

## **AGREEMENT FOR CONSTRUCTION SERVICES**

This agreement for the provision of construction services ("Agreement") is made and entered into this 21<sup>st</sup> day of July, 2015 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City"), and Ames Construction, Inc. ("Contractor"). City and Contractor are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

In consideration of the mutual promises contained herein, City and Contractor agree as follows:

### **ARTICLE 1 - ENGAGEMENT OF CONTRACTOR**

- 1.1 City hereby retains Contractor to perform construction services at locations specified by City's Quality of Life Department (the "Services").
- 1.2 Contractor and its subcontractors shall possess all appropriate State contractors' licenses required for the performance of the Services, and shall not be debarred pursuant to Labor Code sections 1777.1 and 1777.7.

### **ARTICLE 2 - RESPONSIBILITIES OF CONTRACTOR**

- 2.1 The specific Services which Contractor shall perform are more particularly described in Exhibit "A," which is attached hereto and incorporated herein by this reference.
- 2.2 Contractor shall comply with all applicable federal, state and local laws and regulations in the performance of the Services including, but not limited, to all applicable Labor Code and prevailing wage laws and non-discrimination laws, and the Americans with Disabilities Act. Pursuant to Labor Code section 1773.2, copies of the prevailing rates of per diem wages as determined by the Director of the California Department of Industrial Relations for each craft, classification or type of worker needed to perform the Services are on file at City's Municipal Utilities and Engineering Department, located at the Civic Center, 35 Cajon Street, Suite 15A (Mailing: P.O. Box 3005), Redlands, California 92373.
- 2.3 Contractor acknowledges that if it violates the Labor Code provisions relating to prevailing wages that City may enforce such provisions by withholding payments to Contractor or its subcontractors pursuant to Labor Code section 1771.6.
- 2.4 If Contractor executes an agreement with a subcontractor to perform any portion of the Services, Contractor shall comply with Labor Code sections 1775 and 1777.7, and shall provide the subcontractor with copies of the provisions of Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815. Contractor acknowledges that the statutory provisions establishing penalties for failure to comply with state wage and hour laws and to pay prevailing wages may be enforced by City pursuant to Labor Code sections 1775 and 1813.

- 2.5 Contractor and its subcontractors shall comply with the provisions of Labor Code section 1776 regarding payroll records maintenance, certifications, retention and inspection.
- 2.6 Contractor acknowledges that eight (8) hours constitutes a legal day's work pursuant to Labor Code section 1810.
- 2.7 Contractor shall comply with the provisions of Labor Code section 1777.5 as to apprenticeships, and Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815.
- 2.8 Contractor shall guarantee the Services against defective materials or workmanship for a period of (1) year from the date of City's issuance of a Notice of Completion for the Services, except where longer warranty periods are specifically provided by manufacturer of equipment installed in connection with the provision of the Services. During the (1) one year warranty period, should Contractor fail to remedy defective material and/or workmanship, or to make replacements within five (5) days after written notice by City, it is agreed that City may make such repairs and replacement and the actual cost of the required labor and materials shall be chargeable to and payable by Contractor or his surety.

All work which has been rejected by City, shall be remedied, or removed and replaced by the Contractor at its own expense. Any defective material or workmanship which may be discovered before final acceptance of the Services or within (1) one year from the completion date specified in the Notice of Completion, shall be corrected immediately by Contractor at its own expense notwithstanding that such defects may have been overlooked in previous inspections and estimates. Failure to inspect work at any stage shall not relieve the Contractor from any obligation to perform sound and reliable work as herein described. It is Contractor's responsibility to deliver at the time of final acceptance a completed project that complies in all details with this Agreement.

City will endeavor to locate any errors or defective materials or workmanship and call them to the attention of Contractor prior to subsequent work being performed. However, City is under no obligation to do so and shall not be held liable because errors or defective material or workmanship by Contractor are not discovered prior to subsequent work.

Nothing in this section shall be construed to limit the rights of City to immediately correct conditions which may be unsafe or which may pose a public health nuisance. Should said conditions later be found to be caused by defective material and/or workmanship, Contractor and its surety shall reimburse City for costs reasonably incurred while attending the situation.

### ARTICLE 3 - PERIOD OF SERVICE

- 3.1 Contractor shall commence the Services upon City's delivery to Contractor of a written "Notice to Proceed."
- 3.2 Contractor shall commence the Services within ten (10) calendar days from and after the date of the City's issuance to Contractor of the Notice to Proceed.

#### ARTICLE 4 - PAYMENT AND NOTICE

- 4.1 City shall not be obligated to pay Contractor compensation for the Services. Contractor acknowledges and agrees it is donating the Services to the City.
- 4.2 Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the date of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a Party may provide notice in accordance with this section:

City:

Fred Cardenas  
Quality of Life Department  
City of Redlands  
35 Cajon Street, Suite 222  
P.O. Box 3005 (mailing)  
Redlands, CA 92373

Contractor:

Gerard F Miller  
Ames Construction, Inc.  
391 N. Main St. #302  
Corona, CA 92880

#### ARTICLE 5 - INSURANCE AND INDEMNIFICATION

- 5.1 All insurance required by this Agreement shall be maintained by Contractor throughout Contractor's performance of the Services, and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City.
- 5.2 Workers' Compensation and Employer's Liability insurance in the amount that meets statutory requirements with an insurance carrier acceptable to City, or certification to City that Contractor is self-insured or exempt from the workers' compensation laws of the State of California. Contractor shall provide City with Exhibit "C," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference prior to occupancy of the Premises.
- 5.3 Contractor shall secure and maintain in force throughout its performance of the Services comprehensive general liability insurance, with carriers acceptable to City, with minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for public liability, property damage and personal injury. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City. A certificate of insurance and endorsements shall be delivered to City prior to commencement of the Services.

- 5.4 Contractor shall secure and maintain in force throughout its performance of the Services business automobile liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall include all Contractor owned vehicles used for the Services, hired and non-owned vehicles, and employee non-ownership vehicles. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City. A certificate of insurance and endorsements shall be delivered to City prior to commencement of the Services.
- 5.5 Contractor shall indemnify, hold harmless and defend City and its elected officials, employees and agents from and against any and all claims, losses and liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by any negligent or intentionally wrongful act or omission of Contractor, and its officers, employees and agents, in performing the Services.
- 5.6 Contractor is expressly prohibited from assigning any of the work associated with the Services without the prior written consent of City. In the event of agreement by the Parties to assign a portion of the Services, Contractor shall add the assignee as an additional insured to its insurance policies and provide City with the insurance endorsements prior to any work being performed by the assignee. Assignment does not include printing or other customary reimbursable expenses that may be provided for in this Agreement.

#### ARTICLE 6 - GENERAL CONSIDERATIONS

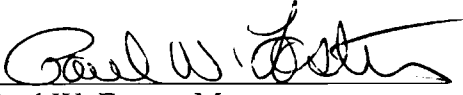
- 6.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to recover its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.
- 6.2 All documents, records, drawings, electronic data files and data base, photographic prints and negatives, designs and specifications, cost estimates, and other documents developed by Contractor for the Services shall become the property of City and shall be delivered to City upon completion of the Services.
- 6.3 Contractor is, for all purposes under this Agreement, an independent contractor with respect to the performance of the Services and not an employee of City. All personnel employed by Contractor to perform the Services are for its account only, and in no event shall Contractor or any personnel retained by it be deemed to have been employed by City or engaged by City for the account of, or on behalf of, City. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the Parties.
- 6.4 Unless earlier terminated as provided for below, this Agreement shall terminate upon

completion and acceptance of the Project by City.

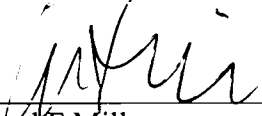
- 6.5 City may terminate this Agreement for any reason, at any time at its sole discretion, upon two (2) calendar days prior written notice to Contractor.
- 6.6 Upon receipt of a termination notice, Contractor shall (1) promptly discontinue all work associated with the Services and (2) deliver or otherwise make available to City, copies of any data, design calculations, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by Contractor in performing the Services. Contractor shall be compensated on a pro-rata basis for any work completed up until notice of termination.
- 6.7 This Agreement, including the exhibits incorporated by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein and any prior negotiations, proposals and agreements relating to the subject matter hereof are superseded by this Agreement. Any amendment to this Agreement shall be in writing and approved by City and Contractor.
- 6.8 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, duly authorized representatives of the Parties have signed in confirmation of this Agreement.

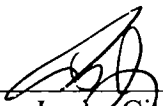
CITY OF REDLANDS

By   
Paul W. Foster, Mayor

AMES CONSTRUCTION, INC.

  
Gerard F Miller  
Senior Vice President

ATTEST:

  
Sam Irwin, City Clerk

**EXHIBIT “A”**  
**Scope of Services**  
**\*\*DONATION\*\***

- Clean fill dirt (approx. 7000 Cubic Yards) to fill the Prospect Park Reservoir.
- Break out and grinding of concrete from the upper part (6 feet) of the reservoir wall and the “vault” area.
- Break out holes in the bottom of the reservoir

## EXHIBIT "B"

### LABOR AND MATERIAL BOND

Bond No. 106307108

Whereas, the City Council of the City of Redlands, State of California, and Ames Construction, Inc., 391 N Main Street, Suite 302, Corona, CA 92880 (hereinafter designated as "Principal") have entered into an agreement (the "Agreement") whereby Principal agrees to install and complete certain designated public improvements (the "Work"), which said agreement, dated July 21, 2015, and identified as Prospect Park Reservoir - Fill Dirt Hauling and Repurposing Project is hereby referred to and made a part hereof; and

Whereas, under the terms of the Agreement, Principal is required before commencing the performance of the Work, to file a good and sufficient Labor and Material bond with the City of Redlands to secure the claims to which reference is made in Title 3 (commencing with Section 9550) of Part 6 of Division 4 of the Civil Code of the State of California.

Now, therefore, said Principal and the undersigned as corporate surety, are held firmly bound unto the City and all contractors, subcontractors, laborers, material men and other persons employed in the performance of the Agreement and referred to in the aforesaid Code of Civil Procedure in the sum of Seventy-seven Thousand Five Hundred Ten And No/100 Dollars (\$77,510.00) for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 3 (commencing with Section 9550) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

In witness whereof, this instrument has been duly executed by the Principal and surety above named, on July 21, 2015.

(SEAL)

Ames Construction, Inc.

(Contractor)

(Signature) Michael J. Kellen,  
Secretary/Chief Financial Officer

(SEAL)

Travelers Casualty and Surety Company of America

(Surety)

BY:

(Signature) R. Scott Egginton, Attorney-in-Fact

Address:

One Tower Square

Hartford, CT 06183

(Seal and Notarial Acknowledgment of  
Surety)

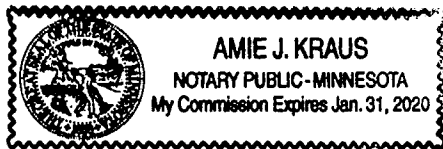
Telephone (860) 277-0111



### CORPORATE ACKNOWLEDGMENT

State of Minnesota )  
County of 17th ) ss

On this 21 day of July, 2015, before me appeared Michael J. Kellen, to me personally known, who, being by me duly sworn, did say that he/she is the Secretary/Chief Financial Officer of Ames Construction, Inc., a corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was executed in behalf of said corporation by authority of its Board of Directors, and that said Michael J. Kellen acknowledged said instrument to be the free act and deed of said corporation.

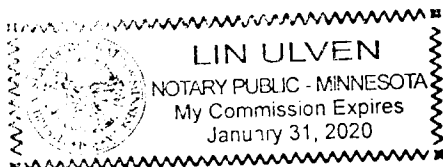


Amie J. Kraus  
Notary Public 17th County, Minnesota  
My commission expires 1/31/2020

### SURETY ACKNOWLEDGMENT

State of Minnesota )  
County of Hennepin ) ss

On this 21st day of July, 2015, before me appeared R. Scott Egginton, to me personally know, who being by me duly sworn, did say that (s)he is the Attorney-in-Fact of Travelers Casualty and Surety Company of America, a corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was executed in behalf of said corporation by authority of its Board of Directors; and that said R. Scott Egginton acknowledged said instrument to be the free act and deed of said corporation.



[Signature]  
Notary Public Ramsey County, Minnesota  
My commission expires 1/31/2020



## POWER OF ATTORNEY

Farmington Casualty Company  
 Fidelity and Guaranty Insurance Company  
 Fidelity and Guaranty Insurance Underwriters, Inc.  
 St. Paul Fire and Marine Insurance Company  
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
 Travelers Casualty and Surety Company  
 Travelers Casualty and Surety Company of America  
 United States Fidelity and Guaranty Company

Attorney-In Fact No. 229381

Certificate No. 006330642

**KNOW ALL MEN BY THESE PRESENTS:** That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

John E. Tauer, Linda K. French, R. W. Frank, Craig Remick, Rachel Thomas, Nicole Stillings, Joshua R. Loftis, Brian J. Oestreich, Sandra M. Doze, Jerome T. Ouimet, D. R. Dougherty, Jack Cedarleaf II, Kurt C. Lundblad, Melinda C. Blodgett, R. C. Bowman, R. Scott Egginton, Ted R. Jorgensen, Emily Keiser, and Lin Ulven

of the City of Minneapolis, State of Minnesota, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 8th day of May, 2015.

Farmington Casualty Company  
 Fidelity and Guaranty Insurance Company  
 Fidelity and Guaranty Insurance Underwriters, Inc.  
 St. Paul Fire and Marine Insurance Company  
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
 Travelers Casualty and Surety Company  
 Travelers Casualty and Surety Company of America  
 United States Fidelity and Guaranty Company



State of Connecticut  
 City of Hartford ss.

By:

Robert L. Raney, Senior Vice President

On this the 8th day of May, 2015, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.  
 My Commission expires the 30th day of June, 2016.



*Marie C. Tetreault*  
 Marie C. Tetreault, Notary Public

## EXHIBIT "C"

### WORKERS' COMPENSATION INSURANCE CERTIFICATION

Every employer, except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

CHECK ONE

☒ 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 and activities required or permitted under this Agreement. (Labor Code §1861).

☐ I affirm that at all times, in performing the work and activities required or permitted under this Agreement, I shall not employ any person in any manner such that I become subject to the workers' compensation laws of California. However, at any time, if I employ any person such that I become subject to the workers' compensation laws of California, immediately I shall provide the City with a certificate of consent to self-insure, or a certification of workers' compensation insurance.

I certify under penalty of perjury under the laws of the State of California that the information and representations made in this certificate are true and correct.

Ames Construction, Inc.

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

By: \_\_\_\_\_

Gerard F Miller,  
Senior Vice President