

OWNER - CONTRACTOR AGREEMENT

EI Toyon Park Proposition 68 Improvements, CIP No. 22-26

This Owner-Contractor Agreement (“Agreement”) is made by and between the City of National City, 1243 National City Boulevard National City, California 91950 and **Dick Miller Inc. (“Contractor”)**, 930 Boardwalk Suite H, San Marcos, California 92078 on the **19th day of November, 2024**, for the construction of the above referenced Project.

In consideration of the mutual covenants and agreements set forth herein, the Owner and Contractor have mutually agreed as follows:

1. CONSTRUCTION

The Contractor agrees to do all the work and furnish all the labor, services, materials and equipment necessary to construct and complete the Project in a turn-key manner in accordance with this Agreement and all documents and plans referenced in Exhibit “A”, (hereinafter “Contract Documents”), in compliance with all relevant Federal, State of California, County of San Diego and City of National City codes and regulations, and to the satisfaction of the Owner.

2. CONTRACT PRICE

Owner hereby agrees to pay and the Contractor agrees to accept as full compensation for constructing the project in accordance with these Contract Documents in an amount not to exceed the contract price as set forth in Exhibit “B” attached hereto and incorporated herein by reference. Payments to the Contractor shall be made in the manner described in the Special Provisions.

3. TIME FOR PERFORMANCE

Time is of the essence for this Agreement and the Contractor shall construct the project in every detail to a complete and turn-key fashion to the satisfaction of the Owner within the specified duration set forth in the Special Provisions.

4. NON-DISCRIMINATION

In the performance of this Agreement, the Contractor shall not refuse or fail to hire or employ any qualified person, or bar or discharge from employment any person, or discriminate against any person, with respect to such person's compensation, terms, conditions or privileges of employment because of such person's race, religious status, sex or age.

5. AUTHORIZED OWNER REPRESENTATIVES

On behalf of the Owner, the Project Manager designated at the pre-construction meeting shall be the Owner's authorized representative in the interpretation and enforcement of all Work performed in connection with this Agreement.

6. WORKERS' COMPENSATION INSURANCE

a) By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code, which requires 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.

b) The Contractor shall require each subcontractor to comply with the requirements of Section 3700 of the Labor Code. Before commencing any Work, the Contractor shall cause each subcontractor to execute the following certification:

"I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for worker's 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."

7. ENTIRE AGREEMENT; CONFLICT

The Contract Documents comprise the entire agreement between the Owner and the Contractor with respect to the Work. In the event of conflict between the terms of this Agreement and the bid of the Contractor, then this Agreement shall control and nothing herein shall be considered as an acceptance of the terms of the bid conflicting herewith.

8. MAINTENANCE OF AGREEMENT DOCUMENTATION

Contractor shall maintain all books, documents, papers, employee time sheets, accounting records and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by Owner and copies thereof shall be furnished to Owner if requested.

9. INDEPENDENT CONTRACTOR

At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee, agent, partner or joint venturer of the Owner. Owner shall have the right to control Contractor insofar as the results of Contractor's

services rendered pursuant to this Agreement; however, Owner shall not have the right to control the means by which Contractor accomplishes such services.

10. LICENSES AND PERMITS

Contractor represents and declares to Owner that it has all licenses, permits, qualifications and approvals of whatever nature which are legally required to practice its profession. Contractor represents and warrants to Owner that Contractor shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, qualifications or approvals which are legally required for Contractor to practice its profession.

11. GOVERNING LAW, VENUE

This Agreement and the Contract Documents shall be construed under and in accordance with the laws of the State of California, and the appropriate venue for any action or proceeding arising from this Agreement and/or the Contract Documents shall be had in the Superior Court of San Diego, Central Branch.

12. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original.

13. FALSE CLAIMS

Contractor acknowledges that if a false claim is submitted to the Owner, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the Owner seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

I have read and understood all of the provisions of this Section 13, above:

(Initial)

(Initial)

14. AGREEMENT MODIFICATION

This Agreement and the Contract Documents may not be modified orally or in any manner other than by an amendment in writing and signed by the Owner and the Contractor.

IN WITNESS WHEREOF this Agreement is executed as of the date first written above.

Owner:

Contractor:
Dick Miller Inc.

Ron Morrison
Mayor, City of National City

(Owner/Officer signature)

APPROVED AS TO FORM:

Print name and title

(Second officer signature if a corporation)

By: _____
Barry J. Schultz
City Attorney, City of National City

Print name and title

Contractor's City Business License No.

State Contractor's License No. and Class

Business street address

City, State and Zip Code

EXHIBIT A

CONTRACT DOCUMENTS

Owner/Contractor Agreement

Bid Schedule

Addenda

Plans

Special Provisions (Specifications)

San Diego County Regional Standard Drawings

City of National City Standard Drawings

Standard Specifications for Public Works Construction and Regional Supplements
(Greenbook)

State Standard Specifications

State Standard Plans

California Building, Mechanical, Plumbing and Electrical Codes

Permits issued by jurisdictional regulatory agencies

Electric, gas, and communications companies specifications and standards

Sweetwater Authority specifications and standards

Specifications, standards and requirements of MTS, BNSF, SANDAG, Port of San Diego and all other agencies that may be adjacent and/or affected by the project.

EXHIBIT B

CONTRACT PRICE

(NOTE - TO BE COMPLETED TO CONFORM WITH BID SCHEDULE ITEMS)

CORPORATE CERTIFICATE

I, _____ certify that I am the Secretary of the Corporation named as Contractor in the foregoing Contract; that _____, who signed said contract on behalf of the Contractor, was then _____ of said Corporation; that said contract was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

I, _____ certify that I am the Secretary of the Corporation named as Contractor in the foregoing Contract; that _____, who signed said contract on behalf of the Contractor, was then _____ of said Corporation; that said contract was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

Corporate Seal: _____

PARTNERSHIP CERTIFICATE

STATE OF _____)
) ss
COUNTY OF _____)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for said County and State, personally appeared:

_____ (Notary Seal)

known to me to be _____ of the partners of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

Signature: _____

Name (Type or Print): _____
(Notary Public in and for said County and State)

My Commission expires: _____

PERFORMANCE BOND

WHEREAS, the City Council of the City of National City, by Resolution No. 2024-_____, on the **19th day of November, 2024**, has awarded **Dick Miller Inc.**, hereinafter designated as the "Principal", the **El Toyon Park Proposition 68 Improvements, CIP No. 22-26**

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract.

NOW, THEREFORE, we, the Principal and _____ as surety, are held and firmly bound unto the City of National City, hereinafter called the "City", in the penal sum of **Five Million, Three Hundred Thirty Four Thousand, Seven Hundred Eighty and 86 Cent (\$5,334,780.86)** dollars lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the above bounden Principal, his/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 agreements in the said contract any alteration thereof made as therein provides, on his or their part, to be kept and performed at the time and in the amount therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City of National City, its officers, agents, employees, and volunteers as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed herein or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or additions to the terms of the contract or to the work or to the specifications.

PERFORMANCE BOND

ATTORNEY-IN-FACT ACKNOWLEDGEMENT OF SURETY

STATE OF _____)
) ss
COUNTY OF _____)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of the _____, the corporation named as Surety in said instrument, and acknowledged to me that he subscribed the name of said corporation thereto as Surety, and his own name as attorney-in-fact.

NOTE: Signature of those executing for Surety must be properly acknowledged.	NOTE: The Attorney-in-fact must attach a certified copy of the Power of Attorney.
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Signature: _____

Name (Type or Print): _____

Notary Public in and for said County and State

My Commission expires: _____

PAYMENT BOND

WHEREAS, the City Council of the City of National City, by Resolution No. 2024-_____, on the **19th day of November, 2024**, has awarded **Dick Miller Inc.**, hereinafter designated as the "Principal", the **El Toyon Park Proposition 68 Improvements, CIP No. 22-26**.

WHEREAS, said Principal is required by Chapter 5 (commencing at Section 3225) and Chapter 7 (commencing at Section 3247), Title 15, Part 4, Division 3 of the California Civil Code to furnish a bond in connection with said contract;

NOW, THEREFORE, we, the Principal and _____ as surety, are held and firmly bound unto the City of National City, hereinafter called the "City", in the penal sum of **Five Million, Three Hundred Thirty Four Thousand, Seven Hundred Eighty and 86 Cent (\$5,334,780.86)** dollars lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his/her or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named in Section 3181 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for 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 subcontractors pursuant to Section 18806 of the Revenue and Taxation Code, with respect to such work and labor the Surety will pay for the same in an amount not exceeding the sum hereinafter specified, and also, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the Court.

This Bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

ATTORNEY-IN-FACT ACKNOWLEDGEMENT OF SURETY

STATE OF _____)
) ss
COUNTY OF _____)

On this day _____ of _____, 20____, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of the _____, the corporation named as Surety in said instrument, and acknowledged to me that he subscribed the name of said corporation thereto as Surety, and his own name as attorney-in-fact.

NOTE: Signature of those executing for Surety must be properly acknowledged.	NOTE: The Attorney-in-fact must attach a certified copy of the Power of Attorney.
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Signature: _____

Name (Type or Print): _____
(Notary Public in and for said County and State)

My Commission expires: _____

ATTACH ALL BONDS