the undersigned Contractor and _____, as Surety are held and firmly bound unto the City of Moreno Valley, County of Riverside, in the penal sum of _____ dollars, (\$ _____), lawful money of the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, and assigns, jointly and severally liable (CCP 995.320 (a)(1)), firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Contractor, his or her or its heirs, executors, administrator, successors, or assigns, or subcontractors, shall fail to pay any of the persons described in the State of California Civil Code, Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Contractor and his or her subcontractors, pursuant to Section 13020, of the Unemployment Insurance Code, with respect to such work and labor, that the Surety or Sureties herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In the event suit is brought upon this bond by the City or other person entitled to bring such an action and judgement is recovered, the Surety shall pay all costs incurred by the City in such suit, including a reasonable attorney fee to be fixed by the court.

Contractor and Surety agree that this Labor and Materials Payment Bond shall not be considered a part of this Agreement between Contractor and the City ("Agreement"). Contractor and Surety further agree that this Labor and Materials Payment Bond is a separate obligation of the Contractor and its Surety, and that any attorney's fee provision contained in this Labor and Materials Payment Bond shall not apply to the Agreement. In the event there is any litigation between the parties arising from the breach of the Agreement, each party will bear its own attorneys' fees in the litigation.

This bond shall inure to the benefit of any of the persons described in the State of California Civil Code Section 9100, to give a right of action to such persons or their assigns in any suit brought upon this bond.

(SIGNATURE PAGE FOLLOWS)

BOND No. _____

IN WITNESS WHEREOF, we have hereunto set our hands, and seals on this _____ day
of _____ 20____.

CONTRACTOR (Principal)

SURETY

Contractor Name: _____

Name: _____

Address: _____

Address: _____

Telephone No.: _____

Telephone No.: _____

Print Name: _____

Print Name: _____

Attorney-in-Fact

Signature: _____

Signature: _____

Approved as to Form this

_____ day of _____ 20____

City Attorney
City of Moreno Valley

NOTE:

- The bond shall be executed by a California admitted surety insurer (CCP 995.311).
- The bond shall include an attached Notary Certificate for the Attorney-in-Fact.
- The bond shall include an attached Notary Certificate for the Contractor.
- The bond shall include an attached original Power of Attorney only authorizing the Attorney-in-Fact to act for the Surety.
- The bond shall include the address at which the Principal (Contractor) and Surety may be served with notices, papers and other documents.
- The Contractor's and Surety's corporate seal may be affixed here

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

SAMPLE

State of California

County of _____

On _____ before me, _____,
(Here insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledgement to me that he/she they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

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- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they~~, is/~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
- Indicate title or type of attached document, number of pages and date.
- Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document.

DESCRIPTION OF THE ATTACHED DOCUMENT

PAYMENT BOND SIGNATURE PAGE
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____

Document Date _____

Additional Information

CAPACITY CLAIMED BY THE SIGNER

- Individual(s)
- Corporate Officer

(Title)

- Partner (s)
- Attorney-in-Fact
- Other _____

