

CITY OF UPLAND
CONSTRUCTION CONTRACT

**RESIDENTIAL CONSTRUCTIONS SERVICES AT
663 DIAMOND COURT, UNIT 4, UPLAND, CA 91786**

1. PARTIES AND DATE.

This Contract is made and entered into this 26th day of June 2023 by and between the City of Upland, a general law city and municipal corporation organized under the laws of the State of California with its principal place of business at 460 N. Euclid Avenue Upland, CA 91786 (“City”) and Labastida Construction, a sole proprietorship with its principal place of business at 31244 Tarryton Court, Yucaipa, California, 92399 (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Contract.

2. RECITALS.

2.1 City. City is a public agency organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Contractor. Contractor desires to perform and assume responsibility for the provision of certain construction services required by the City on the terms and conditions set forth in this Contract. Contractor represents that it is duly licensed and experienced in providing housing rehabilitation services related construction services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California, and that it is familiar with the plans of City. The following license classifications are required for this Project: Classification B - General Building.

2.3 Project. City desires to engage Contractor to render such services for the RESIDENTIAL CONSTRUCTION SERVICES FOR 663 DIAMOND COURT, UNIT C, UPLAND, CA (“Project”) as set forth in this Contract.

2.4 Project Documents & Certifications. Contractor has obtained, and delivers concurrently herewith, the Payment Bond, Performance Bond, proof of insurance listing the City of Upland as additionally insured and Tax Identification Form W-9 as required by the Contract.

3. TERMS

3.1 Incorporation of Documents. This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Services/Notice Inviting Bids and Contractors Bid (Exhibit “A”)
- Schedule (Exhibit “B”)
- Special Conditions (Exhibit “C”)
- Contractor’s Certificate Regarding Workers’ Compensation (Exhibit “D”)
- Public Works Contractor Registration Certification (Exhibit “E”)
- Payment and Performance Bond (Exhibit “F”)

3.1.1 Precedence. To the extent there is a conflict between any portions of this Contract, the order of precedence shall be as follows: change orders, special conditions, technical specifications, plans/construction drawings, general contract terms, scope of work, standard plans, advertisements for bid/proposals, bids/proposals or other documents submitted by Contractor.

3.2 Contractor's Basic Obligation: Scope of Work. Contractor promises and agrees, at its own cost and expense, to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"), for a Total Contract Price as specified pursuant to this Contract. All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference. The plans and specifications for the Work are further described in Exhibit "B" attached hereto and incorporated herein by this reference. Special Conditions, if any, relating to the Work are described in Exhibit "C" attached hereto and incorporated herein by this reference.

3.2.1 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in advance and in writing by a valid change order executed by the City.

3.2.1.1 Change Orders. Changes to the Contract Time (as defined in Section 3.3) or Total Contract Price shall be in the form of a written Change Order, either signed by both parties or issued unilaterally by the City. No adjustment shall be made to the Contract Time unless the delay impacts the critical path to completion and the delay was not caused in whole or in part by the Contractor. Failure to timely request a Change Order shall constitute a waiver of any right to adjust the Contract Time or the Total Contract Price. All requests for Change Orders shall be accompanied by detailed supporting documentation, including but not limited to payroll records, invoices, schedules, and any other documentation requested by the City for the purpose of determining the additional costs or the impact of any delay. If the change involves Work bid at a unit price, then the Total Contract Price shall be increased at the unit price. If there is no unit price, then the Total Contract Price shall be adjusted to account for costs actually incurred plus an allowed mark-up of fifteen percent (15%), which shall constitute the entire amount of profit, mark-ups, field or home office overhead costs, including personnel, equipment or office space, any materials, or any costs of equipment idle time for such work. Regardless of ownership, equipment rates shall not exceed the listed prevailing rates at local equipment rental agencies, or distributors, at the time the work is performed. Nothing herein shall prevent the Parties from agreeing to a lump sum cost.

- (A) Changes Ordered By City. City may at any time issue a written directive ordering additions, deletions, or changes to the Work. Contractor shall proceed with the work in accordance with the directive. To the extent the directive results in extra work or requires additional Contract Time, Contractor shall request a Change Order within seven (7) days of receiving the Work Directive. If any costs are not capable of being determined within seven (7) days, then Contractor shall request a Change Order within seven (7) days of when the costs are capable of being determined.

- (B) Changes Requested By Contractor. With respect to any matter that may involve or require an adjustment to the Contract Time or the Contract Price, Contractor shall provide written notice of the underlying facts and circumstances that gave rise to the potential change within seven (7) days or prior to the alteration of conditions, whichever is earlier. Failure to give notice shall constitute a waiver of Contractor's right to a change order. If any costs are not capable of being determined within seven (7) days, then Contractor shall request a Change Order within seven (7) days of when the costs are capable of being determined.

3.2.2 Substitutions/"Or Equal". Pursuant to Public Contract Code Section 3400(b), the City may make a finding that designates certain products, things, or services by specific brand or trade name. Unless specifically designated in this Contract, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal."

Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in this Contract. However, the City may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

The City has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. Data required to substantiate requests for substitutions of an "or equal" material, process or article data shall include a signed affidavit from Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted "or equal" material, process or article, and substantiates that it is an "or equal" to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the City in a timely fashion will result in the rejection of the proposed substitution.

Contractor shall bear all of the City's costs associated with the review of substitution requests. Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

3.3 Period of Performance and Liquidated Damages.

3.3.1 Contractor shall perform and complete all Work under this Contract within One Hundred (100) days, beginning the effective date of the Notice to Proceed ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the City. Such schedules or milestones may be included as part of Exhibits "A" or "B" attached hereto, or may be provided separately in writing to Contractor. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages the sum of One Thousand One Hundred Thirty Two and no/100 Dollars (\$1,132.00) per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule or Project milestones established pursuant to the Contract.

3.3.2 If Contractor is delayed in the performance or progress of the Work by a Force Majeure Event (as defined herein), then the Contractor shall be entitled to a time extension, as provided herein, when the Work stopped is on the critical path and shall not be charged liquidated damages. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays and the Contractor will not receive an adjustment to the Total Contract Price or any other compensation. Contractor must submit a timely request in accordance with the requirements of the Contract.

3.3.3 A Force Majeure Event shall mean an event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the project site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the work); (4) pandemics, epidemics or quarantine restrictions; and (5) strikes and other organized labor action occurring at the project site and the effects thereof on the work, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of replacement workers. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority.

3.4 Standard of Performance; Performance of Employees. Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and 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 professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work 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 Work, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who

fails or refuses to perform the Work in a manner acceptable to the City, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

3.5 Control and Payment of Subordinates; Contractual Relationship. City retains Contractor on an independent contractor basis and Contractor is not an employee of City. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance

3.5.1 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.

3.6 City's Basic Obligation. City agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract, the City shall pay to Contractor, as full consideration for the satisfactory performance by Contractor of the services and obligations required by this Contract, the below-referenced compensation in accordance with compensation provisions set forth in the Contract.

3.7 Compensation and Payment.

3.7.1 Amount of Compensation. As consideration for performance of the Work required herein, City agrees to pay Contractor the Total Contract Price of One Hundred One Thousand Eight Hundred Twenty and no/100 Dollars (\$101,820.00) ("Total Contract Price") provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the City. The City Manager may approve Additional Work up to ten percent (10%) of the amount of the Agreement or fifty thousand dollars (\$50,000.00). In no event shall the total sum of the agreement (Total Contract Price and Additional Work) exceed One Hundred Fifty One Thousand Eight Hundred Twenty Two and no/100 Dollars (\$151,820.00). Any additional work in excess of this amount shall be approved by the City Council.

3.7.2 Payment of Compensation. If the Work is scheduled for completion in thirty (30) or less calendar days, City will arrange for payment of the Total Contract Price upon

completion and approval by City of the Work. If the Work is scheduled for completion in more than thirty (30) calendar days, City will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the City an itemized application for payment in the format supplied by the City indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the City may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the City and in such detail and form as the City shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments.

3.7.3 Prompt Payment. City shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. However, no progress payments will be made for Work not completed in accordance with this Contract. Contractor shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others.

3.7.4 Contract Retentions. From each approved progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder will be paid to Contractor. All Contract retention shall be released and paid to Contractor and subcontractors pursuant to California Public Contract Code Section 7107.

3.7.5 Other Retentions. In addition to Contract retentions, the City may deduct from each progress payment an amount necessary to protect City from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the City in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by City during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Contract; and (11) any other sums which the City is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

3.7.6 Substitutions for Contract Retentions. Pursuant to California Public Contract Code section 22300, Contractor may substitute securities for any money withheld by the City to ensure the performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, with the State or a federally chartered bank as the escrow agent, who shall return such securities to Contractor upon satisfactory completion of the Contract. Deposit of securities with an escrow agent shall be subject to a written agreement between the escrow agent and the City, which provides that no portion of the securities shall be paid to Contractor until the City has certified to the escrow agent, in writing, that the Contract has been satisfactorily completed. The City shall certify that the Contract has been satisfactorily completed within sixty (60) days of work "completion" as defined in Section 7107(c) of the California Public Contract Code. Securities eligible for investment under

this section shall be limited to those listed in Section 16430 of the Government Code, bank or savings & loan certificates of deposit, interest-bearing demand deposit accounts, stand-by letters of credit, or any other security mutually agreed to by Contractor.

3.7.7 Payment to Subcontractors. Contractor shall pay all subcontractors for and on account of work performed by such subcontractors in accordance with the terms of their respective subcontracts and as provided for in Section 7108.5 of the California Business and Professions Code. Such payments to subcontractors shall be based on the measurements and estimates made and progress payments provided to Contractor pursuant to this Contract.

3.7.8 Title to Work. As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to the City at the time of payment. To the extent that title has not previously been vested in the City by reason of payments, full title shall pass to the City at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by the City, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to items.

3.7.9 Labor and Material Releases. Contractor shall furnish City with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by City.

3.8 Labor

3.8.1 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Work is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Contract. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

3.8.2 Apprenticeable Crafts. When Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor. The Contractor or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty

an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

3.8.3 Hours of Work. Contractor is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Contractor shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

3.8.4 Payroll Records. Contractor and each subcontractor shall keep an accurate payroll record, showing 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 journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, Contractor shall, as a penalty to City, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Contractor. In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the DIR on a weekly basis and in the format prescribed by the DIR, which may include electronic submission. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.8.5 Contractor and Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Contractor is directed to review, fill out and execute the Public Works Contractor Registration Certification attached hereto as Exhibit "E" prior to contract execution. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.8.6 Labor Compliance; Stop Orders. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's

performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.9 Performance of Work; Jobsite Obligations.

3.9.1 Water Quality Management and Compliance.

3.9.1.1 Water Quality Management and Compliance. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); local ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

3.9.1.2 Compliance with the Statewide Construction General Permit. Contractor shall comply with all conditions of the most recent iteration of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, issued by the California State Water Resources Control Board ("Permit"). It shall be Contractor's sole responsibility to file a Notice of Intent and procure coverage under the Permit for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. Prior to initiating work, Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through different phases of construction and is subject to different weather conditions. It shall be Contractor's sole responsibility to update the SWPPP as necessary to address conditions at the project site.

3.9.1.3 Other Water Quality Rules Regulations and Policies. Contractor shall comply with the lawful requirements of any applicable municipality, drainage City, or local agency regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

3.9.1.4 Cost of Compliance. Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Work. Therefore, the Contractor, hereby acknowledges that it has investigated the risk arising from such waters and assumes any and all risks and liabilities arising therefrom.

3.9.1.5 Liability for Non-Compliance. Failure to comply with the Permit is a violation of federal and state law. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to defend, indemnify and hold harmless the City and its directors,

officials, officers, employees, volunteers and agents for any alleged violations. In addition, City may seek damages from Contractor for any delay in completing the Work in accordance with the Contract, if such delay is caused by or related to Contractor's failure to comply with the Permit.

3.9.1.6 Reservation of Right to Defend. City reserves the right to defend any enforcement action brought against the City for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse the City for the costs (including the City's attorney's fees) associated with, any settlement reached between the City and the relevant enforcement entity.

3.9.1.7 Training. In addition to the standard of performance requirements set forth in paragraph 3.4, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.9.1. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in paragraph 3.9.1 as they may relate to the Work provided under this Contract. Upon request, City will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

3.9.2 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

3.9.3 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with the Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the City in writing. Any necessary changes shall be made by written change order. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Contract to the same extent as though set forth herein and will be complied with. Contractor shall defend,

indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.9.4 Permits and Licenses. Contractor shall be responsible for securing City permits and licenses necessary to perform the Work described herein, including, but not limited to, a City Business License. While Contractor will not be charged a fee for any City permits, Contractor shall pay the City's applicable business license fee. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

3.9.5 Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for City's review and approval a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

3.9.6 Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify City of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by City; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, City shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

3.9.7 Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, City shall compensate Contractor for the costs of: (1) locating and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of City to provide for removal or relocation of such utility facilities.

3.9.8 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Although CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Contract.

3.9.9 State Recycling Mandates. Contractor shall comply with State Recycling Mandates. Any recyclable materials/debris collected by the contractor that can be feasibly diverted via reuse or recycling must be hauled by the appropriate handler for reuse or recycling.

3.9.10 Inspection Of Site. Contractor has visited sites where Work is to be performed and has become acquainted with all conditions affecting the Work. Contractor warrants that it has made such examinations as it deems necessary to determine the condition of the Work sites, its accessibility to materials, workmen and equipment, and to determine the Contractor's ability to protect existing surface and subsurface improvements. No claim for allowances—time or money—will be allowed as to such matters.

3.9.11 Field Measurements. Contractor shall make field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the City immediately and prior to performing any work or altering the condition.

3.10 Completion of Work. When Contractor determines that it has completed the Work required herein, Contractor shall so notify City in writing and shall furnish all labor and material releases required by this Contract. City shall thereupon inspect the Work. If the Work is not acceptable to the City, the City shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a re-inspection by the City. Once the Work is acceptable to City, City shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which City may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code.

3.11 Claims; Government Code Claim Compliance.

3.11.1 Except as otherwise provided in this Contract, if any dispute shall arise between the City and Contractor regarding performance of the Work, or any alleged change in the Work, Contractor shall timely perform the disputed work and shall give written notice of a claim for additional compensation for the work to the City within three (3) days after commencement of the disputed work. Contractor's failure to give written notice within the three (3)-day period constitutes an agreement by Contractor that it will receive no extra compensation for the disputed work and shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

3.11.2 Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with all applicable law, including but not limited to these statutes.

3.11.3 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor for:

3.11.3.1 An adjustment to the time for completion including, without limitation, for relief from damages or penalties for delay assessed by the City;

3.11.3.2 Payment by the City of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or

3.11.3.3 An amount the payment of which is disputed by the City.

A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a Change Order, or otherwise failed to follow any procedures contained in the Contract Documents.

3.11.4 Filing Claims. Claims governed by this Section may not be filed unless and until the Contractor completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than thirty (30) days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following words in 16 point capital font: "THIS IS A CLAIM." The Claim shall include the all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.

3.11.5 Supporting Documentation: The Contractor shall submit all claims in the following format:

3.11.5.1 Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made

3.11.5.2 List of documents relating to claim:

- (A) Specifications
- (B) Drawings
- (C) Clarifications (Requests for Information)
- (D) Schedules
- (E) Other

3.11.5.3 Chronology of events and correspondence

3.11.5.4 Narrative analysis of claim merit

3.11.5.5 Analysis of Claim cost, including calculations and supporting documents

3.11.5.6 Time impact analysis in CPM format

3.11.6 City's Response. Upon receipt of a Claim pursuant to this Section, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 days after the City issues its written statement.

3.11.6.1 If the City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City's governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three (3) days following the next duly publicly noticed meeting of the City's governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

3.11.6.2 Within 30 days of receipt of a Claim, the City may request in writing additional documentation supporting the Claim or relating to defenses or Claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor. The City's written response to the Claim, as further documented, shall be submitted to the Contractor within 30 days (if the Claim is less than \$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

3.11.7 Meet and Confer. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

3.11.8 Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the City issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The public entity and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.

3.11.8.1 If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

3.11.8.2 For purposes of this Section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an

independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Section.

3.11.8.3 Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

3.11.8.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.

3.11.9 Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the Contractor must file a Claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a Claim must be filed shall be tolled from the time the Contractor submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.

3.11.10 Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:

3.11.10.1 Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

3.11.10.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

3.11.11 Government Code Claim Procedures.

3.11.11.1 This Section does not apply to tort claims and nothing in this Section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.

3.11.11.2 In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for additional work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the City.

3.11.11.3 Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Price for additional work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If Contractor does not comply with the Government Code claim procedure or the prerequisite contractual requirements, Contractor may not file any action against the City.

3.11.11.4 A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to Contractor or that should reasonably be known to Contractor excepting only new unrelated Claims that arise after the Government Code claim is submitted.

3.11.12 Non-Waiver. The City's failure to respond to a Claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Section.

3.12 Loss and Damage. Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Work until the same is fully completed and accepted by City. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City may terminate this Contract pursuant to Section 3.18.3; provided, however, that the City needs to provide Contractor with only one (1) day advanced written notice.

3.13 Indemnification.

3.13.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Contract, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense which is caused by the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons.

3.13.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Contract, and shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and authorized volunteers.

3.14 Insurance.

3.14.1 Time for Compliance. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

3.14.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage:

3.14.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) OR Insurance Services Office Owners and Contractors Protective Liability Coverage Form (CG 00 09 11 88) (coverage for operations of designated contractor); (2) *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto); (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; and (4) *Builders'/All Risk:* Builders'/All Risk insurance covering for all risks of loss, including explosion, collapse, underground excavation and removal of lateral support (and including earthquakes and floods if requested by the City). Policies shall not contain exclusions contrary to this Contract.

3.14.2.2 Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability:* \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury, personal injury and property damage; (2) *Automobile Liability* \$1,000,000 per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability:* Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of 1,000,000. each accident, policy limit bodily injury or disease, and each employee bodily injury or disease; and (4) *Builders'/All Risk:* Completed value of the project.

Defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the parties required to be named as additional insureds pursuant to this Contract.

3.14.2.3 Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or materially reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Contract does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Contractor or the City may withhold amounts sufficient to pay premium from Contractor payments. In the alternative, the City may suspend or terminate this Contract.

3.14.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions to the insurance policies:

3.14.3.1 General Liability. (1) Such policy shall give the City, its officials, employees, agents and volunteers additional insured status using ISO endorsements CG20 10 10 01 plus CG20 37 10 01, or endorsements providing the exact same coverage, with respect to the Work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it.

3.14.3.2 Automobile Liability. (1) Such policy shall give the City, its officials, employees, agents and volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

3.14.3.3 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

3.14.3.4 All Coverages. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and volunteers.

3.14.4 Builders'/All Risk Policy Requirements. The builders'/all risk insurance shall provide that the City be named as loss payee. In addition, the insurer shall waive all rights of subrogation against the City.

3.14.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and volunteers.

3.14.6 Professional Liability Insurance. All architects, engineers, consultants or design professionals retained by Contractor shall also procure and maintain, for a period of five (5) years following completion of the Contract, errors and omissions liability insurance with a limit of not less than \$1,000,000 per occurrence. This insurance shall name the City, its directors, officials, officers, employees, agents and volunteers as additional and insureds with respect to Work performed, and shall otherwise comply with all requirements of this Section. Defense costs shall be paid in addition to the limits.

3.14.7 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.14.8 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

3.14.9 Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.14.10 Subcontractors. All subcontractors shall meet the requirements of this Section before commencing Work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages

for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

3.14.11 Reporting of Claims. Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Work under this Contract.

3.15 Bond Requirements.

3.15.1 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Payment Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.15.2 Performance Bond. If specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Performance Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.15.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the effected bond within (ten) 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the Total Contract Price is increased in accordance with the Contract, Contractor shall, upon request of the City, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. If Contractor fails to furnish any required bond, the City may terminate the Contract for cause.

3.15.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.16 Warranty. Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any

portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

3.17 Employee/Labor Certifications.

3.17.1 Contractor's Labor Certification. By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California 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 agrees to comply with such provisions before commencing the performance of the Work. A certification form for this purpose, which is attached to this Contract as Exhibit "D" and incorporated herein by reference, shall be executed simultaneously with this Contract.

3.17.2 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.17.3 Verification of Employment Eligibility. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors and sub-subcontractors to comply with the same.

3.18 General Provisions.

3.18.1 City's Representative. The City hereby designates Robert Dalquest, the Director of the City of Upland Development Services Department, or his designee, to act as its representative for the performance of this Contract ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.18.2 Contractor's Representative. Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the City ("Contractor's Representative"). Following approval by the City, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to the City, shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to the City, shall be made for emergency Work which may be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain the City's written approval.

3.18.3 Termination. This Contract may be terminated by City at any time, either with or without cause, by giving Contractor three (3) days advance written notice. In the event of termination by City for any reason other than the fault of Contractor, City shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, City may terminate the Contract immediately without notice, may reduce payment to Contractor in the amount necessary to offset City's resulting damages, and may pursue any other available recourse against Contractor. Contractor may not terminate this Contract except for cause. In the event this Contract is terminated in whole or in part as provided, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, City may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.18.4 Contract Interpretation. Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from City, the matter shall be referred to City's Representative, whose decision shall be binding upon Contractor.

3.18.5 Anti-Trust Claims. This provision shall be operative if this Contract is applicable to California Public Contract Code Section 7103.5. In entering into this Contract to supply goods, services or materials, Contractor hereby offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time the City tender final payment to Contractor, without further acknowledgment by the Parties.

3.18.6 Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CONTRACTOR:

LABASTIDA CONSTRUCTION
31244 TARRYTON COURT, YUCAIPA, CA 92399
Attn: Victor Manuel Labastida, Owner
(909) 953-0767
LICENSE NO. 683200

CITY:

City of Upland
460 N. Euclid Avenue
Upland, CA 91786
Attn: City Manager

With Copy To:
City of Upland
460 N. Euclid Avenue
Upland, CA 91786
Attn: City Attorney

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail as stated above and addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.18.7 Time of Essence. Time is of the essence in the performance of this Contract.

3.18.8 Assignment Forbidden. Contractor shall not, either voluntarily or by action of law, assign or transfer this Contract or any obligation, right, title or interest assumed by Contractor herein without the prior written consent of City. If Contractor attempts an assignment or transfer of this Contract or any obligation, right, title or interest herein, City may, at its option, terminate and revoke the Contract and shall thereupon be relieved from any and all obligations to Contractor or its assignee or transferee.

3.18.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.18.10 Laws; Venue. This Contract shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Contract, the action shall be brought in a state or federal court situated in the County of San Bernardino, State of California.

3.18.11 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original.

3.18.12 Successors. The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

3.18.13 Solicitation. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to terminate this Contract without liability.

3.18.14 Conflict of Interest. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to rescind this Contract without liability. For the term of this Contract, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom. In addition, Contractor agrees to file, or to cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Work.

3.18.15 Certification of License.

3.18.15.1 Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.

3.18.15.2 Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

3.18.16 Authority to Enter Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

3.18.17 Entire Contract; Modification. This Contract contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Contract may only be modified by a writing signed by both Parties.

3.18.18 Non-Waiver. None of the provisions of this Contract shall be considered waived by either party, unless such waiver is specifically specified in writing.

3.18.19 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project or other projects.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR CONSTRUCTION CONTRACT
BETWEEN THE CITY OF UPLAND
AND LABASTIDA CONSTRUCTION**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

CITY OF UPLAND

CONTRACTOR

APPROVED BY:




Michael Blay
City Manager

LABASTIDA CONSTRUCTION



Signature

ATTESTED BY:

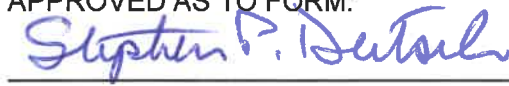


Keri Johnson
City Clerk

VICTOR MANUEL LABASTIDA, JR.
Name

Owner
Title

APPROVED AS TO FORM:



Best Best & Krieger LLP
City Attorney

CONTRACTOR'S LICENSE NO.: 683200
CLASSIFICATION: B- General Building

1000043793
DIR Registration Number

EXHIBIT A

SCOPE OF SERVICES/NOTICE INVITING BIDS AND CONTRACTORS BID

[ATTACHED]

CITY OF UPLAND
Development Services Department



REQUEST FOR PROPOSALS
FOR
RESIDENTIAL CONSTRUCTION SERVICES

Proposals due: Thursday, June 8, 2023 by 5:00 p.m.

City of Upland
Development Services Department
460 N. Euclid Avenue
Upland, CA 91786
Attn: Diane Cotto, Housing Manager
Phone: (909) 931-4146
Dcotto@uplandca.gov

RECEIVED
JUN 08 2023
CITY OF UPLAND
DEV. SERVICES DEPT.

INTRODUCTION

The City of Upland is requesting proposals from qualified general contractors who specialize in residential housing construction to enter into a Professional Services Agreement to rehabilitate a City-owned residential housing unit that was damaged by fire and in need of repair.

BACKGROUND

The City of Upland is located within the western portion of San Bernardino County. The City is bounded on the north by San Bernardino County, on the east by Rancho Cucamonga, on the south by Ontario, and the west by Claremont and Montclair. The City of Upland measures 15.84 square miles.

Incorporated in 1906, the City of Upland is located in the westernmost part of San Bernardino County, approximately 35 miles southeast of Los Angeles, at the base of the San Gabriel Mountains. With approximately 77,000 residents, Upland is strategically located in the Southern California region with access to the Metrolink commuter rail system, nearby Ontario International Airport and major highways such as the Interstate I-10, Interstate I-210, and Interstate I-15.

PROPERTY DESCRIPTION

This is a 3,820 square foot, multi family home (four units/1 story). This home is located at 663 Diamond Ct, Upland, CA 91786 and was built in 1963. Property specifics include the following:

Interior Information

- Heating Fuel Type: Gas Public/Piped

Exterior Information

- Construction Type: Concrete
- Building Type: 4-Plex

Property Information

- Building Sq. Ft: 3,820
- Legal Description: TRACT 6111 LOT 19 TRACT NO 6111 LOT 19 EX MNL RTS

Parking & Garage Information

- Parking Type: Off Site

Lot Information

- # of Buildings: 1
- Land Sq. Ft: 11,016
- Legal Lot Number: 19
- Municipality Name: ONTARIO
- Acres: 0.2529
- Depth Footage: 162
- Front Footage: 68
- County Use Description: QUADRUPLEX

Utility Information

- Electricity / Wiring Type: Overhead Wires
- Sewer Type: Public
- Water Service Type: Public

Please note that only one unit, (Unit 4) as well as a portion of the adjoining laundry room was damaged by the fire. Unit 4 is approximately 1,155 square feet and has 3 bedrooms and 2 bathrooms.

SCOPE OF WORK

The City of Upland is seeking a qualified residential construction firm to rehabilitate a City-owned three (3) bedroom two (2) bathroom rental unit that was damaged by fire. Please complete Attachment A – City of Upland Work Description and Bid Proposal Form include it with your submittal.

SCHEDULE

ITEM	DATE
Issuance of Request for Proposal (RFP)	May 25, 2023
Property Walk-Through	June 1, 2023
Proposal Submittal Deadline	June 8, 2023 before 5:00 p.m.
Review of Received Proposals	June 12, 2023
City Council Meeting	June 26, 2023
Tentative Authorization	July 1, 2023

RESPONSE REQUIREMENTS

Proposals must be prepared simply, providing straightforward, concise descriptions of the capability of the firm to satisfy the requirements of this RFP:

1. The Respondent must have the ability to do business in San Bernardino County.
2. The Respondent must have conducted business in California for a minimum of five (5) years.
3. The Respondent's Firm must have at least five (5) years of experience in residential construction services.
4. The Respondent must provide a copy of the Contractors State License Board license number and proof of insurance.
5. The Respondent's office must be located in Southern California and shall be approximately a two-hour drive from Upland, City Hall.
6. The Respondent must be able to meet the requirements in the Professional Services Agreement (PSA) and the RFP (Attachment A). A copy of the PSA is enclosed for your review.

PROPOSAL REQUIREMENTS

Proposal shall consist of the technical proposal and proposed fee and shall contain the following information:

1. Attachment A – City of Upland Work Description and Bid Proposal Form
2. Attachment B – Staffing Plan and List of Sub-Contractors

EVALUATION PROCESS AND SELECTION CRITERIA

Proposals shall be evaluated, by the City's Selection Committee on the basis of the responsiveness to the requirements in this RFP. Proposals will be competitively evaluated on the basis of the following criteria listed. These criteria are not listed in any order of priority.

Written Proposals:

- The Performance and Qualifications of the Firm and Project Team Members;
- Technical Experience;
- Key Personnel & References;
- The proposed project approach, scope of services and understanding of project;
- Control of Cost and Schedules;
- Adequate Staff and Availability to perform duties in this RFP;
- Proposal Organization and Completeness of Response;
- Accessibility to the office of the Principal Consultant who has the primary responsibility of assignments; and
- Degree of Compliance with the City's sample PSA, terms, and conditions.

Proposals that meet all minimum RFP requirements will be scored based on established criteria, which have been weighted and will be assigned points that measure the responsiveness to each identified criterion.

Selection of the successful firm will be performed by the City's Selection Committee. The Committee may, at its option, decide to conduct interviews during the selection process.

The City reserves the right to interview additional Respondent Firm(s). An inquiry to determine the ability of Respondent Firm(s) to provide any needed services as indicated in this RFP may be conducted. The Respondent Firm agrees that the submission of a Proposal is permission by Respondent Firm for City to verify all information contained therein. If the City deems it necessary, additional information may be requested from the Respondent Firm. Failure to comply with any such request may disqualify the Respondent's Proposal from further consideration.

The selected Firm shall enter into a formal agreement with the City based upon the contents of the RFP and the firm's proposal. The City's sample PSA is enclosed for your review (Attachment C).

DISCLAIMER

This RFP does not commit the City to award a contract, or to pay any costs incurred in the preparation of the proposal by the Respondent. The City reserves the right to extend the due date for the proposal, to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified consultant, to cancel this RFP in part or in its entirety, and to procure alternate or additional consulting services.

PROPOSAL TO REMAIN OPEN

The Respondent's Firm shall guarantee that all the contents of their proposal shall be valid for a period of one hundred eighty (180) calendar days following the due date of the proposals. No proposal may be withdrawn after the submission date.

SUBMITTAL OF THE PROPOSALS

The proposals shall be submitted to the City's Development Services Department's Housing Manager and include:

① Three (3) signed original copies of the proposal shall be submitted.

The proposal shall be submitted to:

**Ms. Diane Cotto, Housing Manager
City of Upland
Development Services Department
460 N. Euclid Avenue
Upland, CA 91786**

Written questions regarding this RFP or requests for additional information shall be sent via email and must be received by Tuesday, June 6, 2023 before 12:00 noon. The email shall be directed to:

Diane Cotto, Housing Manager
Phone: (909) 931-4146
E-Mail: DCotto@uplandca.gov

Proposal shall be submitted before **5:00 p.m. on Thursday, June 8, 2023 at 460 N. Euclid Avenue, Upland, CA 91786**. Postmarks and late proposals will not be accepted.

Enclosures:

- Attachment A - Scope of Work Form
- Attachment B - Staffing Plan and List of Sub-Contractors
- Attachment C - *SAMPLE* City Standard PSA with RFP Attachment. (For review only)

ATTACHMENT "A"

CITY OF UPLAND WORK DESCRIPTION AND BID PROPOSAL FORM

Magnolia Colony Apartments 663 Diamond Ct. Unit-4, Upland, CA 91786 & Ancillary Structures

ALL MEASUREMENTS PROVIDED THROUGHOUT THIS PROJECT BID SPECIFICATION SHEET ARE APPROXIMATE SIZE ONLY. THE CONTRACTOR WILL BE RESPONSIBLE TO TAKE ACTUAL FIELD MEASUREMENTS OF EACH ITEM AS THE NEED ARISES

All work is to be done per City of Upland building, planning and public works codes. In order to establish standards of quality, the detailed specifications may refer to a certain product by name and/or from a major manufacturer. This procedure is not to be construed as eliminating from competition of other product of equal or better quality by other manufacturers. The contractor shall finish the list of proposed desired substitutions prior to signing of the contract. All items listed herein for repair or replacement have been deemed deteriorated, damaged, energy efficiency upgrade and or code related. All items listed on work write-up, unless otherwise specified, shall include:

1. All finish work, including all trim hardware, patching, and finish painting and/or staining.
2. All overhead and profit should be included in each line item.
3. All materials to be installed will have City's review and approval.
4. All appurtenances installed will be standard grade and adhere to the existing conditions/locations

Use of lead-based paint is prohibited. Removal or work on lead and/or asbestos containing materials is subject to applicable federal, state and local regulations and the responsibility of the Contractor. The City's Housing Manager or their designee will be responsible for approving all styles, finishes and colors prior to installation from Contractor's samples or allocation amounts provided.

WORK ESTIMATE	DESCRIPTION AND STANDARD SPECIFICATIONS	
	<i>663 Diamond Court. Unit-4</i>	
1.	Smoke/CO2 Detectors: Install new hardwired battery back-up smoke detectors and CO2 monitors to code.	\$ <u>440.⁰⁰</u>
2.	Ground Fault Circuit Interrupters: Install new ground fault circuit interrupters (GFCI) receptacles in the kitchen and bathrooms to code.	\$ <u>650.⁰⁰</u>
3.	General Demolition: Remove all fire and water damaged drywall, flooring, plumbing, electrical, framing and insulation leave unit ready to receive new drywall, flooring, plumbing, electrical, framing and insulation.	\$ <u>850.⁰⁰</u>

4. **Insulation:** \$ 2650.⁰⁰
Throughout unit, install new batt R-13 insulation in walls as required by code (unfaced batt insulation). In attic area install new blown-in cellulose (loose-fill) insulation to R-38 standards to code.
5. **Drywall and Framing:** \$ 18,250.⁰⁰
Throughout the unit, at all fire damaged walls and ceilings, install new ½" drywall. Patch, tape and texture all walls with a light knockdown texture on walls and smooth texture on ceilings. Leave all walls and ceilings smooth and level ready for primer and paint. Rebuild damage pony wall at kitchen and any other visibly damaged framing encountered.
6. **Electrical:** \$ 14,850.⁰⁰
Throughout the unit, remove all existing electrical wires, junction, receptacles and outlet boxes, lines and conduits and rewire entire electrical system to code. Electrical work will include new code compliant, subpanel, junction boxes, arc fault circuit interrupters, outlet boxes, receptacles, switches (standard grade rocker face plates). Contractor shall install all new light fixtures throughout the unit to include 6-LED recessed warm-light fixtures in the kitchen (min. 850-Lumens), 2 bathroom vanity 3-light bars (in both bathrooms) and flush mounted contractors pack brushed nickel ceiling light fixtures in bedrooms, hallway and livingroom (warm LED bulbs). Replace existing exhaust fans in bathrooms. Install phone lines and phone jacks accordingly. Ground and bond electrical system per code.
7. **Plumbing:** \$ 4275.⁰⁰
Replace all damaged hot and cold water service and sewer lines in the unit. Replace all faucets, angle stops, shut off valves, supply hoses, hammer arrestors, and shower/ tub valves with new standard grade Moen or approved equal fixtures. Install 18-gauge dual basin top mounted kitchen sink. Contractor to provide a material list of plumbing fixtures to be installed indicative of brand(s) and model numbers for City review and approval (all fixtures to be brushed nickel finish).
8. **Kitchen and Hallway Cabinets:** \$ 10,800
Install new standard grade premanufactured white wooden shaker cabinets (wall and base) in kitchen and hallway linen cabinets. Installation shall include 3" crown molding on all wall cabinets, scribe and base molding as needed. Cabinets to include standard pulls and knobs (contractor pack brushed nickel finish).
9. **Kitchen Countertop:** \$ 2480.⁰⁰
Prepare the new cabinets to receive new premanufactured granite top (inclusive of bar top) and 6" matching backsplash. Color and style of countertop to be of the City's choosing from samples provided by the contractor.
10. **Kitchen Appliances:** \$ 2390.⁰⁰
Install new EnergyStar rated stainless steel kitchen appliances. GE or approved equal. Contractor to provide the material allocation cost only for appliances to be installed below (do not include labor costs those will be included in the estimate column):
1. Free standing 4-burner gas range inclusive of gas hook ups \$ 950.⁰⁰
2. Exhaust hood and ducted to exterior \$ 395.⁰⁰
3. Dishwasher and lineset \$ 750.⁰⁰
4. ½ HP Garbage Disposal \$ 295.⁰⁰

11. **Bathroom Vanities, Mirrored Medicine Cabinets and Towel Assemblies:** \$ 3625
Install new bathroom vanity cabinets (premanufactured white standard grade shaker cabinets) to fit existing locations. Install standard grade, white cultured marble vanity tops with integrated sink. Install new matching vanity mirror and medicine cabinets. Install standard grade towel bars and toilet paper holder (all finishes to be brushed nickel).
12. **Bathroom Shower:** \$ 2450.⁰⁰
Install new fiberglass (Masonite or equal) shower stall surround panels and white pressed steel tub in bathrooms. Seal and caulk accordingly.
13. **Interior Doors and Hardware:** \$ 1775.⁰⁰
Install new prehung six panel colonist interior doors throughout the unit. Replacement to include new standard grade lever hardware (doorknobs) Kwikset or approved equal, in brushed nickel finish.
14. **Closet Doors, Shelf and Rod:** \$ 650.⁰⁰
Install new raised wood panel bi-pass colonist closet doors in all bedrooms. Installation to include new tracks. Install new wired closet shelf and rod assemblies in all closets.
15. **Entry Door:** \$ 650.⁰⁰
Install new prehung entry door to match existing wood doors in complex. Install new peephole, door hardware and lockset (Kwikset or approved equal) in brushed nickel finish.
16. **Casing and Baseboards:** \$ 1890.⁰⁰
Install all new primed 3/4" wood casings and matching 3/4" baseboards throughout the unit and at vinyl flooring areas add a 3/4" quarter round molding piece in addition to the baseboard. All joints to miter cut and tightly fitted. Caulk all joints and fill all nail holes, as needed and leave ready for paint.
17. **Interior Paint (Health and Safety):** \$ 7895.⁰⁰
Prepare all interior walls and ceilings throughout the dwelling to receive low VOC latex paint (Dunn Edwards Spartashield semigloss finish or approved equal) at areas specified below. Clean walls and ceilings prior to painting to remove dust and debris. Inspect all surfaces and fill in all holes and cracks, sand to a smooth finish. Install one coat of primer and two coats of paint on all walls and ceilings as per standard specifications. Use drop-clothes to protect all that is not to be painted. Protect all hardware and all other surfaces not intended for paint.
- Approved Colors:
- Walls- Navajo White DEC772
 - Ceiling/Doors/Trims- White DEW380
18. **Luxury Vinyl Plank Flooring:** \$ 5700.⁰⁰
Prepare all subfloor to receive new luxury vinyl plank (LVP) flooring at livingroom, kitchen/dining room, hallway and bathrooms. Install new Shaw or approved equal LVP glue-down flooring (20 mil wear 6" x 36"). All flooring to be installed in the same pattern and direction throughout the unit. Color to be selected by the City, from samples provided by the contractor.

19. Carpet: \$ 3200.⁰⁰
Install new FHA approved wall-to-wall carpeting in bedrooms, inclusive of closets. The contractor shall provide an allowance of \$24/sq. yd., including padding. The installation shall include new tack strips, z bars, finish strips, hot taping of seams and power stretched. Contractor shall check subflooring and repair damaged subfloor areas. City shall select and approve carpet from samples provided by contractor and priced within the square yard allocation.

20. Window, Slider, Screens and Blinds: \$ 3150.⁰⁰
Replace master bedroom window and glass sliding door at kitchen with new insulated, "low-E" dual-pane, retrofit, vinyl window/slider. New window/slider shall be installed according to code and be EnergyStar rated. Installation shall include all finishing elements associated with their replacement (i.e. exterior molding/trim, interior). Install new white framed aluminum window screens on all windows throughout the unit (new and existing) and sliding door. Contractor shall install new standard grade cordless white vinyl blinds in all windows throughout the unit and sliding door.

21. Air Conditioning and Wall Heater \$ 4650.⁰⁰
Install new AC wall unit to fit existing conditions and adequately sized for the room. Install new wall gas furnace inclusive of all gas lines and venting BTU sized for the unit. Include new wall programmable thermostat (Honeywell or approved equal).

22. Roof Repairs: \$ 3750.⁰⁰
Rebuild and repair damaged roof section cut out by the fire department. Install new 5/8" OSB sheathing and rafters as needed, remove damaged/compromised roof shingles as needed. Repair work will include new, matching (as closely as possible), asphalt composition roof shingles, hip, ridgecap, sheathing, felt, roof jacks, water proofing barriers. Contractor shall seal all roof penetrations with appropriate roof mastic. Repair damage soffit and fascia to match existing as closely as possible. Prepare, prime and paint to match.

Total roof squares to be replaced above: _____

• *Alternate Bid (do not include in your project total): Roof replacement of the entire fourplex with 30-year composite roof shingle (Timberline or equal) inclusive of tear-off to sheathing.*
\$ _____

• Total roof squares to be replaced above: _____

23. Exterior Paint: \$ 1250.⁰⁰
Powerwash exterior of unit to match existing conditions and any adjacent areas indicating fire damage. Painting to include walls, eaves, overhangs, gutters etc... Paint to match existing. Contractor to use a feathering technique to minimize or blend appearance of repairs to existing wall or paint to the nearest in-tacked natural joint. City to provide name of Dunn Edward colors to be used.

663 Diamond Court Ancillary Structures

24. Unit 663 #3 Drywall Patch, Prep, and Paint: \$ 750.⁰⁰
Replace the damage drywall at ceiling area between the kitchen and dining room cut out by Fire Dept. New drywall to be patched, textured and painted to match existing conditions as closely as possible.

25. **Unit 663 Laundry Room Access Panel, Drywall and Insulation:** \$ 950.⁰⁰
Install new wooden attic access panel damaged by Fire Dept. and all needed framing and drywall. Paint panel to match walls. In attic space above laundry room install new blown-in cellulose insulation to code

CITY FEES:

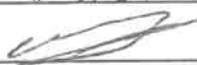
26. **Building Permits and City Business License:** \$ 1850.⁰⁰
Obtain and pay for Upland business license, all required approvals, building permits and inspections.

PROJECT TOTAL: The undersigned, having become thoroughly familiar with the terms and conditions of the proposed Contract Documents and with local conditions affecting the performance and costs of the work at the place where the work is to be completed, and having fully inspected the site in all particulars, hereby proposed and agree to fully perform the work within the time stated and in strict accordance with the proposed Contract Document including furnishing of any and all labor, materials, services necessary equipment and to do all work required to construct, and complete said work in accordance with the Contract Documents for the sum of money as indicated on the Work Description and Bid Proposal Form and summarized as follows:

... one hundred one Thousand eight hundred Twenty Dollars, (\$ 101,820.⁰⁰)
Price in Words Price In Numbers

NOTE: All work shall include the protection of dwelling, fixtures and furnishings as well as maintaining the premises clean at all times. All debris resulting from any work conducted in connection with this contract shall be the property of the contractor, who is responsible for its timely removal and lawful disposal. Work site shall be maintained in a clean and orderly manner, and upon completion, property shall be left in a "broom clean" condition. If awarded the contract, the bidder agrees to present the following documents to the City of Upland prior to the issuance of the Notice to Proceed: Valid certificates covering Property Damage, Liability, and Worker's Compensation insurance, and copy of Contractor's License including the City of Upland as additionally insured. It is further agreed that if awarded this contract, 10% of all requested payouts would be retained until the project is completed to the approval of the owner and all approving agents. Completion of this project will require _____ calendar days.

PROPOSAL SUBMITTED BY:

Contractor: <u>Labastide Construction</u>	Lic. No. & Class: <u>683200 B</u>
Signature: 	Phone No.: <u>909 953-0761</u>
Address: <u>31244 Tarrylen Ct Yucaipa Ca 92389</u>	

SUPPORTING DOCUMENTS TO BE SUBMITTED:

1. Certificate of General Liability Insurance \$2,000,000 coverage (total aggregate)
2. Certificate of Workers Compensation Insurance
3. Copy of Contractors Card or Contractors License
4. Copy of Contractors Driver License
5. Three Residential Rehabilitation References

ATTACHMENT "B"

STAFFING PLAN AND LIST OF SUB-CONTRACTORS

- Staffing plan - list the proposed personnel, years of experience including resume(s) and specialized sub-consultant resume(s).

Name	Classification/ Designation	Years of Experience	License/Certification (Include license number)
Marco Flores	Supervisor	26	
Catalina Schman	Labor	24	

- List sub-consultant(s) (if applicable) anticipated by Respondent's Firm to perform services in attached RFP. Substitution or addition of sub-consultants in any given function shall be allowed only with written approval of the Development Services Director.

Company Name and Address	Contact Name and Telephone Number	Project Function
TBD		

**CONSTRUCTION CONTRACT
SCHEDULE OF PROGRESS PAYMENTS
ATTACHMENT _____**

CITY OF UPLAND

663 DIAMOND COURT FIRE RESTORATION PROJECT

Original Schedule

Progress Payment Schedule Amendment No. _____

OWNER NAME: City of Upland

PROJECT ADDRESS: 663 Diamond Ct., Upland, CA 91786

CONTRACTOR: _____

The schedule of progress payments must specifically describe each phase of work, including the type and amount of work or services scheduled to be supplied in each phase, along with the amount of each proposed progress payment.

IT IS AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A DOWNPAYMENT.

In accordance with the contract agreement, each progress payment amount is subject to retention of ten percent (10%) of the contract value of the work completed at the time of payment.

Progress Payment No. 1

Work/Services to Be Completed	Contract Amount
Total Amount for Completion of the above specified work	

Progress Payment No. 2

Work/Services to Be Completed	Contract Amount
Total Amount for Completion of the above specified work	

Progress Payment No. 3

Work/Services to Be Completed	Contract Amount
Total Amount for Completion of the above specified work	

Progress Payment No. 4

Work/Services to Be Completed	Contract Amount
Total Amount for Completion of the above specified work	

Progress Payment No. 5

Work/Services to Be Completed	Contract Amount
Total Amount for Completion of the above specified work	

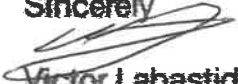
Labastida Construction
31244 Tarryton Ct
Yucaipa, Ca 92399
909-953-0767 Lic # 683200

June 8th 2023
City of Upland
Development Services Department
460 N. Euclid Ave
Upland Ca, 91786
Att: Diane Cotto

Hi, this is Victor Labastida with Labastida Construction. I have been a licensed contractor for 30 years and have had the blessing to have been able to have done so many different types of projects over the years. Including mini track builds, custom homes and remodels. I have also been working on insurance jobs that include water and fire damage for over 15 years. I have negotiated with insurance companies on all the projects that I have been on. Also, with my experience in building of homes I am very affluent in reading blue prints, communicating with building inspectors and other personnel with different agencies. Lastly, I have been working within the city of Upland for the last 14 years and use local suppliers as much as possible. I would like to thank you for this opportunity to be able to provide this estimate for your project.

If you have any questions, please feel free to call me. Again, thank you for this opportunity.

Sincerely


Victor Labastida
Labastida Construction.

RECEIVED
JUN 08 2023
CITY OF UPLAND
DEV. SERVICES DEPT.

▼ Contractor's License Detail (Personnel List)

Contractor License # 683200

Contractor Name LABASTIDA CONSTRUCTION

Click on the person's name to see a more detailed page of information on that person

Licenses Currently Associated With

Name	VICTOR MANUEL LABASTIDA JR
Title	SOLE OWNER
Association Date	12/30/1993
Classification	B
Additional Classification	There are additional classifications that can be viewed by selecting this link.

Licenses No Longer Associated With

Contractor's License Personnel Detail

Contractor License # 683200
Contractor Name LABASTIDA CONSTRUCTION
Name VICTOR MANUEL LABASTIDA JR

Title and Class History

Title SOLE OWNER
Classification B GENERAL BUILDING
Association Date 12/30/1993
Disassociation Date 12/31/2001

Title SOLE OWNER
Classification HIC HOME IMPROVEMENT CERTIFICATION
Association Date 10/12/1999
Disassociation Date 01/01/2004

Title SOLE OWNER
Classification B GENERAL BUILDING
Association Date 10/25/2012

Contractor's License Detail for License # 683200

DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

- ▶ CSLB complaint disclosure is restricted by law (B&P 7124.6) If this entity is subject to public complaint disclosure click on link that will appear below for more information. Click here for a definition of disclosable actions.
- ▶ Only construction related civil judgments reported to CSLB are disclosed (B&P 7071.17).
- ▶ Arbitrations are not listed unless the contractor fails to comply with the terms.
- ▶ Due to workload, there may be relevant information that has not yet been entered into the board's license database.

Data current as of 6/13/2023 11:38:31 AM

Business Information

LABASTIDA CONSTRUCTION
31244 TARRYTON COURT
YUCAIPA, CA 92399
Business Phone Number:(909) 953-0767

Entity Sole Ownership
Issue Date 12/30/1993
Reissue Date 10/25/2012
Expire Date 10/31/2024

License Status

This license is current and active.

All information below should be reviewed.

Classifications

B - GENERAL BUILDING

Bonding Information

Contractor's Bond

This license filed a Contractor's Bond with BUSINESS ALLIANCE INSURANCE COMPANY.

Bond Number: G90912827908

Bond Amount: \$25,000

Effective Date: 01/01/2023

[Contractor's Bond History](#)

Workers' Compensation

This license has workers compensation insurance with the NORGUARD INSURANCE COMPANY

Policy Number:VIWC433482

Effective Date: 01/17/2023

Expire Date: 01/17/2024

[Workers' Compensation History](#)

Surety Company Information

Surety Company Code H23

BUSINESS ALLIANCE INSURANCE COMPANY

Company Information
400 OYSTER POINT SUITE 327
SOUTH SAN FRANCISCO CA 94080
(650) 866-3999

[Back to Top](#) [Conditions of Use](#) [Privacy Policy](#) [Accessibility](#) [Accessibility Certification](#)

Copyright © 2023 State of California

EXHIBIT B

SCHEDULE

- Monday, June 26, 2023 - Upland City Council Meeting
- Wednesday, July 5, 2023 - Notice to Proceed
- July 6, 2023 - Start construction of 663 Diamond Court, Unit 4, Upland, CA 91786
- September 5, 2023 – Construction Completion
 - File Notice of Completion

EXHIBIT C

SPECIAL CONDITIONS

ARTICLE 1. BONDS

Concurrently with this Contract, the Contractor shall deliver to the City four identical counterparts of the Performance Bond and Payment Bond on the forms supplied by the City and included as Exhibit "F" to the Contract. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Contract Price.

EXHIBIT D

**CERTIFICATION
LABOR CODE - SECTION 1861**

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., of the California 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 the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

LABASTIDA CONSRUCTION

By: 

Signature

VICTOR MANUEL LABASTIDA, JR.
Name (Print)

Owner

Title (Print)

EXHIBIT E

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Contractor hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.¹

Name of Contractor: Labastida Construction

DIR Registration Number: 1000043793

DIR Registration Expiration: _____

Small Project Exemption: Yes or No

Unless Contractor is exempt pursuant to the small project exemption, Contractor further acknowledges:

1. Contractor shall maintain a current DIR registration for the duration of the project.
2. Contractor shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Contractor: LABASTIDA CONSTRUCTION

Signature: 

Name and Title: VICTOR MANUEL LABASTIDA, JR. – Owner

Dated: 06/29/2023

¹ If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."

Contractor Information

Legal Entity Name
 LABASTIDA CONSTRUCTION
Legal Entity Type
 Sole Proprietorship
Status
 Expired
Registration Number
 1000043793
Registration effective date
 8/23/2018
Registration expiration date
 6/30/2019
Mailing Address
 31244 TARRYTON CT YUCAIPA 92399 CA United...
Physical Address
 31244 TARRYTON CT YUCAIPA 92399 CA United...
Email Address
Trade Name/DBA
 LABASTIDA CONSTRUCTION
License Number(s)
 CSLB:683200

Registration History

Effective Date	Expiration Date
8/23/2018	6/30/2019
10/20/2016	6/30/2017

Legal Entity Information

Sole Proprietor Name:

Workers Compensation

Do you lease employees through Professional Employer Organization (PEO)?:

Please provide your current workers compensation insurance information below:

PEO InformationName	PEO Phone	PEO Email

Insured by Carrier

Policy Holder Name:VICTOR LABASTIDA**Insurance Carrier:**
 NORGUARD INSURANCE COMPANY**Policy Number:**VIWC774405**Inception date:**