

A G R E E M E N T

KNOW ALL MEN BY THESE PRESENTS: The following Agreement is made and entered into, in duplicate, as of the date executed by the City Clerk and the Mayor, by and between **TSR Construction and Inspection**, hereinafter referred to as the "CONTRACTOR" and the CITY OF UPLAND, hereinafter referred to as "CITY."

A. Recitals.

- (i) WHEREAS, Pursuant to Notice Inviting Sealed Bids or Proposals, bids were received, publicly opened, and declared on the date specified in said notice; and,
- (ii) WHEREAS, CITY did accept the bid of CONTRACTOR as the lowest responsible bidder; and,
- (iii) CITY has authorized the City Clerk and Mayor to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the construction of **Project No. 8411, SP/PE Trail Storm Drain Improvements, Bid No. 2021-02**, ("the project" hereinafter).

B. Terms.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed:

1. **GENERAL SCOPE OF WORK:** CONTRACTOR shall furnish all necessary labor, tools, materials, appliances, and equipment for construction of **Project No. 8411, SP/PE Trail Storm Drain Improvements, Bid No. 2021-02** ("Project"). The project shall be performed by Contractor in accordance with Notice Inviting Bids, Proposal for the Project, Specifications, General Provisions, Special Provisions, Plans, Permits, and Bidder's Response. Contractor shall complete the tasks according to the schedule of performance which is set forth in the contract documents.

2. **INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY:** Notice Inviting Bids, Proposal for the Project, Specifications, General Provisions, Special Provisions, Plans, Permits, and Bidder's Response are incorporated herein by reference thereto and made a part hereof with like force and effect as if all of said documents were set forth in full herein. Said documents, the Resolution Inviting Bids attached hereto, together with this written Agreement, shall constitute the contract between the parties. This contract is intended to require a complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by the CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written Agreement, the provisions of this written Agreement shall control.

3. **TERMS OF CONTRACT:**
a. The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract and to complete his portion of the project within **thirty (30) working days** from the execution of the first contract. CONTRACTOR agrees further to the assessment of liquidated damages in the amount of **\$250.00** dollars for each calendar day the project remains incomplete

beyond the expiration of the completion date. CITY may deduct the amount thereof from any moneys due or that may become due to the CONTRACTOR under this Agreement. Progress payments made after the scheduled date of completion shall not constitute a waiver of liquidated damages.

4. **INSURANCE:** The CONTRACTOR shall not commence work under this contract until he has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been obtained. The CONTRACTOR shall take out and maintain at all times during the life of this contract the following policies of insurance:

a. **Compensation Insurance:** Before beginning work, the CONTRACTOR shall furnish to the Engineer a policy of insurance or proper endorsement as proof that he has taken out full compensation insurance for all persons whom he may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall be maintained in full force and effect during the period covered by this contract.

In accordance with the provisions of § 3700 of the California Labor Code, every contractor shall secure the payment of compensation to his employees. CONTRACTOR, prior to commencing work, shall sign and file with CITY a certification as follows:

"I am aware of the provisions of § 3700 of the Labor Code which require 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 contract."

- b. For all operations of the CONTRACTOR or any subcontractor in performing the work provided for herein, insurance with the following minimum limits and coverage:
- (1) Public Liability - Bodily Injury (not auto) \$1,000,000 each person; \$2,000,000 each accident.
 - (2) Public Liability - Property Damage (not auto) \$500,000 each accident; \$1,000,000 aggregate.
 - (3) Contractor's Protective - Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
 - (4) Contractor's Protective - Property Damage \$500,000 each accident; \$1,000,000 aggregate.
 - (5) Automobile - Bodily Injury \$1,000,000 each person; \$1,000,000 each accident.
 - (6) Automobile - Property Damage \$500,000 each accident.
- c. The policy of insurance provided for in subparagraph a. shall contain an endorsement which:

- (1) Waives all right of subrogation against all persons and entities specified in subparagraph 4.d.(2) hereof to be listed as additional insured in the policy of insurance provided for in paragraph b. by reason of any claim arising out of or connected with the operations of CONTRACTOR or any subcontractor in performing the work provided for herein;
 - (2) Provides it shall not be canceled or altered without thirty (30) days' written notice thereof given to CITY by registered mail.
- d. Each such policy of insurance provided for in paragraph b. shall:
- (1) Be issued by an insurance company approved in writing by CITY, which is admitted and licensed to do business in the State of California and which is rated "A" or better according to the most recent A.M. Best Company Rating Guide;
 - (2) Name as additional insured the CITY, its officers, agents and employees, and any other parties specified in the bid documents to be so included;
 - (3) Specify it acts as primary insurance and that no insurance held or owned by the designated additional insured shall be called upon to cover a loss under said policy;
 - (4) Contain a clause substantially in the following words:

"It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof reduced until thirty (30) days after receipt by CITY of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."
 - (5) Otherwise be in form satisfactory to CITY.
- e. The CONTRACTOR shall at the time of the execution of the contract present the original policies of insurance required in paragraphs a. and b., hereof, or present an endorsement of the insurance company, showing the issuance of such insurance, and the additional insured and other provisions required herein.

5. **PREVAILING WAGE:** Notice is hereby given that in accordance with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 and 2, the CONTRACTOR is required to pay not less than the general prevailing rate of per diem wages 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 that regard, the Director of the Department of Industrial Relations of the State of California is required and has determined such general prevailing rates of per diem wages. Copies may be obtained from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov>. CONTRACTOR shall provide a copy of prevailing wage rates to any staff or sub-contractor hired, and shall pay the adopted prevailing wage rates as a minimum.

CONTRACTOR also shall cause a copy of such determinations to be posted at the job site.

CONTRACTOR shall forfeit, as penalty to CITY, not more than the amount prescribed by California Labor Code Section 1775 for each laborer, workman, or mechanic employed for each calendar day or portion thereof, if such laborer, workman, or mechanic is paid less than the general prevailing rate of wages hereinbefore stipulated for any work done under the attached contract, by him or by any subcontractor under him, in violation of the provisions of said Labor Code and Davis-Bacon Act.

6. **APPRENTICESHIP EMPLOYMENT:** In accordance with the provisions of § 1777.5 of the Labor Code, as amended, and in accordance with the regulations of the California Apprenticeship Council, properly indentured apprentices may be employed in the prosecution of the work.

Attention is directed to the provisions in §§ 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the CONTRACTOR or any subcontractor under him.

§ 1777.5, as amended, requires the CONTRACTOR or subcontractor employing tradesmen in any apprenticeable occupation, to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases shall not be less than one to five except:

- a. When unemployment in the area of coverage by the joint apprenticeship committee has exceeded an average of 15 percent in the 90 days prior to the request for certificate, or
- b. When the number of apprentices in training in the area exceeds a ratio of one to five, or
- c. When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis statewide or locally, or
- d. When the CONTRACTOR provides evidence that he employs registered apprentices on all of his contracts on an annual average of not less than one apprentice to eight journeymen.

The CONTRACTOR is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

The CONTRACTOR and subcontractors under him shall comply with the requirements of §§ 1777.5 and 1777.6 in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, *ex-officio* the

Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

7. LEGAL HOURS OF WORK: Eight (8) hours of labor shall constitute a legal day's work for all workmen employed in the execution of this contract, and the CONTRACTOR and any subcontractor under him shall comply with and be governed by the laws of the State of California having to do with working hours set forth in Division 2, Part 7, Chapter 1, Article 3 of the Labor Code of the State of California as amended.

The CONTRACTOR shall forfeit, as a penalty to CITY, twenty-five dollars (\$25.00) for each laborer, workman, or mechanic employed in the execution of the contract, by him or any subcontractor under him, upon any of the work hereinbefore mentioned, for each calendar day during which said laborer, workman, or mechanic is required or permitted to labor more than eight (8) hours in violation of said Labor Code.

8. TRAVEL AND SUBSISTENCE PAY: CONTRACTOR agrees to pay travel and subsistence pay to each workman needed to execute the work required by this contract as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code § 1773.8.

9. CONTRACTOR'S LIABILITY: The City of Upland and its respective officers, agents and employees shall not be answerable or accountable in any manner for any loss or damage that may happen to the project or any part thereof, or for any of the materials or other things used or employed in performing the project; or for injury or damage to any person or persons, either workmen, employees of the CONTRACTOR or his subcontractors or the public, whatsoever arising out of or in connection with the performance of the Project. The CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever, except the sole negligence or willful misconduct of CITY, or its employees, servants, or independent contractors who are directly responsible to CITY during the progress of the Project or at any time before its completion and final acceptance.

The CONTRACTOR will indemnify CITY against and will hold and save CITY, its officers, officials, employees and volunteers harmless from any and all actions, claims, demands, losses, damages to persons or property, penalties, obligations, or liabilities including attorneys' fees and expert witness expenses that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of the CONTRACTOR, his agents, employees, subcontractors, or invitees provided for herein, whether or not there is concurrent passive or active negligence on the part of CITY, but excluding such actions, claims, damages to persons or property, penalties, obligations, or liabilities arising from the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY, and in connection therewith:

- a. The CONTRACTOR will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.
- b. The CONTRACTOR will promptly pay any judgment or award rendered against the CONTRACTOR or CITY covering such claims, damages, penalties, obligations, and liabilities arising out of or in

connection with such work, operations, or activities of the CONTRACTOR hereunder or reasonable settlement in lieu of judgment or award, and the CONTRACTOR agrees to save and hold the CITY harmless therefrom.

- c. In the event CITY is made a party to any action or proceeding filed or prosecuted against the CONTRACTOR for damages or other claims arising out of or in connection with the project, operation, or activities of the CONTRACTOR hereunder, the CONTRACTOR agrees to pay to CITY any and all costs and expenses incurred by CITY in such action or proceeding together with reasonable attorneys' fees.

Any money due to the CONTRACTOR under and by virtue of this Agreement as shall be considered necessary by CITY may be retained by CITY until disposition has been made of such actions or claims for damage as aforesaid.

10. DEFAULT BY CONTRACTOR: In addition to any other remedy provided by law, the City may require CONTRACTOR to obtain a bond in the amount determined by the City for completion of the Project.

11. INDEPENDENT CONTRACTOR:

- a. CONTRACTOR is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees, or agents except as set forth in this Agreement. CONTRACTOR shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. CONTRACTOR shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.
- b. No employee benefits shall be available to CONTRACTOR in connection with the performance of this Agreement. Except for the fees paid to CONTRACTOR as provided in the Agreement, City shall not pay salaries, wages, or other compensation to CONTRACTOR for performing services hereunder for City. City shall not be liable for compensation or indemnification to CONTRACTOR for injury or sickness arising out of performing services hereunder.
- c. PERS Eligibility Indemnification: In the event that CONTRACTOR or any employee, agent, or subcontractor of CONTRACTOR providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, CONTRACTOR shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONTRACTOR or its employees, agents, or subcontractors, as well

as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONTRACTOR and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

12. NONDISCRIMINATION: No discrimination shall be made in the employment of persons upon public works because of the race, color, sex, sexual preference, sexual orientation, or religion of such persons, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of Division 2, Part 7, Chapter 1 of the Labor Code in accordance with the provisions of § 1735 of said Code.

13. INELIGIBLE SUBCONTRACTORS: The CONTRACTOR shall be prohibited from performing work on this project with a subcontractor who is ineligible to perform on the project pursuant to §§ 1777.1 and 1777.7 of the Labor Code.

14. CONTRACT PRICE AND PAYMENT: CITY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work per the unit prices set forth in accordance with Contractor's Proposal dated **February 9, 2021**.

15. WAIVER: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

16. CONSTRUCTION: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

17. COSTS: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

18. ATTORNEYS' FEES: In the event that any action or proceeding is brought by either party to enforce any term or provision of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs incurred with respect thereto.

19. RELEASE OF INFORMATION:

a. All information gained by CONTRACTOR in performance of this Agreement shall be considered confidential and shall not be released by CONTRACTOR without City's prior written authorization. CONTRACTOR, its officers, employees, agents or subcontractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided CONTRACTOR gives City notice of such court order or subpoena.

b. CONTRACTOR shall promptly notify City should CONTRACTOR, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent CONTRACTOR and/or be present at any deposition, hearing or similar proceeding. CONTRACTOR agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by CONTRACTOR. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

20. **NOTICES.** Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (I) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Upland
460 North Euclid Avenue
Upland, California 91786
Attn: City Manager

To CONTRACTOR: **TSR Construction and Inspection**
8264 Avenida Leon
Rancho Cucamonga, CA 91730
Attn: Gabriel Zapirtan, President

Additionally, CONTRACTOR shall provide an emergency phone number to the City where its point of contact may be reached at any time by City in the event of an emergency.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

State of California
Contractor's License No. **881123**

GABRIEL ZAPIRTAN
[Signature]
[Signature]

3/24/2021
Date

By: PRÉSIDENT
Title
SECRETARY
Title

Contractor's
Business Phone (909) 331-2249

Emergency Phone at which
Contractor can be reached
at any time (909) 331-2249

CITY OF UPLAND,
A Municipal Corporation

4/16/21
Date

By: [Signature]
Mayor

By: [Signature]
City Clerk

Approved as to form:

[Signature]
City Attorney