

## **ATTACHMENT C**

**CONSTRUCTION CONTRACT BY AND BETWEEN  
THE CITY OF VICTORVILLE AND  
KIRTLEY CONSTRUCTION, INC. DBA  
TK CONSTRUCTION  
FOR  
EUCALYPTUS STREET INFRASTRUCTURE RESTORATION,  
CITY PROJECT NO. CC24-117**

**THIS CONSTRUCTION CONTRACT** (the “**Contract**”) dated \_\_\_\_\_ for reference purposes only is made and entered into by and between the City of Victorville, a municipal corporation and charter city located in the County of San Bernardino, State of California, hereinafter referred to as the “**City**”, and TR, a **Kirtley Construction, Inc. dba TK Construction**, a California corporation, hereinafter referred to as the “**Contractor**”. The City and Contractor are sometimes hereinafter referred to as a “**Party**” and collectively referred to as the “**Parties**.”

**RECITALS:**

**WHEREAS**, the City requires construction of **Eucalyptus Street Infrastructure Restoration**, as more fully described in the solicitation documents issued by the City for Project No. CC24-117 (the “**Project**”); and

**WHEREAS**, on **June 10, 2024**, the City issued a Notice Inviting Bids and solicitation documents to prospective bidders for the Project. In response, Contractor submitted a Bid which the City determined to be the lowest responsive and responsible bid; and

**WHEREAS**, Contractor is a duly organized **a California corporation** in good standing in the State of California, and represents that it has the background, knowledge, experience, expertise and resources to perform the Work and other obligations encompassed by this Contract; and

**WHEREAS**, at its meeting held on **August 20, 2024**, the Victorville City Council duly accepted Contractor’s Bid for the Project and directed that a written agreement for the Project be entered into with Contractor; and

**WHEREAS**, in light of the facts set forth above and the certifications made by Contractor as part of its Bid, the City desires to retain Contractor to perform the construction Work for the Project as set forth in this Contract and in the Contract Documents, as hereinafter described.

**NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS, AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE PARTIES HERETO AGREE AS FOLLOWS:**

**Section 1. RECITALS**

The Recitals set forth above are true and correct and are hereby incorporated into this Contract by this reference, as though set forth herein.

## **Section 2. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE**

a. Contract Documents. The Contract Documents consist of the following documents, all of which are either attached hereto as exhibits or are incorporated herein by this reference. Said Contract Documents are complementary; what is called for in one is binding as if called for in all, and together constitute Contractor's performance obligations:

- (1) This Contract and its attached Exhibits, subject to the limitations in Sections 9 and 20 with respect to **Exhibit "A"** (Contractor's submitted Bid Proposal as accepted by the City);
- (2) Change Orders issued and approved by the City;
- (3) Regulatory Permits from other agencies specified in Appendices A and B of the bid package or as may otherwise be required by law;
- (4) Bid Addenda issued by the City;
- (5) Notice Inviting Bids and Instructions to Bidders;
- (6) Special Provisions
- (7) Greenbook 2021 Edition
- (8) Appendices
- (9) Plans
- (10) Bid Forms and attachment thereto;
- (11) Faithful Performance Bond;
- (12) Payment Bond.

b. Interpretation. In the event of any conflict between any of the Contract Documents, the document highest in the order of precedence (from highest to lowest), as set forth in Subsection a. above shall control.

c. Definitions. Unless specifically defined or assigned a meaning in this Contract, or the context clearly indicates otherwise, capitalized terms herein shall have the meaning assigned to them in the "Definitions" section of the Instructions to Bidders document.

## **Section 3. CONTRACTOR'S OBLIGATIONS**

Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents, and to the satisfaction of **Fredy A. Bonilla, City Engineer**, or his/her designee (hereinafter the "**Project Manager**").

## **Section 4. CONTRACT PRICE; PAYMENT AND RETENTION**

a. As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor **Seven Hundred Sixteen Thousand Nine Hundred Eighty-nine and 50/100 Dollars, (\$716,989.50)** (the "**Contract Price**") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with Contractor's Bid Proposal (attached hereto as **Exhibit "A"**) subject to the provisions of this Contract and the Contract Documents.

- b. Procedures relating to payment and retention are set forth in the Special Provisions.

## **Section 5. CONTRACT TIME; NOTICE TO PROCEED**

a. Contract Time. The Work under this Agreement shall be diligently prosecuted to completion before expiration of **Forty (40) WORKING DAYS**, commencing within **Fifteen (15)** calendar days after the issuance of the Notice to Proceed. The City will not issue a Notice to Proceed to the Contractor until this Contract, including bonds and insurance documents, have been executed and/or approved by the City.

b. Notice to Proceed. No work, service, material, or equipment shall be performed or furnished under this Contract unless and until a Notice to Proceed has been given to the Contractor by the City. Contractor shall commence Work pursuant to the Contract Documents and as directed by the City in the Notice to Proceed, and diligently execute the same to completion within the Contract Time.

## **Section 6. DISPUTE RESOLUTION AND CLAIMS PROCEDURES**

a. Public Contract Code Section 9204. For purposes of any Public Works Claims filed by a Contractor or Subcontractor (as those terms are defined in Public Contract Code Section 9204) under this Contract, the claims procedures in Public Contract Code Section 9204 ("**Section 9204**") and the provisions of this Section shall apply. Public Contract Code Section 9204 is set forth in full in Section 2-10 of the Special Provisions.

- (1) In the event of a Section 9204 Public Works Claim, Contractor may not stop working pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work during the Section 9204 process.
- (2) Any Public Works Claims not resolved by the Section 9204 procedures (and/or any tort claims) shall be subject to Section 2.24.020 of the Victorville Municipal Code ("VMC") and the provisions of the Government Claims Act (Government Code section 810 *et seq.*).

b. For disputes or claims that do not constitute Public Works Claims, City and Contractor agree to comply with the following process:

- (1) Each Party shall designate a senior management or executive level representative to negotiate any dispute.
- (2) The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- (3) If the issue remains unresolved after ten (10) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between the legal counsel for each Party. If the above process fails, the Parties may mutually agree to engage in non-binding mediation or arbitration in which the Parties equally share the costs of any mediator or arbitrator, or may proceed with suit or other remedies, subject to the provisions of subparagraph (5) of this Subsection and other applicable provisions and laws.
- (4) The alternative dispute resolution process set forth herein is a material condition to Contract and must be exhausted as an administrative remedy prior to either Party initiating legal action.

- (5) Compliance with VMC Section 2.24.020 and the provisions of the Government Claims Act (Government Code section 810 *et seq.*) is also required prior to initiating suit against the City.

## **Section 7.      TERMINATION OF AGREEMENT FOR CONVENIENCE**

a.      The City may, by providing thirty (30) days' advance written notice to Contractor, terminate this Agreement in whole or in part, whenever the City shall determine that such termination is in the best interests of the City, or when it becomes impracticable or impossible to proceed, or because of conditions or events beyond the control of the City. Any such termination shall be affected by delivery to Contractor of a Notice of Termination for Convenience, specifying the extent to which performance of Work under this Agreement is terminated, and the date upon which such termination becomes effective. Upon such termination, the obligations of the Contractor for portions of the Work already performed shall continue.

b.      Upon receipt of a Notice of Termination for Convenience, the Contractor shall, unless the notice directs otherwise, do the following:

- (1)      Immediately discontinue the Work to the extent specified in the notice.
- (2)      Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary to complete such portion(s) of the Work that are not to be discontinued.
- (3)      Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent that they relate to the performance of the discontinued portion of the Work.
- (4)      Thereafter do only such Work as may be necessary to preserve and protect the Work already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.

c.      Upon such termination, the Contractor will be paid without duplication for:

- (1)      Work completed in accordance with the Contract Documents prior to the effective date of the Notice of Termination for Convenience;
- (2)      Reasonable costs incurred in settlement of terminated contracts with Subcontractors, suppliers and others; and
- (3)      Reasonable expenses directly attributable to termination.

The Contractor shall submit a final termination settlement proposal to the City no later than ninety (90) days from the effective date of termination, unless extended in writing by the City, upon written request by the Contractor. If the Contractor fails to submit a proposal, the City may determine the amount, if any, due the Contractor as a result of the termination. The City will pay the Contractor the amount it determines is reasonable. If the Contractor disagrees with the amount determined by the City as being reasonable, the Contractor shall provide notice to the City within thirty (30) Days of receipt of payment. Any amount due shall be subject to the dispute resolution provisions set forth in the Contract Documents.

d.      Contractor shall include provisions in all of its subcontracts, purchase orders, and other contracts permitting termination for convenience by Contractor on terms that are consistent with this Contract and that afford no greater rights of recovery against Contractor than are afforded to Contractor under this Section 7.

## **Section 8.      TERMINATION FOR CONTRACTOR'S DEFAULT**

a.      Default. The City may terminate this Contract for Contractor's default as set forth in this Section. The City will consider the Contractor in default of this Contract if, prior to the City's acceptance of the Work, the Contractor:

- (1) becomes insolvent, assigns its assets for the benefit of its creditors, is unable to pay its debts as they become due, or is otherwise financially unable to complete the Work;
- (2) abandons the Work by failing to report to the Work site and diligently prosecute the Work to completion;
- (3) disregards written instructions from the City or materially violates provisions of the Contract Documents;
- (4) fails to prosecute the Work according to the schedule approved by the Engineer,
- (5) disregards laws or regulations of any public body having jurisdiction, or
- (6) commits continuous or repeated violations of regulatory or statutory safety requirements.

Notices, and other written communications regarding default between the Contractor, the City, and the Surety shall be transmitted in accordance with Section 21 of this Contract.

b. Notice and Opportunity to Cure. The City will issue a written notice to cure the default to the Contractor and its Surety. The Contractor shall commence satisfactory corrective actions within five (5) Working Days after receipt. If the Contractor fails to commence satisfactory corrective action within five (5) Working Days after receipt of the notice to cure, or to diligently continue satisfactory and timely correction of the default thereafter, the City will consider the Contractor in default of the Contract and:

- (1) will terminate the Contractor's right to perform under the Contract by issuing a written notice of termination for default to the Contractor and its Surety;
- (2) may use any materials, equipment, tools or other facilities furnished by the Contractor to secure and maintain the Work site, and
- (3) may furnish labor, equipment, and materials the City deems necessary to secure and maintain the Job Site;

c. Remedies Cumulative. The provisions of this Section shall be in addition to all other legal rights and remedies available to the City. Termination of this Contract will not relieve the Surety of its obligation for any just claims arising out of the Work performed.

## **Section 9.      PREVAILING WAGE**

a. Compliance with State Prevailing Wage Requirements. Pursuant to Labor Code Section 1773, the City has obtained the prevailing rate of per diem wages and the prevailing wage rate for holiday and overtime work applicable in San Bernardino County, California from the Director of the Department of Industrial Relations (DIR) for each craft, classification, or type of worker needed to perform the Work required under this Contract. A copy of these prevailing wage rates are on file at the City's Finance Department/Purchasing Division and shall be made available for review to any interested party on request. In addition, a copy of the prevailing rate of per diem wages may be obtained via the internet at: <http://www.dir.ca.gov/DLSR/PWD>. Contractor and all Subcontractors shall pay not less than said specified State of California rates to all workers employed by them in the execution of the Work contemplated by this Contract, including workers performing Work covered by under Labor Code Sections 1720 and 1720.9. Contractor shall be responsible for using the correct and current prevailing wage rates. Contractor shall be solely responsible for using the correct wage decision or determination and perform accordingly. An error on the part of any awarding body does not relieve the Contractor from the responsibility for payment of the correct prevailing wage.

b. Conflict. It is further expressly agreed by and between the Parties hereto that should there be any conflict between the terms of this Section 9 and the provisions of **Exhibit "A"**, the terms of this Section 9 shall control and nothing herein shall be considered as an acceptance of the terms of Contractor's Submitted Bid Proposal conflicting with the requirements of this Section 9.

c. Payroll Records. Contractor must comply with the provisions of Labor Code sections 1776 and 1812 and all implementing regulations, including without limitation, those set forth in Title 8 of the California Code of Regulations, Section 16000 *et seq.* (hereinafter the “**Regulations**”), which are fully incorporated by this reference, including requirements for electronic submission of payroll records to the DIR.

(1) Contractor and Subcontractor Obligations. Contractor and each Subcontractor must keep accurate payroll records, 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 in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(a) The information contained in the payroll record is true and correct; and

(b) Contractor or the Subcontractor has complied with the requirements of Labor Code §§ 1771, 1811, and 1815 for any Work performed by its employees on the Project.

(2) Certified Record. A certified copy of an employee’s payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, to the Division of Labor Standards Enforcement, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.

(3) Enforcement. Upon notice of noncompliance with Labor Code § 1776, Contractor or Subcontractor has ten days in which to comply with the requirements of this section. If Contractor or Subcontractor fails to do so within the ten-day period, Contractor or Subcontractor will forfeit a penalty of \$100.00 per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to Contractor.

d. Apprentices. Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code section 1777.5, which is fully incorporated by reference.

e. Notices. Pursuant to Labor Code section 1771.4, Contractor is required to post all Job Site notices, including prevailing wage rates and other notices as required by regulation.

f. Other Labor Requirements. Contractor has the responsibility for and shall comply with all other requirements of California Labor Code Section 1720 *et seq.*, the Regulations, and all other applicable State labor laws. Contractor further acknowledges and agrees that it will be independently responsible for reviewing the applicable laws and regulations and effectuating compliance with those laws. Contractor will require the same of all its Subcontractors.

g. Statutory Penalties. The statutory penalties for failure to pay prevailing wage or to comply with State wage and hour laws will be enforced as follows:

(1) Pursuant to Labor Code section 1775, the Contractor and any Subcontractor under it shall forfeit as a penalty to the City not more than Two Hundred Dollars (\$200.00), for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by

the Director of the DIR for such work or craft in which such worker is employed for any public work done under this Contract by it or by any Subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

(2) The Contractor or Subcontractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the execution of this Contract by the respective contractor or Subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this subsection. In awarding any contract for public work, Contractor must forfeit to City Twenty-five Dollars (\$25.00) per day for each worker who works in excess of the minimum working hours when Contractor does not pay overtime. In accordance with the provisions of Labor Code Sections 1810 *et seq.*, eight (8) hours is the legal working day.

h. DIR Monitoring. Pursuant to Labor Code § 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the DIR.

i. DIR Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its Subcontractors must be registered with the DIR prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all Subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project.

## **Section 10. LIQUIDATED DAMAGES**

If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of **Three Thousand Six Hundred and 00/100 Dollars (\$3,600.00)** per day for each day of unexcused delay in completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.

## **Section 11. COMPLIANCE WITH LAWS**

Contractor shall comply with all Laws applicable to the performance of the Work required by the Contract Documents, including any rule, regulation, or bylaw governing the conduct or performance of Contractor, its employees, officers, board members, agents, independent contractors, and Subcontractors. Unless otherwise specified in the Contract Documents, all required permits and licenses, including a City business license, shall be held or obtained by the Contractor at its sole expense and prior to commencing any Work hereunder.

## **Section 12. WORKERS' COMPENSATION CERTIFICATION**

Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."



### **Section 13.     INSURANCE**

a.       Contractor shall procure and maintain at its own expense at all times during the period covered by this Contract (and through the one-year guarantee period following the date of City's acceptance of the Project) the following policies of insurance:

(1)     **Commercial General Liability ("CGL") Insurance:** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence resulting from the acts or omissions of the Contractor or its officers, employees, servants, volunteers, and agents, and independent contractors. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(2)     **Commercial Vehicle Liability Insurance:** Covering person injury and property damage, of not less than Two Million Dollars (\$2,000,000) combined single limit, covering any vehicle utilized by Contractor or its officers, employees, servants, volunteers, or agents and independent contractors in performing the Work required by this Contract.

(3)     **Workers' Compensation Insurance:** Providing coverage as required by the California State Workers' Compensation Law and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. If any class of employees employed by Contractor is not protected by the California State Workers' Compensation Law, Contractor shall provide adequate insurance for the protection of such employees to the satisfaction of the City.

(4)     **Course of Construction, Builders' Risk, or Inland Marine Insurance for Work on Site:** Issued on an occurrence basis, for all-risk or "all perils" coverage on a 100% completed value basis on the insurable portion of the Project for the benefit of City, that offers "Installation" coverage for all materials, supplies, equipment, and property obtained by, or for Contractor, which is to become part of the Work while such equipment and property is stored at the jobsite, at temporary locations, or while in transit to the Project from such temporary locations. Contractor shall also be responsible for insuring its owned, leased/rented, or borrowed equipment.

(a)     City of Victorville shall be named as a Loss Payee.

(b)     If the Project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery, and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery, or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the Project/Work site.

(5)     **Pollution Liability:** Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$1,000,000 aggregate per policy period of one year.

b.       **Additional Insurance Requirements.** With respect to the policies of insurance set forth above, compliance with the following is also required:

(1) Additional Insureds. Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation coverage, shall bear an endorsement whereby it is provided that, the City and its elected or appointed officials, officers, employees, servants, volunteers, agents and independent contractors, including, without limitation, the City Attorney, are named as Additional Insureds. The coverage shall contain no special limitations on the scope of protection afforded to the City of Victorville, its officers, officials, employees, agents, or volunteers.

(2) Waiver of Subrogation Rights. Contractor shall require the carriers of all required insurance policies to waive all rights of subrogation against the City and its elected or appointed officers, officials, volunteers, employees, contractors, and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

(3) Sufficiency of Insurers. Contractor must secure all policies of insurance required by this Contract from a good and responsible company or companies authorized to do insurance business in the State of California, with an AM Best's rating of not less than A;VII.

(4) Proof of Insurance Coverage Required Prior to Commencement of Work. Within ten (10) days of the date Contractor receives this Contract from the City for execution (following award of same by the City Council), certificates of insurance evidencing the policies of insurance, coverages, and endorsements required by this Contract and satisfactory to and approved by the City shall be furnished by Contractor to the City's Risk Manager. In no event shall any Work on the Project be permitted to commence until adequate proof of insurance and endorsements have been so furnished.

(5) Special Provisions. Any additional insurance requirements set forth in Section 5-4 of the Special Provisions shall also apply to this Contract.

(6) Other Required Endorsements.

(a) The policies shall be endorsed to provide that in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the City shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or amendment is effective. In the case of cancellation for non-payment, ten (10) days advance written notice shall be given.

(b) The CGL and vehicle liability policies shall be endorsed as Primary and Non-contributory.

c. Subcontractors. Contractor must ensure that each Subcontractor is required to obtain and maintain the same insurance coverage required under this Section 13 with respect to its performance of Work on the Project, including those requirements related to the Additional Insureds and waiver of subrogation. Contractor must confirm that each Subcontractor has complied with these insurance requirements before the Subcontractor is permitted to begin Work on the Project. Upon request by the City, Contractor must provide certificates and endorsements submitted by each Subcontractor to prove compliance with this requirement. The insurance requirements for Subcontractors do not replace or limit the Contractor's insurance obligations.

**Section 14.     Reserved.**

## **Section 15.     TIME OF THE ESSENCE**

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

## **Section 16.     INDEMNIFICATION**

a.        Notwithstanding the limits of any insurance and to the fullest extent permitted by law, Contractor shall indemnify the City, its elected or appointed officials, officers, agents, volunteers and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (hereinafter "**Claims or Liabilities**") that may be asserted or claimed by any person, firm or entity arising or alleged to arise out of or in connection with the performance of the Work, operations, or activities of Contractor, its agents, employees, Subcontractors, or invitees on the Project, or arising or alleged to arise from the acts or omissions of Contractor hereunder, or arising or alleged to arise from Contractor's performance of or failure to perform any term, provision, covenant or condition of this Contract, but excluding such Claims or Liabilities or portion of such Claims or Liabilities arising or alleged to arise from the active negligence, sole negligence, or willful misconduct of the City, its elected or appointed officials, officers, agents, volunteers, or employees, and in connection therewith:

- (1)       Contractor will defend any action or actions filed in connection with any of said Claims or Liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;
- (2)       Contractor will promptly pay any judgment rendered against the City, its elected or appointed officials, officers, agents, volunteers, or employees for any such claims or liabilities arising or alleged to arise out of or in connection with Contractor's (or its agents', employees', Subcontractors' or invitees') performance of or failure to perform such Work, operations or activities hereunder; and Contractor agrees to save and hold the City, its elected or appointed officials, officers, agents, volunteers and employees harmless therefrom;
- (3)       In the event the City, its elected or appointed officials, officers, agents, volunteers, or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising or alleged to arise out of or in connection with the performance of or failure to perform the Work, operation, or activities of Contractor hereunder, Contractor shall pay to the City, its elected or appointed officials, officers, agents, volunteers, or employees, any and all costs and expenses incurred by the City, its elected or appointed officers, officials, agents, volunteers, or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees for counsel acceptable to City;
- (4)       Contractor's duty to defend, indemnify, and hold harmless as set out in this Section shall include any claims, liabilities, obligations, losses, demands, actions, penalties, suits, costs, expenses or damages or injury to persons or property arising or alleged to arise from, in connection with, as a consequence of, or pursuant to any state or federal law or regulation regarding hazardous substances, including but not limited to, the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Resource Conservation and Recovery Act of 1976 ("RCRA"), the Hazardous and Solid Waste Amendments of 1984, the Hazardous Material Transportation Act, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, the California Hazardous Substance Account Act, the California Hazardous Waste Control Law or the Porter-Cologne Water Quality Control Act, as any of those statutes may be amended from time to time.

b.        City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code § 9201. The Contractor's indemnification and defense

obligations pursuant to this Section shall survive the termination of this Contract. Contractor shall require the same indemnification from all Subcontractors.

#### **Section 17.     REPORTS; BOOKS AND RECORDS; AUDIT**

a.        Upon request by the Project Manager Contractor shall prepare and submit reports concerning Contractor's performance of the Work required by this Contract.

b.        Contractor shall keep such books and records as shall be necessary to perform the work required by this Contract and enable the Project Manager to evaluate the cost and the performance of such Work.

c.        Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles. The Project Manager shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

d.        Records and supporting documents pertaining to the use of funds paid to Contractor hereunder shall be retained by Contractor and made available to the Project Manager for purposes of performing an audit for a period of five (5) years from the date of termination of this Contract.

#### **Section 18.     MODIFICATIONS AND AMENDMENTS**

This Contract may be modified or amended only by written Change Orders as specified in the Contract Documents or a written instrument signed by both Parties.

#### **Section 19.     ENTIRE AGREEMENT**

a.        This Contract supersedes any and all prior or contemporaneous agreements, either oral or written, between the City and Contractor with respect to the subject matter of this Contract.

b.        The Contract Documents contain all of the covenants and agreements between the Parties with respect to the subject matter herein, and each Party acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any Party, except those covenants and agreements in this Contract and the Contract Documents incorporated herein.

c.        No agreement, statement, or promise with respect to the subject matter of the Contract Documents, which is not contained in the Contract Documents, or in a valid modification or amendment to the Contract Documents, shall be valid or binding on either Party.

#### **Section 20.     AMBIGUITIES**

This Contract is in all respects intended by each Party hereto to be deemed and construed to have been jointly prepared by the Parties and the Parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Contract. Notwithstanding the foregoing, the Parties agree that **Exhibit "A"** is attached hereto for reference purposes, and to the extent there are any ambiguities, inconsistencies, or conflicts between the terms of this Contract and **Exhibit "A"**, the terms of this Contract shall control and nothing set forth in **Exhibit "A"** shall be deemed to supersede any of the provisions of this Contract.

## **Section 21. NOTICES**

a. Any notice to be provided pursuant to this Contract shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the Parties as follows:

**To City:** Fredy A. Bonilla, City Engineer  
Engineering Department City of Victorville  
14343 Civic Drive  
Victorville, CA 92392

**To Contractor:** Troy Kirtley, President  
Kirtley Construction, Inc. dba TK Construction  
740 W. 40<sup>th</sup> Street  
San Bernardino, CA 92407

**To Surety:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Notices, payments, and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

c. Either Party, or the surety, may change its address by giving notice in writing to all other parties listed above, and thereafter notices shall be addressed and transmitted to such new address.

## **Section 22. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of the City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to Contractor or to its successor(s), or for any breach of any obligation of the terms of this Contract.

## **Section 23. REVIEW BY ATTORNEYS**

Each Party hereto has had its attorneys review this Contract and all related documents. Each Party hereto has consulted with its attorneys and has negotiated the terms of this Contract based on such consultation.

## **Section 24. BONDS**

Concurrently with the execution of this Contract by the Contractor, and before the commencement of any Work, Contractor shall furnish to the City a Faithful Performance Bond, and a Payment (Labor and Materials Bond) each in an amount equal to one hundred percent (100%) of the Contract Price written on the forms included in the Contract Documents. These bonds must remain in force until the later of (1) the expiration of the one-year guarantee period; or (2) on one year from the date of completion of the corrective Work. Such bonds must be issued by a responsible corporate Surety, licensed and authorized to issue such bonds in the State of California with an AM Best's Rating of at least A: VII.

## **Section 25. CARE OF WORK**

Contractor must adopt reasonable methods during the life of the Contract to furnish continuous protection to the Work, and the equipment, materials, papers, documents, plans, studies, and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the Work by the City, except those losses or damages as may be caused by the City's own negligence. The performance of the Work by Contractor or the payment of money by the City shall not relieve Contractor from any obligation to correct any incomplete, inaccurate, or defective Work (including the obligation to remedy any defective Work or materials during the one-year guarantee period after the City's acceptance thereof) at no further cost to the City.

## **Section 26. CAPTIONS AND HEADINGS**

The captions and headings contained in this Contract are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

## **Section 27. OWNERSHIP OF DOCUMENTS**

No portion of the Contract Documents may be used for any purpose other than construction of the Project, without prior written consent from City. Contractor is deemed to have conveyed the copyright in any designs, drawings, specifications, Shop Drawings, or other documents (in paper or electronic form) developed by Contractor for the Project, and City will retain all rights to such works, including the right to possession.

## **Section 28. SUCCESSORS, HEIRS, AND ASSIGNS**

Except as otherwise expressly provided herein, this Contract shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties. This Contract may not be assigned or transferred by Contractor without the concurrence of the surety and express written consent of the City.

## **Section 29. GENDER; PLURAL**

In this Contract, unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall include one another.

## **Section 30. SEVERABILITY**

If any one or more of the sentences, clauses, paragraphs, or sections contained herein is declared invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Contract and shall not affect, impair, or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

## **Section 31. GOVERNING LAW**

The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the Parties under this Contract, shall be construed pursuant to and in accordance with California law.

## **Section 32. CUMULATIVE REMEDIES**

Except with respect to rights and remedies expressly declared to be exclusive in this Contract, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default of any other default by the other Party.

**Section 33.     VENUE**

All proceedings involving disputes over the terms, provisions, covenants, or conditions contained in this Contract and all proceedings involving any enforcement action related to this Contract shall be initiated and conducted in the applicable court or forum in San Bernardino County, California.

**Section 34.     EFFECTIVENESS OF CONTRACT**

This Contract shall not be binding upon the City until signed by the authorized representative(s) of Contractor, approved by the City's Risk Manager, and executed by the authorized City personnel or the Mayor.

**Section 35.     REPRESENTATIONS OF PARTIES AND PERSONS EXECUTING CONTRACT**

Each of the Parties to this Contract hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Contract a binding obligation of each of the Parties hereto. The persons executing this Contract warrant that they are duly authorized to execute this Contract on behalf of and bind the Parties each purports to represent.

**Section 36.     WAIVER**

No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default under this Contract shall impair such right or remedy or be construed as a waiver. A Party's consent to or approval of any act by the other Party requiring the Party's consent or approval shall not be deemed to waive or render unnecessary the other Party's consent to or approval of any subsequent act. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Contract.

**Section 37.     INDEPENDENT CONTRACTOR STATUS**

Contractor is an independent contractor. All persons working for or under the direction of the Contractor are the Contractor's employees, agents, or subcontractors, and they shall not be deemed agents, servants, or employees of the City.

**Section 38.     COUNTERPARTS**

This Contract may be executed by the Parties in counterparts, and when executed by each of the Parties, each counterpart shall be deemed to be a part of this Contract.

**Section 39.     PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Each and every provision of law and clause required by Law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either Party the Contract shall forthwith be physically amended to make such insertion or correction.

**Section 40.     ATTORNEY'S FEES**

If either Party commences an action against the other Party, either legal, administrative, or otherwise, arising out of or in connection with this Contract, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

## **Section 41. CARB COMPLIANCE OBLIGATIONS**

a. CARB Regulations. Contractor is aware of the California Air Resources Board ("CARB") regulations mandating various emission reduction requirements. Contractor agrees to comply with all applicable CARB regulations (Title 13, Division 3 of the California Code of Regulations ("CCR")) prior to commencing any work hereunder and maintain compliance throughout the duration of this Contract.

(1) Vehicles with a Gross Vehicle Weight Rating (GVWR) greater than 8,500 lbs. and light-duty package delivery vehicles operated in California may be subject to CARB's Advanced Clean Fleets regulations. Such vehicles may therefore be subject to requirements to reduce emissions of air pollutants. For more information, please visit the CARB Advanced Clean Fleets (ACF) webpage at <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-fleets>.

(2) Effective January 1, 2024, CARB implemented amendments to the In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR Section 2449 *et seq.*, the "Off-Road Regulation") which apply broadly to all self-propelled off road diesel vehicles 25 horsepower or greater and other forms of equipment used in California (including any vehicles or equipment that is rented or leased). The Off-Road Regulation is available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/off-road-diesel/appa-1.pdf>.

b. Contractor must comply with all CARB regulations and requirements, including without limitation, all applicable sections of the Off-Road Regulation (as codified in 13 CCR Section 2449 *et seq.*) throughout the term of the Project and this Contract. Contractor shall be solely liable for all costs associated with complying with the regulations, as well as for any and all penalties, fines, damages, or costs associated with violations or failures to comply with the regulations. Contractor shall defend, indemnify, and hold harmless the City of Victorville, its elected and appointed officials, officers, agents, and employees from and against any and all claims, liabilities, costs, penalties, interest or other damages arising out of Contractor's failure or alleged failure to comply with CARB regulations.

**(END OF THIS PAGE – SIGNATURE PAGE FOLLOWS)**



**IN WITNESS WHEREOF**, the Parties hereto have caused this Contract to be executed as of the dates written below.

**THE CITY OF VICTORVILLE**

**KIRTLEY CONSTRUCTION, INC. DBA  
TK CONSTRUCTION**

By: \_\_\_\_\_  
**Elizabeth Becerra, Mayor**

By: \_\_\_\_\_  
**Troy Kirtley, President**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**ATTEST**

By: \_\_\_\_\_  
**Jennifer Thompson, City Clerk**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
**Sandra Bostick, Risk Manager**

Dated: \_\_\_\_\_

**APPROVED AS TO STANDARD FORM**

By: \_\_\_\_\_  
**Andre de Bortnowsky, City Attorney**

Dated: \_\_\_\_\_

## EXHIBIT A

### **CONTRACTOR'S BID PROPOSAL**

See Attachment

**BID SCHEDULE**  
**EUCALYPTUS STREET INFRASTRUCTURE RESTORATION PROJECT, PROJECT CC24-117**

TO THE CITY COUNCIL OF THE CITY OF VICTORVILLE, CALIFORNIA:

The **undersigned declares** they have carefully examined the locations of the proposed work, the Plans, Special Provisions, Bid Item Descriptions, and Contract Documents; and being familiar with all of the conditions surrounding the work, including the availability of materials and labor, hereby proposes to furnish all labor, materials, tools, equipment, and incidentals, to complete all the work. All of the aforementioned shall be done in accordance with said Plans, Special Provisions, and other Contract Documents for the price set forth in the following schedules:

**SCHEDULE A – GENERAL ADMINISTRATION**

Bid Item #	Ref Spec § / Plan #	Bid Item Description	Approx. Quantity	Unit Price	Total Cost
1	§7-3/S-936/WP-1491	MOBILIZATION & DEMOBILIZATION (F)	1 LS	\$15,500.00	\$15,500.00
2	§3-8.2, 601/S-936/WP-1491	TEMPORARY TRAFFIC CONTROL PLAN(S) (F)	1 LS	\$550.00	\$550.00
3	§601/S-936	TEMPORARY TRAFFIC CONTROL OPERATION & MAINTENANCE (F)	1 LS	\$900.00	\$900.00
4	§3-12/S-936/WP-1491	WORKSITE MAINTENANCE, WATER POLLUTION CONTROL (F)	1 LS	\$4,600.00	\$4,600.00
4A	§3-12.6/S-936/WP-1491	PLACE STORM DRAIN INLET PROTECTION (F)	1 EA	\$800.00	\$800.00
4B	§3-12.6/S-936/WP-1491	PLACE CONCRETE WASHOUT (F)	1 EA	\$950.00	\$950.00
4C	§3-12.6/S-936/WP-1491	STREET SWEEPING & VACUUMING (F)	1 LS	\$1,500.00	\$1,500.00
<b>SUBTOTAL FOR SCHEDULE A – GENERAL ADMINISTRATION (SUM OF BID ITEMS 1 THROUGH 4C) \$</b>				<b>\$24,800.00</b>	

**SCHEDULE B – EUCALYPTUS WATER LINE RELOCATION**

Bid Item #	Ref Spec \$ / Plan #	Bid Item Description	Approx. Quantity	Unit Price	Total Cost
5	WP-1491	AUTHORIZED WORK	1 LS	\$50,000.00	\$50,000.00
6	\$402/S-936/WP-1491	UTILITY LOCATION & PROTECTION	1 LS	\$4,000.00	\$4,000.00
7	\$402/WP-1491	REMOVE & DISPOSE OF EXISTING ASBESTOS-CEMENT PIPE	250 LF	\$46.00	\$11,500.00
8	\$402/WP-1491	REMOVE & DISPOSE EXISTING VALVE ASSEMBLIES	1 LS	\$250.00	\$250.00
9	WP-1491	REMOVE & REPLACE AC PAVEMENT	120 LF	\$150.00	\$18,000.00
10	\$209-1/WP-1491	FURNISH & INSTALL 8" DIP CLASS 350 PIPE	828 LF	\$157.00	\$129,996.00
11	WP-1491	FURNISH & INSTALL 18" x 0.25" CARBON STEEL CASING	96 LF	\$296.00	\$28,416.00
12	\$212-5/WP-1491	FURNISH & INSTALL 2" COMBINATION AIR VAC ASSEMBLY	1 EA	\$14,200.00	\$14,200.00
13	\$212-5/WP-1491	FURNISH & INSTALL 4" BLOW-OFF ASSEMBLY	1 EA	\$10,100.00	\$10,100.00
14	WP-1491	FURNISH & INSTALL 8" DIP 45° BEND	4 EA	\$872.00	\$3,488.00
15	WP-1491	FURNISH & INSTALL 8" DIP 45° BEND W/ THRUST BLOCK	1 EA	\$1,400.00	\$1,400.00
16	WP-1491	FURNISH & INSTALL 8" DIP 90° BEND	1 EA	\$900.00	\$900.00
17	WP-1491	FURNISH & INSTALL 8" DIP 90° BEND W/ THRUST BLOCK	1 EA	\$1,400.00	\$1,400.00
18	\$212-5/WP-1491	FURNISH & INSTALL 8" GATE VALVE	4 EA	\$2,250.00	\$9,000.00
19	\$212-5/WP-1491	FURNISH & INSTALL 6" GATE VALVE	1 EA	\$1,700.00	\$1,700.00
20	WP-1491	FURNISH & INSTALL 8" x 8" x 8" TEE W/ THRUST BLOCK	1 EA	\$4,500.00	\$4,500.00
21	WP-1491	FURNISH & INSTALL 8" x 8" x 6" TEE W/THRUST BLOCK	1 EA	\$9,900.00	\$9,900.00
22	WP-1491	CONNECT TO EXISTING WATER MAIN W/ 8" DIP SPOOL AND TRANSITION COUPLER	3 EA	\$2,100.00	\$6,300.00
23	WP-1491	CONNECT TO EXISTING WATER MAIN W/ 6" DIP SPOOL AND TRANSITION COUPLER	1 EA	\$1,700.00	\$1,700.00
24	WP-1491	CUT & CAP EXISTING WATER MAIN	1 LS	\$1,900.00	\$1,900.00
<b>SUBTOTAL FOR SCHEDULE B – EUCALYPTUS WATER LINE RELOCATION (SUM OF BID ITEMS 5 THROUGH 24) \$</b>				<b>\$308,650.00</b>	

## CITY OF VICTORVILLE, CALIFORNIA

**SCHEDULE C – EUCALYPTUS STORM DRAIN REPAIR**

Bid Item #	Ref Spec \$ / Plan #	Bid Item Description	Approx. Quantity	Unit Price	Total Cost
25	S-936	AUTHORIZED WORK	1 LS	\$20,000.00	\$20,000.00
26	\$300-3/S-936	ALLOWANCE FOR UNCLASSIFIED FILL	410 CY	\$47.00	\$19,270.00
27	\$303/S-936	REPAIR EXISTING CATCH BASIN	1 LS	\$16,400.00	\$16,400.00
28	\$303/S-936	CONSTRUCT CURB OPENING CATCH BASIN W/ 3 GRATINGS	1 LS	\$34,500.00	\$34,500.00
29	\$306/S-936	CONSTRUCT 48" D-2000 RCP STORM DRAIN USING PROVIDED SALVAGED MATERIAL	112 LF	\$413.00	\$46,256.00
30	\$306/S-936	CONSTRUCT 48" D-2000 RCP STORM DRAIN USING NEW MATERIAL	32 LF	\$668.50	\$21,392.00
31	\$201/S-936	CONSTRUCT PIPE CULVERT HEADWALL W/ WINGWALLS	1 EA	\$80,150.00	\$80,150.00
32	\$303/S-936	CONSTRUCT REINFORCED CONCRETE CUTOFF WALL	1 LS	\$9,400.00	\$9,400.00
33	\$206/S-936	INSTALL METAL RAILING ALONG PARAPET OF HEADWALL AND WINGWALLS	31 LF	\$490.50	\$15,205.50
34	\$200-1/S-936	CONSTRUCT 2-TON (CLASS IX) OUTSIDE LAYER UNGROUTED RIPRAP	400 SF	\$70.50	\$28,200.00
35	\$200-1/S-936	CONSTRUCT BACKING NO. 2 UNGROUTED RIPRAP	400 SF	\$32.00	\$12,800.00
36	\$300-9/S-936	CONSTRUCT RSP-TYPE B FABRIC UNDER RIPRAP LAYERS	940 SF	\$6.00	\$5,640.00
37	\$201/S-936	CONSTRUCT CONCRETE PIPE COLLAR	17 EA	\$2,900.00	\$49,300.00
38	\$404/S-936	COLD MILL EXISTING AC PAVEMENT 2.0'x0.17'	31 SF	\$65.00	\$2,015.00
39	\$401, 3-12 /S-936	SAWCUT AC ROAD PAVEMENT	15 LF	\$24.00	\$360.00
40	\$401	REMOVE & DISPOSE EXISTING AC PAVEMENT	40 SF	\$32.00	\$1,280.00
41	\$302-5/S-936	CONSTRUCT 2.0" AC PAVEMENT C2-PG 64-10 R15 (F)	31 SF	\$111.00	\$3,441.00
42	\$302-5/S-936	CONSTRUCT 3.0" AC PAVEMENT C2-PG 64-10 R15 (F)	208 SF	\$45.50	\$9,464.00
43	\$302-5/S-936	APPLY TACK COAT (F)	36 SF	\$6.00	\$216.00
44	\$303/S-936	CONSTRUCT PCC CURB	33 LF	\$250.00	\$8,250.00
<b>SUBTOTAL FOR SCHEDULE C – EUCALYPTUS STORM DRAIN REPAIR (SUM OF BID ITEMS 25 THROUGH 44) \$</b>				<b>\$383,539.50</b>	

**CITY OF VICTORVILLE, CALIFORNIA**

The **base bid** shall be the total of Schedules **A** through **C** added together. All **quantities greater than one (1)** contained herein are approximate.

Schedule A Subtotal: \$24,800.00

Schedule B Subtotal: \$308,650.00

Schedule C Subtotal: \$383,539.50

**TOTAL:** \$716,989.50

**\*\*\*\*\* CITY CLERK WILL READ THIS TOTAL BASE BID \*\*\*\*\***

**TOTAL FOR BASE BID, SCHEDULES A+B+C (NUMBERS):**

**\$** Seven Hundred Sixteen Thousand Nine Hundred Eighty Nine Dollars and Fifty Cents

**TOTAL FOR BASE BID, SCHEDULES A+B+C (WORDS):**

Contractor: Kirtley Construction, Inc. dba TK Construction

Address: P.O. Box 9608, San Bernardino, CA 92427

Phone: 909-473-8739 Fax: 909-473-3067

Email Address: tntkirtley@msn.com

By: David King - Vice President

Signature

July 11, 2024

Date: