

**SECTION 00506 - AGREEMENT BETWEEN COUNTY AND CONTRACTOR**

**AGREEMENT**

**BETWEEN**

**COUNTY AND CONTRACTOR**

**AGREEMENT**

Made as of the 24<sup>th</sup> day of October in the year of Two Thousand and Twenty-Three.

**BETWEEN** the County:

**COUNTY OF TULARE, STATE OF CALIFORNIA**

and the Contractor:

The Project:

Tulare County – Mooney Grove Park Pond Walkway Project, 27000 S. Mooney Blvd., Visalia, CA 93277

The County's Representative:

Albert Cendejas – Tulare County Parks Projects - County of Tulare

The Project Consultant:

MVE Inc. 866-526-4214

The County and the Contractor agree as set forth below.

**ARTICLE 1**

**THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, the General Conditions and those documents enumerated in Sub-paragraph 1.1.1 of the General Conditions, which documents are hereby incorporated into this Agreement and made a part hereof.

**ARTICLE 2**

**THE WORK**

The Contractor shall perform all the Work required by the Contract Documents for the Mooney Grove Park Pond Walkway Project, 27000 S. Mooney Blvd., Visalia, CA 93277.

**ARTICLE 3**

**TIME OF COMMENCEMENT AND COMPLETION**

The Work to be performed under this Contract shall be commenced within Ten (10) calendar days after the date the Notice to Proceed is received by the Contractor and, subject to authorized adjustments, Completion of the Work shall be achieved for The Project within 120 calendar days from the date established in the notice to proceed. The Agreement includes provisions for Liquidated Damages if the Project is not completed within the agreed time of completion. If Contractor fails to complete the Work within the Contract Time, Contractor shall pay to County, as

liquidated damages and not as a penalty, the sum of \$1000.00 for each day after the expiration of the Contract Time that the Work remains incomplete. County and Contractor agree that if the Work is not completed within the Contract Time, County's damages would be extremely difficult or impracticable to determine and that the aforesaid amounts are reasonable estimates of and reasonable sums for such damages. County may deduct any liquidated damages due from Contractor from any amounts otherwise due to Contractor under the Contract Documents. This provision shall not limit any right or remedy of County in the event of any other default of Contractor other than failing to complete the Work within the Contract Time.

#### **ARTICLE 4**

#### **CONTRACT SUM**

The County shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order or as otherwise provided in the Contract Documents, the Sum of \$ 2,113,596.61.

#### **ARTICLE 5**

#### **PROGRESS PAYMENTS**

Based upon Applications for Payment submitted to the County by the Contractor and Project Certificates for Payment issued by the County's Representative, the County shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents as follows:

Progress Payments: The Contractor shall, on or before the first day of each month, make an estimate of the work performed during the preceding month and submit same to the County's Representative for checking and approval. On or about the 20th day of the month, following the month in which the work was performed, the County shall pay to the Contractor ninety-five (95%) percent of the value of said work in place, as checked and approved by the County's Representative. The balance of five (5%) percent of the estimate shall be retained by the County until the time of final acceptance of said work.

#### **ARTICLE 6**

#### **FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the County to the Contractor when the Work has been completed; the Contract fully performed, the County's Representative has issued a Project Certificate for Payment, which approves the final payment due the Contractor and the Board of Supervisors of Tulare County has formally accepted the project as complete by Resolution.

#### **ARTICLE 7**

#### **MISCELLANEOUS PROVISIONS**

7.1 Terms used in this Agreement, which are defined in the "GENERAL CONDITIONS" of the contract shall have the meanings designated in those Conditions.

7.2 Notices shall be addressed as follow:



**COUNTY****BOARD OF SUPERVISORS**

County of Tulare  
County Civic Center  
2800 W. Burrel Avenue  
Visalia, CA 93291  
(559) 636-5000

**COUNTY'S REPRESENTATIVE**

Albert Cendejas  
County of Tulare  
General Services Agency  
Tulare County Parks Projects  
2637 W. Burrel Avenue Suite 200  
Visalia, CA 93291  
(559) 205-1100

**CONTRACTOR**

SW CONSTRUCTION, INC.  
4301 GRISSOM ST. STE D  
BAKERSFIELD, CA 93313  
661-398-2289

**SURETY**

MM BONDING ? INSURANCE  
9452 TELEPHONE RD # 125  
VENTURA, CA 93004

- 7.3 **PREVAILING WAGES.** The Contractor agrees that State Prevailing Wages apply to this Project, and that the Contractor will pay the rates for each trade or craft and shall require the subcontractors on the project to pay the rates for each trade and craft. The State Wage Determinations are on file with the Tulare County General Services Agency, 2637 W. Burrel Avenue Suite 200, Visalia, California, and will be made available to any interested person on request; and the Payroll Submittal Information attached hereto as Section 00508 are incorporated herein as if set forth in full and are a part of this Contract. The Contractor agrees to repay the County any and all amounts paid to any subcontractor in violation of Public Contract Code Section 6109.
- 7.4 **COMPLIANCE WITH LAW:** CONTRACTOR shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.
- 7.5 **RECORDS AND AUDIT:** CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, CONTRACTOR shall make such records available within Tulare County to the Auditor of Tulare County and to his agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.
- 7.6 **INDEPENDENT CONTRACTOR STATUS:**  
a. This Agreement is entered into by both parties with the express understanding that CONTRACTOR will perform all services required under this Agreement as an

independent contractor. Nothing in this Agreement shall be construed to constitute the CONTRACTOR or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

b. CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- i. Withhold FICA (Social Security) from CONTRACTOR'S payments.
- ii. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
- iii. Withhold state or federal income tax from payments to CONTRACTOR.
- iv. Make disability insurance contributions on behalf of CONTRACTOR.
- v. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

c. Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

7.7 **INDEMNIFICATION AND DEFENSE:** CONTRACTOR shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees in accordance with paragraph 4.17 of the General Conditions. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CONTRACTOR under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CONTRACTORS failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

The absence of insurance or insufficient insurance limits will not eliminate the obligation to indemnify and defend hereunder.

7.8 **CONFLICT OF INTEREST:**

a. CONTRACTOR agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interests or appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this



purpose, from the making of any decision on behalf of COUNTY in which such officer, employee or consultant has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

b. CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interests' laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

- 7.9 **ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.
- 7.10 **HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.
- 7.11 **CONSTRUCTION:** This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.
- 7.12 **NO THIRD PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.
- 7.13 **GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County California.
- 7.14 **WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.
- 7.15 **EXHIBITS AND RECITALS:** The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
- 7.16 **CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.
- 7.17 **FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts which may be reasonably required to effect the purposes of this

Agreement.

- 7.18 **ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.
- 7.19 **ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY.
- 7.20 **DISPUTES AND DISPUTE RESOLUTION:** The Parties shall continue to perform their responsibilities under this Agreement during any dispute arising out of or relating to this Agreement or the breach thereof. If such a dispute arises between the Parties and if said dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by nonbinding mediation before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The mediator shall be mutually selected by the Parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each Party. All costs and fees required by the mediator shall be split equally by the Parties; otherwise, each Party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, or such other timeframe as the Parties may agree, then either Party may pursue litigation to resolve the dispute. The provisions of section 7.8 of the General Conditions shall apply to the resolution of disputes under this Agreement.
- 7.21 **UNEMPLOYMENT INSURANCE COMPLIANCE:** CONTRACTOR acknowledges that this Agreement is subject to filing obligations pursuant to Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include the CONTRACTOR'S full name, social security number, address, the date this contract was executed, the total amount of the contract, the contract's expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make such information available and to complete DE Form 542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.
- 7.22 **REDUCTION IN FUNDING:** Contractor expressly understands and agrees that COUNTY is dependent upon certain Federal and/or State and/or local funding to pay the services provided in this contract. If such Federal and/or State and/or local funding is discontinued or reduced, County shall have the right to terminate the contract. In either event County shall provide CONTRACTOR with at least 30 days prior written notice of such termination.
- 7.23 **ORDER OF PRECEDENCE:** In the event of a conflict between or among the Contract Documents, the order of precedence shall be first the provisions of the main body of this Agreement, i.e., those provisions set forth in the Articles of the Agreement, and then General Conditions, followed by the other documents described in Sub-paragraph 1.1.1 of the General Conditions.
- 7.24 **AUTHORITY:** Each Party represents and warrants to the other that the individual(s) signing this Agreement on its behalf are duly authorized and have legal capacity to sign this

Agreement and bind them to its terms. Each Party acknowledges that the other Party has relied upon this representation and warranty in entering into this Agreement.

- 7.25 **COUNTERPARTS:** The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together form one single document. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature (including portable document format) by the Parties and the receiving Party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

This Agreement entered into as of the day and year first written above.

COUNTY

CHAIR, BOARD OF SUPERVISORS

CONTRACTOR

Signature

ELIAS GARCIA

Typed Name

Signature

José Barba

Typed Name

COUNTY OF TULARE  
Civic Center  
Visalia, CA 93291

4301 GRISCOM ST STE D  
BAKERSFIELD, CA 93313

Address

ATTEST: Jason T. Britt  
County Administrative Officer/Clerk of  
The Board of Supervisors of the  
County of Tulare

BY:

APPROVED AS TO FORM

Patrick Beck

County Counsel Matter No. 2023656



END OF SECTION 00506