

### CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. 7069, 9124, & 9142 is made and entered into this 14th day of August, 2023 by and between the CITY OF UPLAND, with its principal place of business at 460 N. Euclid Avenue, Upland, California 91786 sometimes hereinafter called the "City" and All American Asphalt, sometimes hereinafter called "Contractor."

**WITNESSETH:** That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

#### ARTICLE 1. SCOPE OF WORK.

The Contractor shall perform all Work within the time stipulated in the Contract, and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5, below, for the following Project:

**Project No. 7069, 9124 & 9142**

**Bid No. 2023-07**

**Arrow Highway Pavement Rehabilitation & Utility Improvements**

**from**

**Benson Avenue to San Antonio Avenue**

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

#### ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within 300 calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

#### ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of Nine Million Eight Hundred Twenty-One Thousand Eight Hundred Dollars (\$9,821,800.00). Any work above \$9,821,800.00 up to \$11,200,000.00 for unforeseen conditions, change orders, etc. is at the City's sole discretion. Total compensation shall not exceed \$11,200,000.00 without prior approval from the City Council. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

#### **ARTICLE 4. LIQUIDATED DAMAGES.**

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of **\$250.00** for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

Consistent with Public Contract Code Section 7102, Contractor will be compensated for damages incurred due to delays for which the City is responsible. The parties agree that determining Contractor's exact delay damages is and will continue to be impracticable and extremely difficult. As such, for each calendar day in excess of the Contract Time, the City shall pay to the Contractor **\$250.00** per day as Reverse Liquidated Damages and not as a penalty or forfeiture. Such amount shall constitute the only payment allowed for any City caused delays and shall necessarily include all overhead, all profits, all administrative costs, all bond costs, all labor, materials, equipment and rental costs and any other costs, expenses and fees incurred or sustained as a result of such delays. Notice of requests for delay damages and additional days shall be provided to the City within five (5) Days from the discovery of the circumstances giving rise to any delay or three (3) Days from the discovery of any latent or subsurface conditions giving rise to a delay.

#### **ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.**

The "Contract Documents" include the following:

- Notice Inviting Bids
- Instructions to Bidders
- Bid Forms
- Bid Acknowledgement
- Bid Schedule
- Bid Guarantee
- Designation of Subcontractors
- Information Required of Bidders
- Non-Collusion Declaration Form
- Iran Contracting Act Certification
- Public Works Contractor DIR Registration Certification
- Performance Bond
- Payment (Labor and Materials) Bond
- Contract for Construction
- General Conditions
- Special Conditions
- Specifications
- Addenda

Construction Plans and Drawing  
Standard Specifications for Public Works Construction "Greenbook", 2018 edition  
Applicable Local Agency Standards and Specifications, as last revised  
Reference Specifications  
Approved and fully executed Change Orders  
Permits  
Any other documents contained in or incorporated into the Contract

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

**ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.**

Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.

**ARTICLE 7. INDEMNIFICATION.**

Contractor shall provide indemnification and defense as set forth in the General Conditions.

**ARTICLE 8. PREVAILING WAGES.**

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at <http://www.dir.ca.gov> and which must be posted at the job site.


**ARTICLE 9. FALSE CLAIMS.**

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

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

CITY OF UPLAND

By:   
Bill Velto, Mayor

ATTEST:

By:   
Keri Johnson, City Clerk

APPROVED AS TO FORM:

By:   
Best Best & Krieger LLP  
City Attorney

**ALL AMERICAN ASPHALT**

[IF CORPORATION, TWO SIGNATURES, PRESENT OR VICE PRESIDENT AND SECRETARY OR TREASURER REQUIRED]

By: 

Its: Vice President

Printed Name: Edward J. Carlson

[SECOND SIGNATURE LINE IF APPLICABLE]

By: 

Its: Secretary

Printed Name: Michael Farkas

267073 Class A

Contractor's License Number and Classification

1000001051

DIR Registration Number

**(CONTRACTOR'S SIGNATURE MUST BE NOTARIZED AND CORPORATE SEAL AFFIXED, IF APPLICABLE)**