

STANDARD AGREEMENT FOR PUBLIC WORKS CONSTRUCTION

The CITY OF MORENO VALLEY ("CITY") and McMurray Stern, LLC.
("CONTRACTOR"), through this agreement ("Agreement") entered into on this ____ day of _____, 2024 ("Effective Date"), agree as follows:

A. CONTRACTOR shall construct the following public improvements ("work") identified as:

_____.

B. CITY-approved plans and specifications for the construction of the work ("Project"), which are incorporated herein by reference and prepared by:

_____.

are identified as:

_____.

C. The following are attached hereto and made a part hereof and/or are incorporated by reference: Schedule A, Notice Inviting Sealed Bids, Instructions to Bidders, Proposal Documents, and all referenced specifications, details, standard drawings, and appendices, together with this Agreement and all required bonds, insurance certificates, permits, notices, and affidavits; and also including any and all addenda or supplemental agreements clarifying, amending or extending the work contemplated as may be required to ensure its completion in an acceptable manner. .

1. **COMPENSATION:** For and in consideration of the payments to be made by CITY, CONTRACTOR agrees to furnish all materials and perform all work required for the work and to fulfill all other obligations as set forth herein.

CONTRACTOR agrees to receive and accept the prices set forth in the Bid Proposal as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damage and consequences arising out of the nature of 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 herein; 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.

CITY hereby promises and agrees to retain, and does hereby retain, CONTRACTOR to provide the materials, do the work, and fulfill the obligations according to the terms and conditions herein contained and referred to, for prices aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions set forth herein. CONTRACTOR shall invoice the City for the performance of the work under this Agreement in the amount agreed upon by the parties herein. CONTRACTOR shall be paid the amount specified in the invoice within thirty (30) days of receipt by the City, in accordance with the terms of this Agreement, provided that the work reflected in the invoice was performed to the reasonable satisfaction of the City in accordance with the terms of this Agreement.

2. **IMPROVEMENTS:** For valuable consideration, CONTRACTOR agrees to do, or cause to be done, all of the work described herein by the date specified in Schedule A. CONTRACTOR warrants that all of the materials supplied and work to be done will be of good quality and workmanship in accordance with Section 11 of this Agreement. Said work shall be in strict conformity with the plans and specifications of the work, the standard specifications and drawings for public improvements adopted by CITY and this Agreement. CONTRACTOR shall furnish all transportation, equipment, labor, services, permits, utilities and all other items necessary to complete the work. CONTRACTOR shall pay all claims, demands and liability arising out of, or resulting from or in connection with, the performance of the work. CONTRACTOR shall furnish accurate "as constructed" plans. CONTRACTOR'S obligations herein are not limited by any cost estimates nor will any estimate be a measure of damages.
3. **TIME FOR COMPLETION:** The work shall be commenced on a date to be specified in a written Notice to Proceed from the CITY and shall be completed within _____ (____) working days from and after said date. It is expressly agreed that except for extensions of time duly granted in the manner and for the reasons specified in the General Provisions, time shall be of the essence.
4. **INSURANCE:** CONTRACTOR shall not commence or continue to perform any work unless CONTRACTOR has in full force and effect all insurance required hereunder with companies satisfactory to CITY. To be acceptable, insurers must be authorized to do business, and have an agent for service of process, in California, and have an "A" policyholder's rating and a financial rating of at least Class V, in accordance with the current Best's Ratings. All insurance policies shall be maintained at CONTRACTOR's expense until expiration of the term of this Agreement, as defined in Section 12 and provide for coverage of all causes of action or disputes arising out of acts in performance of the construction of the work herein, whether said causes or disputes are filed or brought to the attention of CITY before or after the termination of this Agreement.

Concurrent with execution of this Agreement, CONTRACTOR shall provide certificate(s) of insurance and endorsements, satisfactory to CITY, or otherwise provide proof of insurance as approved by the City Attorney, certifying that CONTRACTOR has and will maintain for the Agreement period, full worker's compensation insurance coverage as required by State laws, for all persons who are or may be employed in carrying out the work.

Concurrent with execution of this Agreement, CONTRACTOR shall provide to CITY certificate(s) of insurance and endorsements, satisfactory to CITY, or otherwise provide proof of insurance as approved by the City Attorney, certifying that CONTRACTOR has general liability and commercial vehicle liability insurance coverage naming CITY, City Council members, CITY'S engineer, and their consultants, officials, directors, officers, agents and employees, as additional insureds for both bodily injury and property damage of not less than that specified in Schedule A. CONTRACTOR shall ensure that the most current certificates of insurance and endorsements shall be delivered to and maintained by the CITY at all times until the date that is one (1) year following the CITY's acceptance of the Project unless the CITY releases the Performance Bond earlier pursuant to Section 7 in which event CONTRACTOR's obligation to ensure the CITY maintains current certificates of insurance and endorsements will expire as of the date of such release. The requirements set forth in this paragraph shall survive expiration or sooner termination of this Agreement.

General liability and commercial vehicle liability insurance coverage shall include each of the following types of insurance as required by CITY to carry out this Agreement:

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| <p>A. General Liability</p> <ol style="list-style-type: none"> 1. Comprehensive Form 2. Premises-Operations 3. Explosion and Collapse Hazard 4. Underground Hazard 5. Products/Completed Operations Hazard 6. Contractual Insurance | <p>B. Automobile Liability</p> <ol style="list-style-type: none"> 1. Comprehensive Form, Including Loading and Unloading 2. Owned 3. Hired 4. non-owned |
|---|---|

7. Broad Form Property Damage including Completed Operations
8. Independent Contractors
9. Personal Injury

Concurrent with execution of any agreements between CONTRACTOR and any subcontractors retained by CONTRACTOR to perform any work required of CONTRACTOR hereunder, and in any event prior to CONTRACTOR authorizing any subcontractors to perform any such work or to even conduct any preliminary activities in preparation for or in anticipation of such work, CONTRACTOR shall collect certificates of insurance and endorsements from all such subcontractors evidencing proof that all subcontractors have procured and will maintain all the insurance coverages required of CONTRACTOR under this Agreement, and name as additional insureds the parties to this Agreement. CONTRACTOR agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section.

In addition to naming the CITY, City Council members, CITY'S engineer, and their consultants, officials, directors, officers, agents and employees, as additional insureds, as set forth above, the certificates of insurance, including those provided by any subcontractor, provided either on forms required by the CITY or as otherwise approved by the City Attorney, shall bear the following endorsements: (1) each policy required herein must be endorsed to provide that the policy shall not be cancelled or non-renewed by or reduced in coverage or limits (except by paid claims) unless the insurer has provided the CITY with thirty (30) days prior written notice of cancellation; (2) the carriers of all required insurance policies must waive all rights of subrogation against the CITY and its officers, employees, servants, volunteers, agents and independent contractors; and (3) except for worker's compensation insurance, all insurance policies required to be provided by CONTRACTOR must be endorsed to provide that the policies shall apply on a primary and noncontributing basis in relation to any insurance or self-insurance, primary or excess, maintained or available to the CITY, and its officers, employees, servants, volunteers, agents and independent contractors.

CONTRACTOR shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and shall also be responsible for payment of any self-insured retentions. In the event CONTRACTOR maintains insurance with broader coverage and/or limits of liability greater than those required herein, CITY requires and shall be entitled to the broader coverage and/or higher limits of liability maintained by CONTRACTOR. Any insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to CITY. The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify and hold the CITY harmless shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, its principals, officers, agents, employees, persons under the supervision of CONTRACTOR, vendors, suppliers, invitees, sub-contractors, or anyone employed directly or indirectly by any of them. Without limiting the generality of the forgoing, CONTRACTOR agrees and acknowledges that if it fails to obtain all of the insurance required in this Agreement in accordance with the requirements herein, or to obtain and ensure that the coverage required herein is maintained by any subcontractors or others involved in any way with the Project, CONTRACTOR shall be responsible for any losses, claims, suits, damages, defense obligations, or liability of any kind or nature attributable to the CITY or its officers, employees, servants, volunteers, agents and independent contractors; and all performance under this Agreement shall be discontinued immediately until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance, including insurance required of any subcontractors or others involved in any way with the Project, shall be sufficient cause for CITY to terminate this Agreement.

Nothing contained in these insurance requirements shall limit the liability of CONTRACTOR or CONTRACTOR's sureties. Review and acceptance of insurance certificates shall not constitute any representation by CITY or its representatives that any required insurance has been issued.

Unless Contractor has no employees and is exempt from worker's compensation requirements, Contractor shall further procure and maintain at its expense, until expiration of the term of this Agreement as defined in Section 10, workers' compensation insurance providing coverage as required by the California State Workers' Compensation Law. If any class of employees employed by the Contractor pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Contractor shall provide adequate insurance for the protection of such employees to the satisfaction of the City. Contractor agrees to waive its statutory immunity under any workers' compensation or similar statute, as respecting the City, and to require any and all subcontractors and any other person or entity involved in the Project to do the same. Additionally, Contractor shall execute and file with the City the certification as required by Labor Code Section 1861, as set forth in Exhibit "A."

Worker's Compensation Insurance:

- Contractor has no employees and is exempt from workers compensation requirements.
- Contractor carries workers' compensation insurance for all employees.

4. **CONTRACTOR'S LIABILITY:** CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, be solely and completely responsible for all matters affecting the design, prosecution, progress and completion of the work (both on and off the job site). CONTRACTOR shall be responsible for observing all laws, including, but not limited to, those required under Section 1725.5 of the Labor Code. CONTRACTOR shall provide for public convenience and safety and safety of workers, including CONTRACTOR'S workers and those of CONTRACTOR'S subcontractors, suppliers and others contributing to the work. CONTRACTOR shall protect CITY property and property rights of others, including the location, maintenance and replacement of utilities, whether shown on the plans or not. CONTRACTOR shall give prior notification to utility owners. CONTRACTOR shall notify Underground Service Alert at 1-800-422-4133 at least 48 hours prior to start of construction. CONTRACTOR shall protect against, and prevent drainage from, storm runoff. CONTRACTOR shall not interfere with easements, rights-of-way and encroachment permits. Nothing in this Agreement, the specifications, or other contract documents, or CITY'S approval of the plans and specifications or inspection of the work is intended to include CITY'S review, inspection, acknowledgment of or responsibility for any such matters. CITY, CITY COUNCIL members, ENGINEER, and their consultants and each of their officials, directors, officers, employees and agents shall have no responsibility or liability for the above.
5. **CONTRACTOR'S LICENSE:** No Bid will be accepted from a Bidder who, at the Bid Deadline, is not fully and properly licensed as a contractor in accordance with Chapter 9 of Division 3 of the California Business and Professions Code (Section 7000 et seq.). At the Bid Deadline, the prime Contractor must hold an active Class "A" or "B" contractor's license issued by the California Contract State License Board or a combination of Class "C" specialty contractor's licenses issued by the California Contract State License Board necessary for the performance of all Work to be performed by the prime Contractor. All Subcontractors shall be properly licensed at the Bid Deadline.
6. **CONTRACTOR'S INDEMNIFICATION:** CONTRACTOR shall defend, indemnify and hold harmless CITY, CITY COUNCIL members, ENGINEER, and their consultants and each of their officials, directors, officers, agents and employees from and against all liability, claims, damages, losses, expenses and other costs, including costs of defense and attorneys' fees arising out of or resulting

from or in connection with all matters affecting the design or construction of the work, both on and off the job site, and during and after completion, except for any such claim arising out of the sole or active negligence or willful misconduct of the CITY, its officers, agents, employees or volunteers. This, provided any of the above is: (1) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself) including the loss of use resulting therefrom, and (2) caused in whole or in part by any act or omission of CONTRACTOR, CONTRACTOR'S engineer, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable. Said indemnification and agreement to hold harmless shall extend to injuries to persons and damages to or taking of property resulting from all matters affecting the design or construction of said improvements or the diversion of waters or from all matters affecting the design or construction or maintenance of drainage systems, streets and other improvements. Acceptance of these improvements by CITY shall not constitute an assumption by CITY of any responsibility for such damage or taking. As to any and all claims against the indemnified parties by any employee of CONTRACTOR, any contractor, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnity obligations hereunder 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, subcontractor, supplier or other person under workers' compensation acts, disability benefit acts or other employee acts.

CONTRACTOR shall also defend, indemnify and hold harmless CITY, CITY COUNCIL members, ENGINEER, and their consultants, and each of their officials, directors, officers, employees and agents from and against all losses, expenses, damages (including damages to the work itself), attorneys' fees and other costs, including costs of defense, which any of them may incur both during and after completion with respect to any latent deficiency in all matters affecting the design, specifications, surveying, planning, supervision, observation or construction of the improvements referred to herein or any injury to a person or property, real or personal, as a result of any such latent portions of the work which CITY reasonably suspects may also be defective by reason of known defects in the work or other work performed by CONTRACTOR or CONTRACTOR'S subcontractors, or suppliers or designed by their representatives, except for any such claim arising out of the sole or active negligence or willful misconduct of the CITY, its officers, agents, employees or volunteers. Provisions of this paragraph shall remain in effect ten (10) years following acceptance of improvements by the City. Nothing contained herein shall limit CITY'S remedies pursuant to Code of Civil Procedure, Section 337.15.

The indemnity provisions contained in this Section shall survive expiration or sooner termination of this Agreement.

Neither CITY nor CONTRACTOR will be held liable for failure to fulfill its obligations hereunder if such failure is due to a Force Majeure Event. A "Force Majeure Event" means, but is not limited to, an act of war; domestic and/or international terrorism; civil riots or rebellions; quarantines, pandemics or epidemics; embargoes, state or national states of emergencies, and other similar unusual governmental actions; or extraordinary elements of nature or acts of God; provided that such Force Majeure Event is beyond the excused Party's reasonable control, occurs without the excused Party's fault or negligence, is not caused directly or indirectly by the excused Party and could not have been prevented or avoided by the excused Party's reasonable diligence.

7. **SECURITY:** With the execution of this Agreement, unless otherwise indicated on Schedule A, CONTRACTOR shall furnish and deliver to CITY, at no expense to CITY, a payment bond and a performance bond. Each shall be in the amount of CITY-approved estimate specified on Schedule A. Bonds shall be furnished by surety companies satisfactory to CITY on the forms provided by CITY. No alterations or substitution of said forms shall be allowed. To be acceptable, surety companies must be authorized to do business and have an agent for service of process in California, be on the accredited list of the United States Treasury Department, and have an "A" policyholder's rating and a financial rating of Class V, or better, in accordance with the current Best's Rating. The bonds shall

be limited to amounts acceptable to the Treasury Department. The payment bond shall remain in force and shall not be released until at least seven (7) months after recordation of the Notice of Completion or Notice of Acceptance, whichever occurs first. The performance bond shall remain in force until at least one (1) year after the date of final acceptance of the Project, unless the City determines, in its sole and absolute discretion, to release the performance bond earlier and notifies the Contractor of the same in writing. The requirements set forth in this paragraph shall survive expiration or sooner termination of this Agreement.

None of the following shall in any way affect the obligations of any surety. Each surety waives notice thereof: (a) any change, extension of time, alteration or additions to the terms of the Agreement, or the work to be performed, or the plans and specifications therefore; (b) any matters unknown to surety which might affect surety's risk, except that CITY shall advise surety upon request of the following: (1) any written claims it receives from unpaid subcontractors or suppliers, (2) any written orders received from other public authorities charging violations of laws, ordinances or regulations, and (3) failure of CONTRACTOR to comply with any written notice to correct defective work. The obligations of CONTRACTOR shall not be limited by the amount of such bonds.

8. **TYPES/AMOUNT OF SECURITY:** If specified in Schedule A, in lieu of payment and performance bonds, CONTRACTOR may furnish CITY either cash, a Letter of Credit, or an Agreement of Deposit as security for performance. Said security shall be in an amount not less than 100% of the cost estimate and, in addition, for payment of those furnishing materials, labor or equipment in an amount not less than 100% of the cost estimate. Said security agreements shall be on forms furnished by CITY. No alterations or substitution of said forms shall be allowed. The obligations of CONTRACTOR shall not be limited by the amount of the security required. No interest shall be paid CONTRACTOR on any cash deposit made pursuant to this paragraph.

9. **SUBSTITUTION OF SECURITIES:** In conformance with the State of California Public Contract Code, Part 5, Section 22300, CONTRACTOR may substitute securities for any monies withheld by the CITY to ensure performance under this Agreement.

At the request and expense of CONTRACTOR, CONTRACTOR has the option of establishing an escrow account with a state or federally chartered bank which shall serve as an escrow agent, for CONTRACTOR'S direct deposit of securities as a substitute for retention earnings required to be withheld by the CITY. Upon CONTRACTOR'S completion of its obligations hereunder, as evidenced by the CITY'S acceptance of the work pursuant to Section 11 hereof, the escrow agent shall return the securities to CONTRACTOR. The escrow agent shall notify the CITY within ten (10) days after deposit of the securities. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention. Securities shall be held in the name of the CITY and shall designate CONTRACTOR as the beneficial owner. Alternatively, on written request of CONTRACTOR, the CITY shall make payments of the retention earnings directly to the escrow account.

10. **PARTIAL UTILIZATION:** Until all work has been completed and accepted by CITY and all other public authorities having jurisdiction, CONTRACTOR shall be responsible for the care and maintenance of, or any damage to, the work. When the work or any portion of it is sufficiently complete to be utilized or placed into service, CITY shall have the right, upon written notification to CONTRACTOR, to utilize such portions of the work and to place the operable portions into service. With this notice and commencement of utilization or operation by CITY, CONTRACTOR shall be relieved of the duty of maintaining the portions so utilized or placed into operation. However, such use and operation shall not relieve CONTRACTOR of the full responsibility for completing the work in its entirety, for making good any defective work or materials, for protecting the work from damage, and for being responsible for damage and for the work as set forth herein. Nor shall such action by CITY be deemed completion and acceptance. Further, such action shall not relieve CONTRACTOR or CONTRACTOR'S sureties and insurers of the provisions hereof relating to indemnity and guarantees.

11. **ACCEPTANCE OF PROJECT - WARRANTY:** Acceptance of the Project shall only be by action of the CITY ENGINEER. Neither the acceptance nor any prior inspections or failure to inspect shall constitute a waiver by CITY of any defects in the Project. From and after acceptance, the Project shall be owned and operated by CITY. As a condition to acceptance, CONTRACTOR shall certify to CITY in writing that all of the Project performance has been performed in strict conformity with the Agreement and that all costs have been paid, or security supplied to CITY, satisfactory to CITY, guaranteeing such performance. In addition to CONTRACTOR'S other obligations under the Agreement CONTRACTOR warrants all work and materials to be good quality and fit for the purpose and intended use for a duration that shall continue until one (1) year following acceptance of the Project, or the longest period permitted by law, whichever is later. If any defects in materials or workmanship become evident prior to the date referenced above, the CONTRACTOR shall, at his or her own expense, make any repair(s) or replacement(s) necessary to restore the work to full compliance with the plans and specifications. CONTRACTOR shall also repair, replace and restore any other work which is displaced in correcting defective work as well as other portions of the work which CITY by reason of such defects reasonably suspects may also be defective.

In the event of a failure to commence with the compliance of above-mentioned conditions within seven (7) calendar days after being notified in writing or failure to diligently pursue such compliance to completion, CITY is hereby authorized to proceed to have the defects repaired and made good at the expense of CONTRACTOR who hereby agrees to pay the cost and charges therefor immediately on demand.

If, in the opinion of CITY, nonconforming work creates a dangerous condition or requires immediate correction or repair to prevent further loss to CITY or to prevent interruption of operations, CITY shall attempt to give the CONTRACTOR notice. If CONTRACTOR cannot be contacted or does not comply with CITY'S request for correction within a reasonable time as determined by CITY, CITY may proceed to make such correction or provide such repair. The costs of such correction or repair shall be charged against CONTRACTOR, who agrees to make payment for said costs upon demand.

Corrective action by CITY will not relieve CONTRACTOR or CONTRACTOR'S sureties or insurers of the guarantees and indemnities of this Agreement.

This paragraph does not in any way limit CITY'S remedies pursuant to Code of Civil Procedure, Section 337 and 337.15, or the guarantee or warranty on any items for which a longer guarantee is specified or on any items for which a manufacturer or supplier gives a longer guarantee or warranty period. CONTRACTOR agrees to act as a co-guarantor with such manufacturer or supplier and shall furnish CITY all appropriate guarantees or warranty certificates upon completion of the Project. No manufacturer's guarantee period shall in any way limit the liability of CONTRACTOR or CONTRACTOR'S sureties and insurers under the indemnity or insurance provisions of this Agreement.

12. **TERM:** The term of this Agreement shall commence as of the Effective Date and expire upon the date the City Council accepts the Project pursuant to this Agreement, or upon release of the Performance Bond in accordance with Section 7 of this Agreement, whichever occurs first.
13. **CONTRACTORS AND AGENTS:** CONTRACTOR shall be as fully responsible to CITY for the acts and omissions of CONTRACTOR'S subcontractor and of the persons directly or indirectly employed by CONTRACTOR'S subcontractor as CONTRACTOR is for the acts and omissions of persons directly or indirectly employed by CONTRACTOR. Nothing contained in the Agreement shall create any contractual relationship between any subcontractor or others and CITY. CONTRACTOR shall bind every contractor to be bound by the terms of this Agreement.

14. **LIQUIDATED DAMAGES AND CONTROL OF WORK.** 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, place the order of materials, 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.

15. **DEFAULT BY CONTRACTOR:** CONTRACTOR shall be in default of this Agreement if: CONTRACTOR refuses or fails to prosecute the work or any separable part thereof with such diligence as will ensure its completion within the time specified herein, or any written extension thereof, or fails to complete such work within such time, or if CONTRACTOR should be adjudged a bankrupt, make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of CONTRACTOR'S insolvency, or if CONTRACTOR or any of their subcontractors violate any of the provisions of this Agreement, or if CONTRACTOR fails to make prompt payment for materials or labor, or if CONTRACTOR disregards laws, ordinances, or instructions of CITY. CITY may thereafter serve written notice upon the CONTRACTOR and CONTRACTOR'S surety of its intention to declare this Agreement in default. Said notice shall contain the reasons for such intention to declare a default. Unless, within ten (10) days after the service of such notice, such violations shall cease and satisfactory arrangements for the corrections thereof be made, this Agreement shall upon the expiration of said time be in default.

Upon such default, CITY shall serve written notice thereof upon the surety and CONTRACTOR, and the surety shall have the right to take over and perform this Agreement. If the surety does not, within fifteen (15) days after the serving upon it of a notice of a default, give CITY written notice of its intention to take over and perform this Agreement or does not commence performance thereof within thirty (30) days from the date of CITY'S notice, CITY may take over the work and prosecute the same to the extent of completion it deems necessary by contract or by any other method it may deem advisable for the account and at the expense of CONTRACTOR, and the surety shall be liable to CITY for any cost or other damage occasioned CITY thereby. In such event CITY may, without liability for so doing, take possession of, and utilize in completing such work, such materials, appliances, plants, and other property belonging to CONTRACTOR that may be on the site of the work and be necessary therefor. Should surety fail to take over and diligently perform the Agreement upon CONTRACTOR'S default, surety agrees to promptly on demand deposit with CITY such amount as CITY may reasonably estimate as the cost of completing all of CONTRACTOR'S obligations. For any such work the CITY elects to complete by furnishing its own employees, materials, tools, and equipment, CITY shall receive reasonable compensation therefor including costs of supervision and overhead.

CITY may, at its option, elect not to complete any or all of the work and may elect not to accept any of the work already completed. If CITY elects not to accept any of the work, then all CITY'S obligations to CONTRACTOR and the lands to be served shall terminate. CITY'S obligations to CONTRACTOR and the lands to be served shall continue to the extent of any acceptance, subject to CITY'S right to offset any sums due the CITY.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to CITY.

16. **DELAY BY CONTRACTOR:** If the work is suspended or otherwise not continuously prosecuted for any cause whatsoever, within or without the time for completion, CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, remove and replace all or any portion of the work already completed and inspected which CITY, in its sole discretion, determines is or can be damaged.
17. **ATTORNEYS' FEES AND COSTS:** Should CITY engage an attorney to enforce any provision of this Agreement or to defend any claim brought by anyone arising out of the failure of CONTRACTOR to perform any of CONTRACTOR'S obligations under this Agreement, CONTRACTOR shall pay all of CITY'S attorneys' fees incurred in connection therewith, with or without suit, whether or not said attorney is in the regular employ of the CITY.
18. **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.

19. **ASSIGNMENT**: The performance of the Agreement may not be assigned except upon the written consent of CITY. Consent will not be given to any proposed assignment which would relieve CONTRACTOR or CONTRACTOR’S sureties of their responsibilities under the Agreement unless CITY finds that assignee can perform this Agreement and provide security comparable to that provided by CONTRACTOR.
20. **NOTICE**: All notices required hereunder shall be deemed served or given upon the earlier of actual receipt or deposit in the U.S. Postal Service, first class postage prepaid, addressed to CONTRACTOR at the address set forth below, to the surety at the address in the security instrument, and to CITY at 14177 Frederick St, Moreno Valley, California 92553.
21. **SUBSTITUTION OF SUBCONTRACTORS**: Pursuant to Synergy Project Management v. the City and County of San Francisco, 33 Cal.App.5th 21 (2019), CITY may initiate substitution proceedings and direct CONTRACTOR to remove any subcontractor from performing any work on the Project, in the event CITY deems such subcontractor’s performance to be substantially unsatisfactory and not in substantial accordance with the Project’s plans and specifications.
22. **COUNTERPARTS**: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic signatures shall be deemed to constitute evidence of the Agreement having been executed.

**CITY OF MORENO VALLEY
STANDARD AGREEMENT FOR PUBLIC WORKS CONSTRUCTION
SIGNATURE REQUIREMENTS**

(Limited Partnership/General Partnership/Corporation)

1 WHERE PRINCIPAL IS A LIMITED PARTNERSHIP

- A. General Partner shall execute on behalf of the limited partnership.
- B. General Partner shall furnish City of Moreno Valley a copy of the recorded Certificate of Limited Partnership to authenticate the authority of the General Partner to sign on behalf of the limited partnership.

2 WHERE PRINCIPAL IS A GENERAL PARTNERSHIP

- A. General Partner shall execute on behalf of general partnership.
- B. General Partner shall furnish City of Moreno Valley a copy of the General Partnership Agreement authenticating that the General Partner who signs the document has authority to do so.

3 WHERE PRINCIPAL IS A CORPORATION

- A. Officers shall execute on behalf of corporation.
- B. Officers shall furnish City of Moreno Valley a copy of a corporate resolution indicating that the officers who sign the document are the officers of the corporation and authorized to bind the corporation to contract. Corporation requires two signatures.

In each of the foregoing situations (a limited partnership, a general partnership or a corporation) the CITY requires an individual obligor in addition to the partnership or corporate entity.

For example, John Doe may sign on behalf of either partnership or the corporation as the General Partner and/or president thereof, but then, in addition, John Doe is required to sign the document individually as an individual obligor.

4 WHERE PRINCIPAL IS A LIMITED LIABILITY COMPANY

- A. In a member-managed Limited Liability Company, a member shall execute on behalf of the Limited Liability Company.
- B. In a manager-managed Limited Liability Company, a manager shall execute on behalf of the Limited Liability Company.
- C. The member or manager who executed the contract shall provide the District a copy of the Limited Liability Company's Operating Agreement authenticating that the member or manager who executes the contract has the authority to do so.

CITY OF MORENO VALLEY, a Municipal Corporation

McMurray Stern, LLC.

BY _____
CITY MANAGER

License No./
Classification: _____

DATE _____

Expiration Date: _____

Federal I.D. No. _____

INTERNAL USE ONLY

APPROVED AS TO LEGAL FORM:

City Attorney

Date

RECOMMENDED FOR APPROVAL:

Police Chief

Date

Chief Financial Officer / City Treasurer

Date

PRINT NAME _____

SIGNATURE _____

TITLE: _____

DATE: _____

PRINT NAME _____

SIGNATURE _____

TITLE: _____

DATE: _____

(Seal: Partnership/Corporation)

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.

SCHEDULE A

STANDARD AGREEMENT FOR PUBLIC WORKS CONSTRUCTION

This schedule is attached to and made a part of the Standard Agreement for Construction of Public Improvements between CITY and CONTRACTOR for the above-referenced property.

- 1. Compensation: \$ _____
- 2. Completion Date (____ calendar days): To be determined by Notice to Proceed
- 3. Liability Insurance Limits:

General Liability

\$2,000,000	Each Occurrence (Includes Bodily Injury and Property Damage)
\$1,000	Medical Expense
\$1,000,000	Personal & Advertising Injury
\$2,000,000	General Aggregate
\$2,000,000	Products-Completed/Operations Aggregate

Automobile Liability

Combined Single Limit \$1,000,000 each accident, \$2,000,000 aggregate

Workers Compensation Statutory

4. Approved Security Amounts:

a. Performance
\$ _____

b. Payment
\$ _____

5. Bond Substitute Acceptable: Yes No (Cross out one)

6. **Contractor(s):**

Name and Address	License No.	Phase of Work
------------------	-------------	---------------

() Initial of CITY REPRESENTATIVE

() Initials of CONTRACTOR REPRESENTATIVE

PERFORMANCE BOND

We, _____, as Principal, and _____, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the City of Moreno Valley ("CITY") for payment of the penal sum of: _____

_____ U.S. Dollars (\$_____). CITY and Principal have entered into an agreement, or are about to enter into the agreement attached hereto and incorporated by reference, for the construction of public improvements for property referenced in said agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by CITY and Principal.

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

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

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

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

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.

(Notary Seal)

Signature of Notary Public

ADDITIONAL OPTIONAL INFORMATION

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 _____

CAPACITY CLAIMED BY THE SIGNER

- Individual(s)
 Corporate Officer

(Title)

- Partner (s)
 Attorney-in-Fact
 Other

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 properly 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 a acknowledgment.
- Date of notarization must be the date that the signer(s) personally 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.

PAYMENT BOND

We, _____, as Principal, and _____, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the CITY OF MORENO VALLEY ("CITY") and those for whose benefit this bond insures in the sum of _____

_____ U.S. Dollars (\$_____). CITY and Principal have entered into an agreement or are about to enter into the agreement attached hereto and incorporated by reference, for the construction of public improvements for the property referenced in said agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by CITY and Principal. If Principal or any of Principal's contractors or subcontractors, fails to pay any of the persons named in Section 9000 *et seq.* of the California Civil Code employed in the performance of the Agreement for materials furnished or for labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, then Surety shall pay the same in an amount not exceeding the sum specified above, and also shall pay, in case suit is brought upon this bond, such reasonable attorneys' fees as shall be fixed by the court.

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

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

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

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

**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

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 _____

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- Individual(s)
- Corporate Officer

(Title)

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

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- 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.

EXHIBIT "A"

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

Contractor's Signature

DRAFT