

Moreno Valley Community Services District of the City of Moreno Valley

**PUBLIC WORKS AGREEMENT  
 BID # 2019-034  
 COMMUNITY PARK SKATE PARK  
 PROJECT No. 807-0048**

This Public Works Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Moreno Valley Community Services District, a district formed pursuant to California Community Services District Law, County of Riverside, State of California, hereinafter sometimes referred to as the “Agency,” and Micon Construction Inc., a corporation, hereinafter referred to as the “Contractor,” with respect to the following:

- A. The Agency desires to retain Contractor, on an independent contractor basis, to perform construction services for Moreno Valley Community Park, located at 13380 Frederick St, Moreno Valley, CA 92553 (“Project,” as described in Section 2 of this Agreement); and
- B. The public interest, convenience, necessity and general welfare will be served by this Agreement; and
- C. This Project is subject to payment of prevailing wages per the State Labor Code; and
- D. This Agreement is made and entered into the date Agency signs this Agreement.
- E. In the event of any conflict in the provisions thereof, the terms of said Bid Documents as set forth above shall control, each over the other, in the order provided. The above items are incorporated in this Agreement as though set forth in full.
  - a. This Agreement.
  - b. Any and all Contract Change Orders issued after execution of this Agreement.
  - c. Addenda Nos. 01, inclusive, issued prior to the opening of the Bids.
  - d. The Bid Documents.
  - e. The Special Provisions which include the General Provisions, Technical Provisions, and Appendices, all of which are parts of this Agreement.
  - f. The project Plans.
  - g. The City Standard Plans.
  - h. The Standard Specifications.
  - i. Reference Specifications, all of which are essential parts of this Agreement.
  - j. The Bidder’s Proposal which includes the Bidder’s Bond and Noncollusion Affidavit.

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

**1. CONTRACTOR INFORMATION:**

Micon Construction Inc.  
 1616 Sierra Madre Circle  
 Placentia, CA 92870  
 Business Phone: 800-949-0203, Fax No. 714-666-1007  
 Email: kim@miconconstruction.com  
 Business License Number: 20752  
 Federal Tax I.D. Number: 33-0611193  
 Contractor License Number: 744198 CA  
 License Classification(s): A, B, C-8, C-27, C-12  
 DIR PWC Registration: 1000009060

For Department use only.
DIR ID # _____
CITY CONTRACT # _____
P.O. # _____

## 2. CONTRACTOR SERVICES, FEES, AND RELEVANT DATES:

- A. The Contractor's scope of service is described in on page 1, E e-j, referenced herein and referred as "Project".
- B. The Agency's responsibility, other than payment, is described in Exhibit A attached hereto and incorporated herein by this reference.
- C. Payment terms are provided in Exhibit B attached hereto and incorporated herein by this reference.
- D. The Contractor shall furnish all materials, tools, equipment and labor, except as otherwise provided in the Plans or Special Provisions, and will perform all the work which is necessary to complete in a good, workmanlike and substantial manner the above said project in accordance with the Bid Documents for this project, the Bid Documents which are hereby specifically referred to and by such reference made a part hereof.
- E. In the event any conflict exists between the Agreement minus the Scope of Services, on the one hand, and the Scope of Services, on the other hand, the former shall supersede.
- F. The Parties agree that the specifications, standards, and procedures set forth in the 2015 Greenbook: Standard Specifications for Public Works Construction ("Greenbook") and the 2016 California Building Standards Code ("CBSC") (together, "Public Works Authority") shall govern the completion of the Project, and to such extent the Public Works Authority is incorporated herein by this reference; provided, however, in the event any conflict exists between this Agreement and the Public Works Authority, this Agreement shall supersede unless otherwise required by law.
- G. The Agreement shall commence on the date it is signed by the Agency and shall expire two (2) years following the City's acceptance of the work, pursuant to this Agreement, or release of the Performance Bond, whichever occurs first.
- H. The Contractor's starting date shall be listed on the "Notice to Proceed." The Contractor agrees to diligently prosecute the contracted work for the Project to completion within **Ninety (90) working days** after said date in the "Notice to Proceed." The Agency acknowledges that it will not unreasonably withhold approval of the Contractor's requests for extensions of time in which to complete the work required. The Contractor shall not be responsible for performance delays caused by others or delays beyond the Contractor's reasonable control (excluding delays caused by non-performance or unjustified delay by Contractor, his/her/its employees, or subcontractors), and such delays shall extend the time for performance of the work by the Contractor.
- I. The work performed in this Agreement shall be performed Monday through Friday, 7 a.m. to 5 p.m. Agency observed holidays shall be observed by the Contractor and no work shall be performed on these dates, unless prior written permission is granted.
- J. Substantial completion of work shall be evidenced by inspection and approval by Agency staff in writing.

## 3. LIQUIDATED DAMAGES

The Contractor and Agency have agreed to liquidate damages with respect to Contractor's failure to order all materials in accordance with the Notice to Proceed with Order of Materials and/or failure to fulfill the preconstruction requirements, and/or failure to complete the Work within the Contract Time. The Parties intend for the liquidated damages set forth herein to apply to this Contract as set forth in Government Code Section 53069.85. Contractor acknowledges and agrees that the liquidated damages are intended to compensate the

---

Agency solely for Contractor's failure to meet the deadline 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 Agreement.

In the event that Contractor fails to order all materials in accordance with the Notice to Proceed with Order of Materials and/or fails to fulfill the preconstruction requirements and/or fails to complete the work within Project time, Contractor agrees to pay the Agency \$1,000.00 per Calendar day that completion of the work is delayed beyond the Project time, as adjusted by Contract Change Orders. The Contractor will not be assessed liquidated damages for delays occasioned by the failure of the Agency or of the owner of a utility to provide for the removal or relocation of utility facilities.

The Contractor and Agency acknowledge and agree that the foregoing liquidated damages have been set based on an evaluation of damages that the Agency will incur in the event of late completion of the work. The Contractor and Agency 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 Agency'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 Agency will have the right to deduct liquidated damages against progress payments or retainage and that the Agency will issue a Change Order and reduce the Agreement price accordingly. In the event the remaining unpaid Agreement amount is insufficient to cover the full amount of liquidated damages, Contractor shall pay the difference to the Agency.

#### **4. LABOR LAWS AND PREVAILING WAGES**

- A. 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.
  - B. Contractor represents that it is an equal opportunity employer and shall not discriminate against any subcontractor, employee, or applicant ("person") for employment because of denial of family and medical care leave; race; 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, and 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.
- C. 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 Agency 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 Agency 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.
- D. Contractor and all subcontractors hired to perform any work under the 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 Agency 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).

- E. Notwithstanding anything else to the contrary, Contractor hereby acknowledges that all contractors 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. 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. Ready-mix haulers and companies that deliver ready-mixed concrete for public works projects are considered subcontractors under Labor Code section [1722.1](#) and must [register](#) with the Department of Industrial Relations as specified in 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](#).

## 5. STANDARD TERMS AND CONDITIONS:

- A. Control of Work. Contractor is solely responsible for the content and sequence of the work, and will not be subject to control and direction as to the details and means for accomplishing the anticipated results of services. The Agency will not provide any training to Contractor or his/her/its employees.
- B. Intent of Parties. Contractor is, and at all times shall be, an independent contractor and nothing contained herein shall be construed as making the Contractor or any individual whose compensation for services is paid by the Contractor, an agent or employee of the City and/or CSD, or authorizing the Contractor to create or assume any obligation or liability for or on behalf of the Agency, or entitling the Contractor to any right, benefit, or privilege applicable to any officer or employee of the Agency.
- C. Subcontracting. Contractor may retain or subcontract for the services of other necessary contractors with the prior written approval of the Agency. Payment for such services shall be the responsibility of the Contractor.
- D. Extra Work and Change Orders. Extra work and change orders shall become a part of this Agreement once the extra work or change order is approved in writing and signed by the Agency and Contractor, prior to the commencement of any extra work or change in work covered by the change order. The Agency's form change order shall be used for both extra work and a change in work. The change order must describe the scope of the extra work or change in work, and the cost to be added or subtracted from this Agreement. The Agency shall not require Contractor to perform any extra work or a change in work without written authorization. A change order shall not be enforceable against the Agency unless the change order complies with this provision.
- E. Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of Agency.
- F. Contractor's Representative. Contractor hereby designates **Kim Garrigues**, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the services under this Agreement.
-

- G. Substitution of Key Personnel. Contractor has represented to Agency that certain key personnel will perform and coordinate the services under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of Agency. In the event that Agency and Contractor cannot agree as to the substitution of key personnel, Agency shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the services in a manner acceptable to the Agency, or who are determined by the Agency to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Contractor at the request of the Agency. The key personnel for performance of this Agreement are as follows: **Kim Garrigues.**
- H. Agency's Representative. The Agency hereby designates the Director of Parks and Community Services of the City of Moreno Valley, or his or her designee, to act as its representative for the performance of this Agreement ("Agency's Representative"). Contractor shall not accept direction or orders from any person other than the Agency's Representative or his or her designee. The Agency's representatives are as follow: Tony Hetherman.
- I. Standard of Care; Performance of Employees. Contractor shall perform all services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the profession necessary to perform the services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the services and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any employee of the Contractor or its subcontractors who is determined by the Agency to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the services in a manner acceptable to the Agency, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the services or to work on the Project.
- J. Legal Considerations. The Contractor shall comply with applicable federal, state, and local laws, rules and regulations in the performance of this Agreement.
- K. Contractor Indemnification. 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 Moreno Valley Community Services District (sometimes "CSD"), the City of Moreno Valley (sometimes "City"), the City Council and Board of Directors and each member thereof, and the Moreno Valley Housing Authority and all of their respective officials, officers, directors, employees, commission members, representatives and agents (collectively "Indemnitees" and singularly "Indemnitee"), 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 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 or the Project or any breach of this Agreement 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:

1. Any activity on or use of the CSD’s and/or City’s premises or facilities;
2. Any liability incurred due to Contractor acting outside the scope of its authority pursuant to this Agreement, whether or not caused in part by an Indemnitee;
3. The failure of Contractor or the work to comply with any applicable law, permit or orders;
4. Any misrepresentation, misstatement or omission with respect to any statement made in this Agreement or any document furnished by the Contractor in connection therewith;
5. Any breach of any duty, obligation or requirement under this Agreement or any document furnished by Contractor in connection therewith, including, but not limited to any breach of Contractor’s warranties, representations or agreements;
6. Any failure to coordinate the work with Agency’s separate contractors;
7. Any failure to provide notice to any party as required by this Agreement or any document furnished in connection therewith;
8. Any failure to act in such a manner as to protect the Project from loss, cost, expense or liability;
9. 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 and/or CSD), and injury or death sustained by any person or persons (including, but not limited to, Contractor’s employees or agents, and members of the general public);
10. Any liability imposed by applicable law including, but not limited to criminal or civil fines or penalties;
11. Any dangerous, hazardous, unsafe or defective condition of, in or on the Project 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;
12. Any operation conducted upon or any use or occupation of the Project site by Contractor, its officers, agents, employees, or subcontractors under or pursuant to the provisions of this Agreement or otherwise;
13. Any acts, errors, omission or negligence of Contractor, its officers, agents, employees, or subcontractors;
14. Infringement of any patent rights, licenses, copyrights or intellectual property which may be brought against the Contractor or Agency arising out of Contractor’s work, for which the Contractor is responsible; and
15. Any and all claims against the Agency 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 Agency from such claims.

- L. 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 Indemnitees, 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 section. 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.
- M. 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 Agency.
- N. 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 Agreement 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.
- O. 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.
- P. 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 section.
- Q. No Limitation or Waiver of Rights. Contractor's obligations under this section are in addition to any other rights or remedies which the Indemnitees may have under the law or under the Agreement. Contractor's indemnification and defense obligations set forth in this section are separate and independent from the insurance provisions set forth in the Agreement, 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 Agreement 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' compensation acts, disability benefit acts or other employee benefit acts. Failure of the Agency to monitor compliance with these requirements
-



imposes no additional obligations on the Agency and will in no way act as a waiver of any rights hereunder.

- R. Withholding to Secure Obligations. Subject to applicable law, in the event a claim arises prior to final payment to Contractor, the Agency may, in its sole discretion, reserve, retain or apply any monies due Contractor for the purpose of resolving such claims; provided, however, the Agency may release such funds if the Contractor provides the Agency with reasonable assurances of protection of the Indemnitees' interests. The Agency shall, in its sole discretion, determine whether such assurances are reasonable.
- S. Survival of Indemnity Obligations. Contractor's obligations under this section 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.
- T. Insurance Requirements. The Contractor shall procure and maintain at its sole expense and throughout the term of this Agreement and any extension thereof, Commercial General Liability, Automobile Liability, and Workers' Compensation Insurance with such coverage limits as described herein.
- U. Additional Insured Endorsements. The Contractor shall provide Agency with certificates of insurance and endorsements as evidence of the insurance coverages required herein, and shall cause such certificates of insurance and endorsements to include:  
***"the City of Moreno Valley (City), the Moreno Valley Community Services District (CSD), the Moreno Valley Housing Authority, and their officers, officials, employees, agents, and volunteers are additional insureds as respects to General Liability and Auto Liability insurance. This insurance is primary, and our obligations are not affected by any other insurance carried by such additional insured whether primary, excess, contingent, or on any other basis. Waiver of subrogation for Workers' Compensation and Employer's Liability insurance as respects to the City of Moreno Valley (City), the Moreno Valley Community Services District (CSD), the Moreno Valley Housing Authority and each of their officers, officials, employees, agents, and volunteers."***  
 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 (04/13); or
  2. Substitute endorsements providing equivalent coverage, approved by the Agency.
 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.
- V. Waivers of Subrogation. All policies of insurance required by the Agreement 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 (City), the Moreno Valley Community Services District (CSD), the Moreno Valley Housing Authority, and their officers, officials, employees, agents, and volunteers."*
- W. Primary and Noncontributory Coverage. All policies and endorsements shall stipulate that the Contractor's (and the subcontractors') insurance coverage shall be primary and noncontributory insurance as respects the *"City of Moreno Valley (City), the Moreno Valley Community Services District (CSD), the Moreno Valley Housing Authority, and their officers, officials, employees, agents, and volunteers,"* and shall be excess of the Contractor's (and its subcontractors') insurance and shall not contribute with it.  
 For the primary and noncontributory coverage, said parties shall be named as additional insureds utilizing either:
  1. Insurance Services Office ("ISO") Additional Insured endorsement CG 20 10
-

(01/13); or

2. Substitute endorsements providing equivalent coverage, approved by Agency.
- X. 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.
- Y. 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 Agency in writing prior to execution of the Agreement. The Agency's approval of self-insurance, if any, is within the Agency's sole discretion and is subject to the following conditions:
- 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 maintain and upon Agency's reasonable request provide evidence of:
1. 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;
  2. 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
  3. a claims procedure that identifies how a claim is supposed to be tendered to reach the financing provided by the self-insured fund.
- If at any time after such self-insurance has been approved Contractor fails to meet the financial thresholds or otherwise fails to comply with the provisions set forth in this section, at the option of the Agency:
- a. the Contractor shall immediately obtain and thereafter maintain the third party insurance required under this section, 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 of Moreno Valley (City), the Moreno Valley Community Services District (CSD), the Moreno Valley Housing Authority, and their officers, officials, employees, agents, and volunteers;*" or
  - c. the Contractor shall procure a bond guaranteeing payment of losses and related investigation, claim administration, and defense expenses.
- Z. 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.
- AA. Notices to Agency of Cancellation or Changes. Each insurance policy described in this Agreement 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 Agency (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 Agency), 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 Agreement, Contractor agrees to give written notice to the Agency at the address indicated in this Agreement. Contractor agrees to provide the same notice of cancellation and non-renewal to the Agency 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.

BB. Commercial General Liability.

1. Coverage shall be written on an ISO Commercial General Liability "occurrence" form CG 00 01 (10/01 or later edition), Acord Certificate of Liability form 25 (2014/01), or equivalent form approved by the Agency 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) or equivalent form approved by the Agency. 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 acceptance of the Project, and any extension of the one-year correction guarantee period after acceptance.

2. 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.

CC. 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. Additionally, the policy shall be endorsed utilizing ISO form CA 20 48 (10/14) or equivalent form.

DD. 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 Agreement.

EE. 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.

FF. Intellectual Property. Any system or documents developed, produced or provided under this Agreement, including any intellectual property discovered or developed by Contractor in the course of performing or otherwise as a result of its work, shall become the sole property of the Agency unless explicitly stated otherwise in this Agreement. The Contractor may retain copies of any and all material, including drawings, documents, and specifications, produced by the Contractor in performance of this Agreement. The Agency and the Contractor agree that to the extent permitted by law, until final approval

---

- by the Agency all data shall be treated as confidential and will not be released to third parties without the prior written consent of both parties.
- GG. 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.
- HH Termination.
1. The Agency may terminate this Agreement without cause by giving at least ten (10) days written notice to the Contractor. The written notice shall specify the date of termination. Upon receipt of such notice, the Contractor may continue work through the date of termination, provided that no work or service(s) shall be commenced or continued after receipt of the notice which is not intended to protect the interest of the Agency. The Agency shall pay the Contractor within thirty (30) days after receiving any invoice after the date of termination for all non-objected to services performed by the Contractor in accordance herewith through the date of termination.
  2. Either party may terminate this Agreement for cause. In the event the Agency terminates this Agreement for cause, the Contractor shall perform no further work or service(s) under the Agreement unless the notice of termination authorizes such further work.
- II. Payment.
1. Payments to the Contractor pursuant to this Agreement will be reported to federal and state taxing authorities as required. Contractor is independently responsible for the payment of all applicable taxes. Where the payment terms provide for compensation on a time and materials basis, the Contractor shall maintain adequate records to permit inspection and audit of the Contractor's time and materials charges under the Agreement. Upon reasonable notice, such records must be made available to the Agency's agent; however, nothing herein shall convert such records into public records, unless otherwise required by law. Such records shall be retained by the Contractor for three (3) years following completion of the services under the Agreement.
  2. Pursuant to Public Contract Code section 9203, the Agency shall retain no less than five percent (5%) of the compensation to be paid to Contractor which shall be released to the Contractor no later than sixty (60) days from the date of the Contractor's acceptance of the work pursuant to this Agreement.
- JJ. Stop Payment Notice Withholdings. The Agency may withhold payments to cover claims filed under Civil Code § 9350 et seq.
- KK. Restrictions on CSD/City Employees. The Contractor shall not employ any CSD or City employee or official in the work performed pursuant to this Agreement. No officer or employee of the CSD or City shall have any financial interest in this Agreement in violation of federal, state, or local law.
- LL. Choice of Law and Venue. The laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement, and shall govern the interpretation of this Agreement. Any legal proceeding arising from this Agreement shall be brought in the appropriate court located in Riverside County, State of California.
- MM. Legal Action.
3. Should either party bring any legal or equitable action for the purpose of protecting or enforcing its rights under this Agreement, the prevailing party in such action shall recover in addition to all other relief, its reasonable attorney's fees and court costs, fixed by the court.
  4. In addition to the foregoing award of attorney's fees, the prevailing party shall be entitled to its attorneys' fees incurred in any post judgement proceedings to enforce any
-

judgments in connection with this Agreement. The provision is separate and several and shall survive the merger of this provision into any judgement.

NN. Warranty.

1. The Contractor, the Contractor's heirs, executors, administrators, successors, and/or assigns guarantee that all work performed under this Agreement fully meets the requirements thereof as to quality of workmanship and materials furnished, including without limitation materials to be of good quality and fit for their purpose and intended use. If any defects in materials or workmanship become evident prior to expiration of the term of this Agreement or release of the Performance Bond, whichever occurs first, 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 which the Agency 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 requirements within seven (7) calendar days after being notified in writing of failure to diligently pursue such compliance to completion, the Agency 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.

2. If, in the opinion of the Agency, nonconforming work creates a dangerous condition or requires immediate correction or repair to prevent further loss to the Agency or to prevent interruption of operations, the Agency shall attempt to give the Contractor notice of the same. If Contractor cannot be contacted or does not comply with the Agency's request for correction within a reasonable time as determined by the Agency, the Agency 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 the Agency will not relieve Contractor or Contractor's sureties or insurers of the guarantees and indemnities of this Agreement.

3. This section does not in any way limit the Agency's remedies available under the law, or the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer or supplier gives a longer guarantee period. Contractor agrees to act as a co-guarantor with such manufacturer or supplier and shall furnish the Agency 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.

OO. Records. The Contractor agrees that he or she and its subcontractors shall maintain and keep books, payrolls, invoices of materials, and records on a current basis, and recordings of all transactions pertaining to this Agreement in a form in accordance with generally acceptable accounting principles. Said books and records shall be made available to the City, the CSD, County of Riverside, 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 such periods of time as required by law, provided, however, notwithstanding any shorter period of retention, all books, records, and supporting detail shall be retained for a period of at least three (3) years after acceptance of the Project by the Agency.

PP. Performance. The parties do for themselves, their heirs, executors, administrators, successors and assigns agree to the full performance of all of the provisions herein contained. The Contractor may not, either voluntarily or by action of law, assign any

---

obligation assumed by the Contractor hereunder without prior written consent of the CSD Board.

QQ. Workers' Compensation. By my signature hereunder, as Contractor, I certify that 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 Agreement. Contractor agrees to waive its statutory immunity under any workers' compensation or similar statute, as respecting the Agency, and to require any and all subcontractors and any other person or entity involved in the Project to do the same.

RR. Independent Contractor Waiver and Civil Code Section 1542 Waiver. Contractor expressly waives any claims for any compensation or benefits afforded to CSD and/or City employees and not to independent contractors, and 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 does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

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. Contractor 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

SS. Acceptance of Work. Acceptance of the work shall be by action of the Agency's CSD Board or its designee. Neither the acceptance nor prior inspections or failure to inspect shall constitute a waiver by the Agency of any defects in the work. From and after acceptance, the work shall be owned and operated by the Agency. As a condition to acceptance, Contractor shall certify to the Agency in writing that all of the work has been performed in strict conformity with this Agreement and that all costs have been paid, satisfactorily to the Agency, guaranteeing such performance.

TT. Licensing. Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a Contractor may be referred to the Registrar, Contractors' State License Board, 3132 Bradshaw Road, Sacramento, CA 95826. Mailing address: P.O.Box 26000, Sacramento, CA 95826.

UU. City of Moreno Valley Business License. The Contractor and all subcontractors shall obtain and keep current a valid City of Moreno Valley Business License and all professional licenses, certifications and/or permits necessary for performing the services describe in this Agreement prior to commencement and throughout the term of this Agreement.

VV. Default.  
1. Failure or delay by any party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided



however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default within fifteen (15) days after receipt of written notice specifying such default and diligently completes such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

2. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

3. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

4. In the event that a default of any party to this Agreement may remain uncured for more than fifteen (15) days following written notice, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

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

XX. Conflicts of Interest. Contractor covenants that it does not have any interest, nor shall it acquire an interest, directly or indirectly, which would conflict in any manner with the performance of Contractor's services under this Agreement. In the event the Agency officially determines that Contractor must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Contractor shall file the subject Form 700 with City Hall, as specified under the Notice provisions of this Agreement, pursuant to the written instructions provided by the Agency.

YY. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Contractor:**

**Micon Construction  
1616 Sierra Madre Circle  
Placentia, CA 92870  
Business Phone: 800-949-0203  
Attn: Kim Garrigues**

**Agency:**

**Parks and Community Services  
14177 Frederick St  
Post Office Box 88005  
Moreno Valley, CA 92552-0805  
Attn: Tony Hetherman**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

---

- ZZ. Time of Essence. Time is of the essence for each and every provision of this Agreement.
- AAA. Agency's Right to Employ Other Contractors.
1. The Agency reserves the right to employ other contractors in connection with work ancillary to the Project. The Contractor shall be responsible for ascertaining the nature and extent of any simultaneous, collateral, and essential work by others and coordinating with the work by others. The Agency, other contractors and utilities shall have the right to operate within or adjacent to the Project site during the performance of such work.
  2. Should construction be under way by other forces or by other contractors within or adjacent to the limits of the work specified or should work of any other nature be under way by other forces within or adjacent to those limits, the Contractor shall cooperate with all the other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.
- BBB. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.
- CCC. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.
- DDD. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the parties, nor shall any provision of this Agreement be so construed.
- EEE. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original. All electronic signatures shall be deemed to be one and the same as original signatures.
- FFF. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that comes closest to expressing the intention of such invalid or unenforceable term.
- GGG. Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the Agency. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.
- HHH. Bonds (applicable when Project exceeds \$25,000.00), (Exhibit C)
1. Performance Bond. The Contractor shall furnish a satisfactory Performance Bond meeting all statutory requirements of the State of California on the form provided by the Agency. The bond shall be furnished as a guarantee of the faithful performance of the requirements of this Agreement as may be amended from time to time, including, but not limited to, for protection against liability for delays and damages (both direct and consequential) to the Agency and the Agency's consultants and other contractors, and to ensure all warranties, guarantees, and indemnity obligations, in an amount that shall remain equal to one hundred percent (100%) of the compensation to be paid Contractor under this Agreement. The Performance Bond shall remain in force until at least two (2) years 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 Contractor in writing.
-



2. Labor and Materials Payment Bond. The Contractor shall furnish a satisfactory Labor and Materials Payment Bond meeting all statutory requirements of the State of California on the form provided by the Agency in an amount that shall remain equal to one hundred percent (100%) of the compensation to be paid Contractor under this Agreement to secure payment of all claims, demands, stop notices, or charges 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 Project. The Labor and Materials Payment Bond shall remain in force and shall not be released until at least seven (7) months after the date of recordation of the Notice of Completion or Notice of Acceptance, whichever occurs first.
3. Bond Requirements.
  - a. 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 Agency. 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 Agreement. 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 Agreement compensation, the amount of each bond shall be deemed to increase and at all times remain equal to the Agreement amount. The signatures shall be acknowledged by a notary public. Every bond must display the surety's bond number and incorporate by reference the Agreement and the obligations to complete the Project in accordance with the Agreement. The terms of the bonds shall provide that the surety agrees that no change, extension of time, alteration, or modification of the Agreement 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 Agreement. The surety further agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Agency.
  - b. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.
  - c. Should any bond become insufficient, or should any of the sureties, in the opinion of the Agency, become non-responsible or unacceptable, the Contractor shall, within ten (10) calendar days after receiving notice from the Agency, provide written documentation to the satisfaction of the Agency that Contractor has secured new or additional sureties for the bonds; otherwise the Contractor shall be in default of the Agreement. No further payments shall be deemed due or will be made under the Agreement until a new surety(ies) qualifies and is accepted by the Agency.
- III. Non-Liability of City or CSD's Officers and Employees. No officer or employee of the City or CSD shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to Consultant or to its successor, or for any breach of any obligation of the terms of this Agreement.

**SIGNATURE PAGE TO FOLLOW**

---

IN WITNESS HEREOF, the parties have each caused their authorized representative to execute this Agreement.

**Moreno Valley Community Services District**

**Micon Construction Inc.**

By: \_\_\_\_\_  
**Thomas M. DeSantis**  
**Executive Director**

By: \_\_\_\_\_  
**Mitch Holle**

Title: \_\_\_\_\_  
**President**

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

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

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
**Patti Solano**  
Director, Parks and Community Services

By: \_\_\_\_\_  
**Mariia Los**

Title: \_\_\_\_\_  
**Secretary**

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

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

\_\_\_\_\_  
**Tony Hetherman**  
Parks Projects Coordinator

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

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney

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

Signature(s) must be accompanied by a completed notary certificate of acknowledgement attached hereto. **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. **The contract shall be notarized**

Attachments

- Exhibit A: Agency – Services to be provided to Contractor
- Exhibit B: Terms of Payment
- Exhibit C: Bond Forms
- Exhibit D: Bid Documents, Addenda, Special Provisions



## EXHIBIT A

### SERVICES TO BE PROVIDED TO CONTRACTOR

1. Furnish the Contractor all in-house data which is pertinent to services to be performed by the Contractor and which is within the custody or control of the Agency, including, but not limited to, copies of record and off-record maps and other record and off-record property data, right-of-way maps and other right-of-way data, pending or proposed subject property land division and development application data, all newly developed and pertinent design and project specification data, and such other pertinent data which may become available to the Agency.
  2. Provide timely review, processing, and reasonably expeditious approval of all submittals by the Contractor.
  3. Provide timely Agency staff liaison with the Contractor when requested and when reasonably needed.
-

**EXHIBIT B****TERMS OF PAYMENT**

1. The Agency will pay the Contractor and the Contractor agrees to receive and accept the prices set forth in the Bid Schedule as full compensation for the work required under the bid items awarded by the Agency, to wit, the **Base Bid** Item(s) in the sum total amount of **FIVE HUNDRED FOURTY-SIX THOUSAND, FIVE HUNDRED TWENTY-THREE, and 00/100 DOLLARS (\$546,523.00)**, subject to additions or reductions of the quantities of the various bid items at the unit prices bid, for furnishing all materials and for doing all the work contemplated and embraced under this Agreement; for all loss or damages arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work, until the work is accepted by the Board of Directors; for all expenses incurred by or in consequence of the suspension or discontinuance of work; and for well and faithfully completing the work, the whole thereof, in the manner and in accordance with the Bid Documents therefore and the requirements of the Engineer under them.
  2. A contingency of **FIFTY THOUSAND and 00/100 DOLLARS (\$50,000.00)** is added to the project's base bid. The contingency shall only be utilized with approval of the Director or his/her designee for items foreseen and/or unforeseen that have been added to the project by the Agency. All requests shall be documented in writing. (ONLY IF THERE IS A CONTINGENCY)
  3. The Contractor will obtain, and keep current during the term of this Agreement, the required City of Moreno Valley business license. Proof of a current City of Moreno Valley business license will be required prior to any payments by the Agency. Any invoice not paid because the proof of a current City of Moreno Valley business license has not been provided will not incur any fees, late charges, or other penalties. Complete instructions for obtaining a City of Moreno Valley business license are located at: [http://www.moval.org/do\\_biz/biz-license.shtml](http://www.moval.org/do_biz/biz-license.shtml)
  4. The Contractor shall meet with the Director or his/her designee monthly, prior to billing, to review and agree on quantities and work performed.
  5. The Contractor will electronically submit an invoice to the Agency as provided in this Agreement for progress payments along with documentation evidencing services completed to date. The progress payment is based on actual time and materials expended in furnishing authorized professional services since the last invoice. At no time will the Agency pay for more services than have been satisfactorily completed and the Agency determination of the amount due for any progress payment shall be final. The Contractor will submit all original invoices to Accounts Payable staff at [AccountsPayable@moval.org](mailto:AccountsPayable@moval.org) and to Tony Hetherman at [tonyh@moval.org](mailto:tonyh@moval.org).
  6. Accounts Payable questions can be directed to 951.413.3087.
  7. Questions regarding invoicing, quantities, and/or labor can be directed to Tony Hetherman at 951.413.3163.
  8. The Contractor agrees that Agency payments will be received via Automated Clearing House (ACH) Direct Deposit and that the required ACH Authorization form will be completed prior to any payments by the Agency. Any invoice not paid because the completed ACH Authorization Form has not been provided will not incur any fees, late charges, or other penalties. The ACH Authorization Form is located at: [http://www.moval.org/city\\_hall/forms.shtml#bf](http://www.moval.org/city_hall/forms.shtml#bf)
-

9. The minimum information required on all invoices is:
- A. Vendor Name, Mailing Address, and Phone Number
  - B. Invoice Date
  - C. Vendor Invoice Number
  - D. City-provided Reference Number (e.g. Project, Activity, and Purchase Order No.)
  - E. Detailed work hours by class title (e.g. Manager, Technician, or Specialist), services performed and rates, explicit portion of a contract amount, or detailed billing information that is sufficient to justify the invoice amount; single, lump amounts without detail are not acceptable.
10. The Agency shall pay the Contractor for all invoiced, authorized professional services within thirty (30) days of receipt of the invoice for same, provided the services reflected in the invoice were performed to the reasonable satisfaction of the Agency in accordance with the terms of this Agreement.
11. Pursuant to Public Contract Code section 9203, the Agency shall retain no less than five (5) percent of the compensation to be paid to Contractor which shall be released to the Contractor no later than sixty (60) days from the date of the Agency's acceptance of the work pursuant to this Agreement.
-

**EXHIBIT C**  
**BONDS**

---

BOND NO. \_\_\_\_\_

**FAITHFUL PERFORMANCE BOND  
(100% of Total Contract Price)**

**Moreno Valley Community Services District of the City of Moreno Valley  
COMMUNITY PARK SKATE PARK  
PROJECT NO. 807-0048**

KNOW ALL MEN AND WOMEN BY THESE PRESENTS:

THAT WHEREAS, the Moreno Valley Community Services District of the City of Moreno Valley, County of Riverside, State of California, known as "CSD," has awarded to **MICON CONSTRUCTION** 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 **Executive Director**, and identified as **Project No. 807-0048**, 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 Moreno Valley Community Services District of the City of Moreno Valley, County of Riverside in the penal sum of **FIVE HUNDRED FORTY-SIX THOUSAND, FIVE HUNDRED TWENTY-THREE, and 00/100 DOLLARS (\$546,523.00)**, lawful money of the United States, to be paid to the said CSD 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 CSD, 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 CSD and judgement is recovered, the Surety shall pay all costs incurred by the CSD in such suit, including a reasonable attorney fee to be fixed by the court.

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 Bidder's and Surety's corporate seal may be affixed hereto.



BOND NO. \_\_\_\_\_

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

**Moreno Valley Community Services District of the City of Moreno Valley  
COMMUNITY PARK SKATE PARK  
PROJECT NO. 807-0048**

KNOW ALL MEN AND WOMEN BY THESE PRESENTS

THAT WHEREAS, the Moreno Valley Community Services District of the City of Moreno Valley, County of Riverside, State of California, known as "CSD," has awarded to **MICON CONSTRUCTION** 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 **Executive Director**, and identified as **Project No. 807-0048**, 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 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 Moreno Valley Community Services District of the City of Moreno Valley, County of Riverside in the penal sum of **FIVE HUNDRED FORTY-SIX THOUSAND, FIVE HUNDRED TWENTY-THREE, and 00/100 DOLLARS (\$546,523.00)**, lawful money of the United States, to be paid to the said CSD 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 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 3181, 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 CSD or other person entitled to bring such an action and judgement is recovered, the Surety shall pay all costs incurred by the CSD in such suit, including a reasonable attorney fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons described in the State of California Civil Code Section 3181, 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 Bidder's and Surety's corporate seal may be affixed hereto.