

CITY OF UPLAND
CONSTRUCTION CONTRACT

GIBSON SENIOR CENTER INTERIOR IMPROVEMENT PROJECT

1. PARTIES AND DATE.

This Contract is made and entered into this **10th day of August, 2026** 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 **KNM Design Build, LLC**, a California Limited Liability Company with its principal place of business at 202 Fashion Lane, Suite 101, Tustin, CA. 92780 ("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 Gibson Sr. Center Building Interior Improvements 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: Class "B" General Building Contractor.

2.3 Project. City desires to engage Contractor to render such services for the Gibson Sr. Center Interior Improvement Project ("Project") as set forth in this Contract.

2.4 Project Documents & Certifications. Contractor has obtained, and delivers concurrently herewith, Bid Bond & Liability Insurances 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/Schedule (Exhibit "A")
- Plans and Specifications (Exhibit "B")
- Special Conditions (Exhibit "C")
- Contractor's Certificate Regarding Workers' Compensation (Exhibit "D")
- Public Works Contractor Registration Certification (Exhibit "E")
- Payment and Performance Bonds (Exhibit "F")
- Fleet Compliance Certification (Exhibit "G")
- Federal Requirements (Exhibit "H")
- Addenda
- Change Orders executed by the City
- Notice Inviting Bids, if any
- Instructions to Bidders, if any
- Contractor's Bid

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 additional 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 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 **60** 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 \$250 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 Dollars **\$209,930.00** ("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). 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 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 the 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 broader, 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, 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*: \$2,000,000 per occurrence and \$4,000,000 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 ensure 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 \$2,000,000 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:VIII, 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 affecting 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 reinstitution 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 Richard Smiderle, Operations Manager or his or her 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:

KNM Design Build, LLC.
202 Fashion Lane, Suite 101
Tustin, CA 92780
Attn: Nicole McFayden, President

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.

3.18.20 Fleet Compliance.

3.18.20.1 To the extent applicable, Contractor, shall comply, and shall ensure all subcontractors comply, with all requirements of the most current version of the California Air Resources Board ("CARB") including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments ("Regulation"). A Fleet Compliance Certification Form is attached hereto as Exhibit "H" and incorporated herein by this reference.

3.18.20.2 Throughout Project, and for three (3) years thereafter, Contractor shall make available for inspection and copying any and all documents or information associated with Contractor's and subcontractors' fleet including, without limitation, the CRCs, fuel/refueling records, maintenance records, emissions records, and any other information the Contractor is required to produce, keep or maintain pursuant to the Regulation upon two (2) calendar days' notice from the City.

3.18.20.3 Contractor shall be solely liable for any and all costs associated with complying with the Regulation as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the Regulation. Contractor shall defend, indemnify and hold harmless the City, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Regulation.

3.18.21 Federal Provisions. When funding for the Services is provided, in whole or in part, by an agency of the federal government, Contractor shall also fully and adequately comply with the provisions included in Exhibit "G" (Federal Requirements) attached hereto and incorporated herein by reference ("Federal Requirements"). With respect to any conflict between such Federal Requirements and the terms of this Contract and/or the provisions of state law, the more stringent requirement shall control.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR CONSTRUCTION CONTRACT
BETWEEN THE CITY OF UPLAND
AND KNM DESIGN BUILD, LLC.**

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

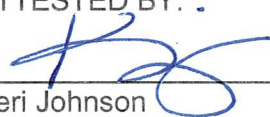
CITY OF UPLAND

APPROVED BY:



Michael Blay
City Manager

ATTESTED BY: .



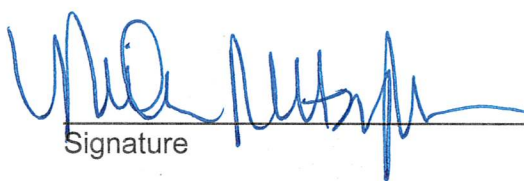
Keri Johnson
City Clerk

APPROVED AS TO FORM:



Best Best & Krieger LLP
City Attorney

KNM DESIGN BUILD, LLC.



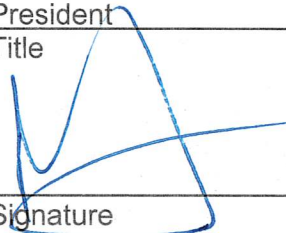
Signature

Nicole McFayden

Name

President

Title



Signature

Nicholas McFaden *Nicholas*

Name

Vice President

Title

1120065

Contractor's License Number and
Classification

2000011143

DIR Registration Number

EXHIBIT A

SERVICES/SCHEDULE

N/A

EXHIBIT B

PLANS AND SPECIFICATIONS

1. GENERAL

The Contractor shall furnish in accordance with the plans and specifications, all labor, equipment, time, and materials required for the construction / improvements of all work as outlined herein. The Contractor shall furnish in accordance with the plans and specifications, all labor, materials, tools, equipment, time, and incidentals required for the construction of all work as outlined herein.

Unless specifically covered under a separate bid item on Section 2, "Definition of Bid Items," or noted below, full compensation for complying with all the requirements of this Section 1, "General Requirements," shall be considered as included in the various bid items of work, and no additional compensation will be allowed or paid for.

2. DESCRIPTION OF WORK

The work to be performed under this Contract consists of the Interior Improvements to the City of Upland Gibson Senior Center.

Bid Schedule

Part A / 1-3. Consist of Gibson Senior Center complete interior paint with Dunn-Edwards products. Two (2) base colors and one (1) trim color. Interior paint process shall include full preparation, sanding, filling of holes/divots, etc., and matching drywall textures. Dunn-Edwards paint products shall be Spartawall 30, Eggshell. All skim coat areas require primer. All metal doorjambs/metal surfaces shall be Aristisheild 50 Urethane Alkyd Eggshell.

Part B / 4-14. Consist of Gibson Senior Center all interior flooring, removal, and disposal of existing flooring. Sanding, patching, and prepping as needed. Installation of new Luxury Vinyl Tile flooring (LVT) . Product shall be **Shaw Contract Style – Inlet ii, #4372V. Color Valley #72103. With Eco Wall 4" Cove Base. Color #94 Flint.**

Part C / 15-17. Consist of Gibson Senior Center all interior flooring, removal, and disposal of existing flooring. Sanding, patching, and prepping as needed. Classroom Office – Install Carpet Tile Flooring. Product - **Shaw Contract. Style – Lineweight 18"X36", #5T114. Color – Gouache, #13761. With Eco Wall 4" Cove Base. Color #94 Flint.**

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.

KNM DESIGN BUILD, LLC.

By:

Signature

Nicholas McFayden

Name (Print)

Vice President

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/PublicWorks/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: KNM Design Build, LLC.

DIR Registration Number: 2000011143

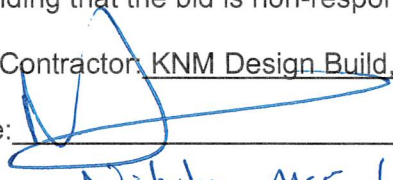
DIR Registration Expiration: 6/30/2027

Small Project Exemption: Yes or X 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: KNM Design Build, LLC.

Signature: 

Name and Title: Nicholas McFayden, vice president

Dated: 8/17/2026

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."

ORIGINAL

THIS BOND SHALL TAKE EFFECT AUGUST 10, 2026 UPON APPROVAL TO PROCEED WITH AWARD OF CONSTRUCTION BY THE CITY OF UPLAND AND AFTER AN AUTHORIZED OFFICIAL SIGNS THE AGREEMENT FORM.

ISSUED IN ONE ORIGINAL COUNTERPART

BOND NO.: WCN7499373

PREMIUM: \$4,149.00

Performance Bond

**THE PREMIUM IS PREDICATED ON
THE FINAL CONTRACT PRICE AND
IS SUBJECT TO ADJUSTMENT.**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the CITY OF UPLAND, with its principal place of business at 460 N. Euclid Avenue, Upland, California 91786 (hereinafter referred to as the "City") has awarded to KNM Design Build LLC dba NM Building Group, (hereinafter referred to as the "Contractor") an agreement for Contract No. _____, (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated August 10, 2026, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, KNM Design Build LLC dba NM Building Group, the undersigned Contractor and Old Republic Surety Company as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of Two Hundred Nine Thousand Nine Hundred Thirty and 00/100 DOLLARS, (\$209,930.00), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by the City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by the City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 24th day of July, 2026.

(Corporate Seal)

KNM Design Build LLC dba NM Building Group
Contractor/ Principal

By [Signature]

Title Vice President

(Corporate Seal)

Old Republic Surety Company
Surety

By [Signature]

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title Kenneth A. Coate, Attorney-In-Fact

The rate of premium on this bond is sliding scale
\$25.00/\$15.00 per thousand. The total amount of premium
charges is \$ 4,149.00.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

Old Republic Surety Company
6 Jenner, Suite 230, Irvine, CA 92618

(Name and Address of Agent or
Representative for service of
process in California, if different
from above)

HUB International Insurance Services Inc
DBA Inland Surety Bonds and Insurance Services
3801 University Ave., #400, Riverside, CA 92501

(Telephone number of Surety
and Agent or Representative for
service of process in California)

213-200-0922 951-788-8581

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

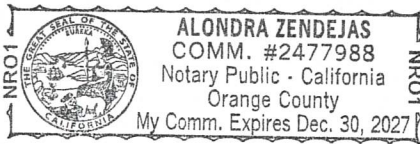
COUNTY OF Orange

On July 28, 2026, before me, Alondra Zendejas, Notary Public, personally appeared Nicholas McFayden, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Nº 5410

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
SAN FRANCISCO

Certificate of Authority

THIS IS TO CERTIFY, That, pursuant to the Insurance Code of the State of California,

Old Republic Surety Company

of Brookfield, Wisconsin, organized under the
laws of Wisconsin, subject to its Articles of Incorporation or
other fundamental organizational documents, is hereby authorized to transact within this State,
subject to all provisions of this Certificate, the following classes of insurance:

SURETY, LIABILITY and MISCELLANEOUS

as such classes are now or may hereafter be defined in the Insurance Laws of the State of California.

THIS CERTIFICATE is expressly conditioned upon the holder hereof now and hereafter being in
full compliance with all, and not in violation of any, of the applicable laws and lawful requirements
made under authority of the laws of the State of California as long as such laws or requirements are
in effect and applicable, and as such laws and requirements now are, or may hereafter be changed
or amended.

IN WITNESS WHEREOF, effective as of the 14th day
of December, 19 90, I have hereunto set
my hand and caused my official seal to be affixed this 14th
day of December, 19 90.



NOTICE:

Qualification with the Secretary of State must be accomplished as required by the California Corporations Code promptly after issuance of this Certificate of Authority. Failure to do so will be a violation of Ins. Code Sec. 701 and will be grounds for revoking this Certificate of Authority pursuant to the covenants made in the application therefor and the conditions contained herein.

By

ROXANI M. GILLESPIE
Insurance Commissioner

VICTORIA S. SIDBURY
Deputy



OLD REPUBLIC SURETY COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That OLD REPUBLIC SURETY COMPANY, a Wisconsin stock insurance corporation, does make, constitute and appoint:

Julia B. Bales, Kenneth A. Coate, Andrea Paris, Jonathan M. Cagner of Riverside, CA

its true and lawful Attorney(s)-in-Fact, with full power and authority for and on behalf of the company as surety, to execute and deliver and affix the seal of the company thereto (if a seal is required), bonds, undertakings, recognizances or other written obligations in the nature thereof, **(other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and note guaranty bonds, self-insurance workers compensation bonds guaranteeing payment of benefits, or black lung bonds)**, as follows:

ALL WRITTEN INSTRUMENTS

and to bind OLD REPUBLIC SURETY COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed. This appointment is made under and by authority of the board of directors at a special meeting held on February 18, 1982.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the OLD REPUBLIC SURETY COMPANY on February 18, 1982.

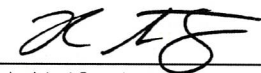
RESOLVED that, the president, any vice-president or assistant vice president, in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the company to execute and deliver and affix the seal of the company to bonds, undertakings, recognizances, and suretyship obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any Power of Attorney previously granted to such person.

RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company

- (i) when signed by the president, any vice president or assistant vice president, and attested and sealed (if a seal be required) by any secretary or assistant secretary; or
- (ii) when signed by the president, any vice president or assistant vice president, secretary or assistant secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or
- (iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the Power of Attorney issued by the company to such person or persons.

RESOLVED FURTHER that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the company; and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, OLD REPUBLIC SURETY COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be affixed this 20th day of May, 2025.


Assistant Secretary



OLD REPUBLIC SURETY COMPANY


President

STATE OF WISCONSIN, COUNTY OF WAUKESHA - SS

On this 20th day of May, 2025, personally came before me, Alan Pavlic and Kevin J. Abitz, to me known to be the individuals and officers of the OLD REPUBLIC SURETY COMPANY who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say: that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said corporation.




Notary Public

CERTIFICATE

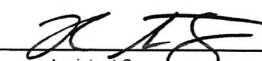
My Commission Expires: September 28, 2026
(Expiration of notary's commission does not invalidate this instrument)

I, the undersigned, assistant secretary of the OLD REPUBLIC SURETY COMPANY, a Wisconsin corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.

74 4030



Signed and sealed at the City of Brookfield, WI this 24th day of July, 2026.


Assistant Secretary

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Riverside

On JUL 24 2026 before me, Stephanie D. Fisher, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Kenneth A. Coate
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature [Signature]
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

ORIGINAL

THIS BOND SHALL TAKE EFFECT AUGUST 10, 2026 UPON APPROVAL TO PROCEED WITH AWARD OF CONSTRUCTION BY THE CITY OF UPLAND AND AFTER AN AUTHORIZED OFFICIAL SIGNS THE AGREEMENT FORM.

ISSUED IN ONE ORIGINAL COUNTERPART

BOND NO. WCN7499373

PREMIUM: INCLUDED IN THE PREMIUM
CHARGED FOR THE PERFORMANCE BOND

EXHIBIT F

Payment Bond (Labor and Materials).

**THE PREMIUM IS PREDICATED ON
THE FINAL CONTRACT PRICE AND
IS SUBJECT TO ADJUSTMENT.**

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the CITY OF UPLAND , with its principal place of business at 460 N. Euclid Avenue, Upland, California 91786 (hereinafter designated as the "City"), by action taken or a resolution passed _____, 20____, has awarded to (1) _____ hereinafter designated as the "Principal," a contract for the work described as follows: Contract No. _____ (the "Project"); and

(1) KNM Design Build LLC dba NM Building Group

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated August 10, 2026, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and Old Republic Surety Company as Surety, are held and firmly bound unto the City in the penal sum of (2) _____ Dollars (\$209,930.00) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

(2) Two Hundred Nine Thousand Nine Hundred Thirty and 00/100

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or the City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract, including but not limited to, the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 24th day of July, 2026.

(Corporate Seal)

KNM Design Build LLC dba NM Building Group
Contractor/ Principal

By 

Title Vice President

(Corporate Seal)

Old Republic Surety Company
Surety

By 

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title Kenneth A. Coate, Attorney-In-Fact

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

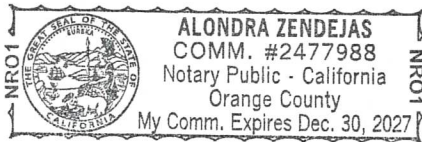
COUNTY OF Orange

On July 28, 2026, before me, Alondra Zendejas, Notary Public, personally appeared Nicholas McFayden, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

Title or Type of Document

- ☐ Partner(s) ☐ Limited
 ☐ General

Number of Pages

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Nº 5410

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
SAN FRANCISCO

Certificate of Authority

THIS IS TO CERTIFY, That, pursuant to the Insurance Code of the State of California,

Old Republic Surety Company

of Brookfield, Wisconsin, organized under the
laws of Wisconsin, subject to its Articles of Incorporation or
other fundamental organizational documents, is hereby authorized to transact within this State,
subject to all provisions of this Certificate, the following classes of insurance:

SURETY, LIABILITY and MISCELLANEOUS

as such classes are now or may hereafter be defined in the Insurance Laws of the State of California.

THIS CERTIFICATE is expressly conditioned upon the holder hereof now and hereafter being in
full compliance with all, and not in violation of any, of the applicable laws and lawful requirements
made under authority of the laws of the State of California as long as such laws or requirements are
in effect and applicable, and as such laws and requirements now are, or may hereafter be changed
or amended.

IN WITNESS WHEREOF, effective as of the 14th day
of December, 19 90, I have hereunto set
my hand and caused my official seal to be affixed this 14th
day of December, 19 90.



NOTICE:

Qualification with the Secretary of State must be accomplished as required by the California Corporations Code promptly after issuance of this Certificate of Authority. Failure to do so will be a violation of Ins. Code Sec. 701 and will be grounds for revoking this Certificate of Authority pursuant to the covenants made in the application therefor and the conditions contained herein.

By

ROXANI M. GILLESPIE
Insurance Commissioner

VICTORIA S. SIDBUKY
Deputy



OLD REPUBLIC SURETY COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That OLD REPUBLIC SURETY COMPANY, a Wisconsin stock insurance corporation, does make, constitute and appoint:

Julia B. Bales, Kenneth A. Coate, Andrea Paris, Jonathan M. Cagner of Riverside, CA

its true and lawful Attorney(s)-in-Fact, with full power and authority for and on behalf of the company as surety, to execute and deliver and affix the seal of the company thereto (if a seal is required), bonds, undertakings, recognizances or other written obligations in the nature thereof, **(other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and note guaranty bonds, self-insurance workers compensation bonds guaranteeing payment of benefits, or black lung bonds)**, as follows:

ALL WRITTEN INSTRUMENTS

and to bind OLD REPUBLIC SURETY COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed. This appointment is made under and by authority of the board of directors at a special meeting held on February 18, 1982.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the OLD REPUBLIC SURETY COMPANY on February 18, 1982.

RESOLVED that, the president, any vice-president or assistant vice president, in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the company to execute and deliver and affix the seal of the company to bonds, undertakings, recognizances, and suretyship obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any Power of Attorney previously granted to such person.

RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company

- (i) when signed by the president, any vice president or assistant vice president, and attested and sealed (if a seal be required) by any secretary or assistant secretary; or
- (ii) when signed by the president, any vice president or assistant vice president, secretary or assistant secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or
- (iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the Power of Attorney issued by the company to such person or persons.

RESOLVED FURTHER that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the company; and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, OLD REPUBLIC SURETY COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be affixed this 20th day of May, 2025.



Assistant Secretary



OLD REPUBLIC SURETY COMPANY

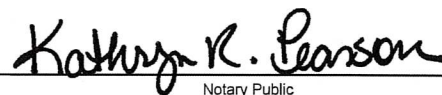


President

STATE OF WISCONSIN, COUNTY OF WAUKESHA - SS

On this 20th day of May, 2025, personally came before me, Alan Pavlic and Kevin J. Abitz, to me known to be the individuals and officers of the OLD REPUBLIC SURETY COMPANY who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say: that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said corporation.





Notary Public

My Commission Expires: September 28, 2026

(Expiration of notary's commission does not invalidate this instrument)

CERTIFICATE

I, the undersigned, assistant secretary of the OLD REPUBLIC SURETY COMPANY, a Wisconsin corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.

74 4030



Signed and sealed at the City of Brookfield, WI this 24th day of July, 2026.



Assistant Secretary

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Riverside

On JUL 24 2026 before me, Stephanie D. Fisher, Notary Public,
Date Here Insert Name and Title of the Officer
 personally appeared Kenneth A. Coate
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature [Signature]
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

EXHIBIT G

FLEET COMPLIANCE CERTIFICATION

Bidder hereby acknowledges that they have reviewed the California Air Resources Board's policies, rules and regulations and are familiar with the requirements of Title 13, California Code of Regulations, Division 3, Chapter 9, effective on January 1, 2024 (the "Regulation"). Bidder hereby certifies, subject to penalty for perjury, that the option checked below relating to the Bidder's fleet, and/or that of their subcontractor(s) ("Fleet") is true and correct:

The Fleet is subject to the requirements of the Regulation, and the appropriate Certificate(s) of Reported Compliance have been attached hereto.

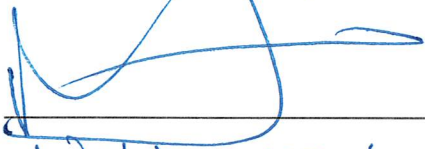
The Fleet is exempt from the Regulation under section 2449.1(f)(2), and a signed description of the subject vehicles, and reasoning for exemption has been attached hereto.

Bidder and/or their subcontractor is unable to procure R99, or R100 renewable diesel fuel as defined in the Regulation pursuant to section 2449.1(f)(3). Bidder shall keep detailed records describing the normal refueling methods, their attempts to procure renewable diesel fuel and proof that shows they were not able to procure renewable diesel (i.e. third-party correspondence or vendor bids).

The Fleet is exempt from the requirements of the Regulation pursuant to section 2449(i)(4) because this Project has been deemed an Emergency, as defined under section 2449(c)(18). Bidder shall only operate the exempted vehicles in an emergency situation and records of the exempted vehicles must be maintained, pursuant to section 2449(i)(4).

The Fleet does not fall under the Regulation or are otherwise exempted, and a detailed reasoning is attached hereto.

Name of Bidder: KNM Design Build LLC dba NM Building Group

Signature: 

Name: Nicholas McFadden

Title: Vice President

Date: 8/17/2024

EXHIBIT H

FEDERAL REQUIREMENTS

1. COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

- 1.1 Contractor agrees that it undertakes hereby the same obligations to City that City has undertaken to HUD by way of City's CDBG application and certifications. The obligations thus undertaken by Contractor include, but are not limited to, the obligation to comply with all federal laws and regulations described in Subpart K of 24 CFR Part 570, specifically with each of the following:
- (A) The Housing and Community Development Act of 1974 (Public Law 93- 383) as amended, and legislative changes contained in the Housing and Urban-Rural Recovery Act of 1983; and the Housing and Community Development Act of 1987;
 - (B) Final regulations of the Department of Housing and Urban Development relating to Community Development Block Grants (Title 24, Chapter V, Part 570 of the Code of Federal Regulations commencing with Section 570.1) dated September 6, 1988; and revisions to 24 CFR Part 570 at Subpart J entitled "Grant Administration" and dated March 11, 1988;
 - (C) Regulations of the Department of Housing and Urban Development relating to environmental review procedures for the Community Development Block Grant program (Title 24, Subtitle A, Part 58 of the Code of Federal Regulations, commencing at Section 58.1), except that Contractor does not assume City's environmental responsibilities;
 - (D) Title VI of the Civil Rights Act of 1964 (Public Law 88-352); Title VIII of the Civil Rights Act of 1968 (Public Law 90-284); Section 109 of the Housing and Community Development Act of 1974; Section 3 of the Housing and Urban Development Act of 1968; Executive Order 11246 as amended by Executive Order 12086; Executive Order 11063 as amended by Executive Order 12259; and any HUD regulations heretofore issued or to be issued to implement these authorities relating to civil rights;
 - (E) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and regulations adopted to implement that Act in the Code of Federal Regulations, Title 24, Part 42;
 - (F) Administrative regulations, including, but not limited to, applicable sections of Department of Housing and Urban Development regulations located at: Title 2 CFR Chapter 1, Chapter 11, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule, as applicable;

- (G) The following laws and regulations relating to preservation of historic places: Public Law 89-665 the Archaeological and Historical Preservation Act of 1974 (Public Law 93-291), and Executive Order 11593 including the procedures prescribed by Advisory Council on Historic Preservation in 36 Code of Federal Regulations, Part 800;
 - (H) The Labor Standards Regulations set forth in Section 570.603 of 24 CFR Part 570; and HUD Handbook 1344.1;
 - (I) The Architectural Barriers Act of 1968 (42 U.S.C. Section 4151) and the Americans' with Disabilities Act of 1990 (ADA);
 - (J) The Hatch Act relating to the conduct of political activities (Chapter 15 of Title 5, U.S.C.);
 - (K) The Flood Disaster Protection Act of 1973 (Public Law 93-234 and the regulations adopted thereunder) 24 CFR Chapter X Subpart B;
 - (L) The Clean Air Act (42 U.S.C. Section 1857 et. Seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et seq.) and the regulations adopted thereunder (40 CFR Part 15);
 - (M) Executive Order 12372, which requires State Clearinghouse review and comment of any CDBG project for the planning, construction, reconstruction, or installation of water or sewer facilities;
 - (N) Section 401 (b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 (b)); and Lead Safe Housing Rule; and
 - (O) Provision of 24 CFR Part 24 regarding use of debarred, suspended, or ineligible contractors or subrecipients.
- 1.2 Contractor further agrees to comply with all environmental, procurement, construction, and other guidelines provided by City.
 - 1.3 Contractor will obtain all necessary permits and licenses that are necessary for its performance under this Contract.
 - 1.4 Failure to meet established performance goals and standards or non-compliance with applicable rules and regulations constitutes non-compliance with the terms of this Contract. City is entitled to avail itself of one or more of the following remedies to address noncompliance:
 - (A) Temporarily withhold cash payments pending correction of deficiencies by Contractor;
 - (B) Disallow all or part of the cost of the activity or action not in compliance
 - (C) Wholly or partly suspend or terminate the current award for Contractor's program;

- (D) Withhold further awards for the program; or
- (E) Take other remedies that may be legally available.

2. SUBCONTRACTS

Contractor will incorporate the same or substantially equivalent requirements as are contained in this Contract in all subcontracts that utilize any CDBG funds or that support any CDBG project covered by this Contract. When a project utilizes CDBG funds and funds from other sources, all funds are subject to CDBG regulations. Contractor, by entering into a subcontract for performance of any portion of its CDBG program, is not relieved of its responsibilities to City as set forth in this Contract.

3. NON-DISCRIMINATION/GRIEVANCE PROCEDURES

- 3.1 No person with responsibilities in the operation of any project under this Contract may discriminate because of race, creed, color, national origin, age, sex, political affiliation, handicap, beliefs, or marital or familial status.
- 3.2 Contractor will ensure that every effort is made to provide equal opportunity to every potential minority and women's business vendor, contractor, and subcontractor.

STANDARD OF CONDUCT/CONFLICT OF INTEREST AND LOBBYING

- 4.1 No member, officer or employee of Contractor or its designee or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any function or responsibility with respect to the program during that person's tenure or for one year thereafter, may have any interest, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the programs activities assisted under this Contract.
- 4.2 By entering into this Contract, Contractor certifies that:
 - (A) No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant loan, or cooperative agreement.
 - (B) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Contractor must complete and submit Standard Form- LL,

"Disclosure Form to Report Lobbying," in accordance with its instructions, and other federal disclosure forms as requested.

- (C) Contractor will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients certify and disclose accordingly.

4.3 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

5. FISCAL CONTROL

5.1 Contractor is responsible for the internal control and monitoring of fiscal and programmatic/operational goals and procedures. Contractor will establish such fiscal controls and fund accounting procedures as required by federal regulations, or as may be deemed necessary by HUD and City to assure the proper disbursement of, and accounting for, funds paid to Contractor under the CDBG.

(A) Disbursement of Funds: CDBG funds must be disbursed by City to Contractor on a reimbursement basis for actual expenses.

(B) Deposit of Funds: Contractor must maintain separate accounts within established bookkeeping systems for the deposit of CDBG funds.

5.2 Contractors subject to Title 2 CFR Part 200 must deposit funds in an account requiring two signatures for disbursement and submit to City specimen signatures for all authorized signatories prior to receipt of funds.

5.3 City will pay Contractor progress payments at the time and in the manner set forth in Exhibit "B." Payment by City is not to be construed as final in the event that HUD disallows reimbursement for the Project or any portion thereof. Contractor will submit reasonable back-up documentation as specified by City with request for payment.

5.4 Contractor is liable for all amounts that are determined to be due by HUD including, but not limited to, disallowed costs that are the result of Contractor's or its contractor's conduct under this Contract.

5.5 City will notify Contractor in writing regarding any controversy or proceeding between City and HUD arising from this Contract. Contractor will be permitted to respond regarding the controversy or proceeding.

5.6 All financial transactions must be supported by complete and verifiable source documents. Records must provide a clear audit trail.

6. PROGRAM INCOME

- 6.1 Program income is defined as gross income received by Contractor and directly generated from the use of CDBG funds. When program income is generated by an activity that is only partially assisted with CDBG funds, the income is prorated to reflect the percentage of CDBG funds used.
- 6.2 Program income includes, but is not limited to, the following:
- (A) Proceeds from the disposition by sale or long-term lease of real property purchases or improved with CDBG funds;
 - (B) Proceeds from the disposition of equipment purchased with CDBG funds;
 - (C) Gross income from the use or rental of real or personal property acquired by Contractor with CDBG funds, less costs incidental to generation of the income;
 - (D) Gross income from the use or rental of real property, owned by Contractor, that was constructed or improved with CDBG funds, less costs incidental to generation of the income;
 - (E) Payments of principal and interest on loans made using CDBG funds;
 - (F) Proceeds from the sale of loans or obligations secured by loans made with CDBG funds;
 - (G) Interest earned on funds held in a revolving fund account;
 - (H) Interest earned on program income pending its disposition; and
 - (I) Funds collected through special assessments made against properties owned and occupied by households not of low or moderate income where the assessments are used to recover all or part of the CDBG portion of a public improvement.
- (1) Program income received by Contractor during the effective term of this Contract may be retained by Contractor if mutually agreed upon by City and Contractor and utilized for the specific activities described in the Contract, subject to all provisions of the Contract. In such case, further disbursement of funds under this Contract must be made in accordance with 24 CFR Part 570.504(b)(2)(i) and (ii).
 - (2) Program income attributable to the Services funded under this Contract and in Contractor's control when Contract expires or received after the Contract expiration, must be paid to City as required by 24 CFR Part 570.503(b)(8) when Contractor ceases to be under continuous Contract with City for the operation of CDBG activities. As long as there is no break in the Contract period, program income is governed by the provisions of section 0.

7. REVERSION OF ASSETS

- 7.1 Upon expiration of this Contract, Contractor will transfer to City any CDBG funds in Contractor's control at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Further, any real property under Contractor's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 must be either:
- (A) Used to meet one of the national objectives in 24 CFR Part 570.208 after expiration of this Contract, the length of time to be further prescribed by mutual agreement of the parties.
 - (B) Disposed of in such manner that City is reimbursed in the amount of the fair market value of the property at the time of disposition of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition or improvement of such property.
- 7.2 If Contractor is a private non-profit organization, Contractor further agrees to a voluntary lien on above-referenced property as to any CDBG funds received and that such lien will be notarized and recorded in the Office of the County Recorder, will utilize form specified by City.

8. EQUIPMENT

Equipment, which is defined as tangible, nonexpendable, personal property having a useful life of more than one (1) year and an acquisition cost of \$5,000 or more per unit, is eligible for purchase using CDBG funds only upon prior approval of City and subject to 24 CFR Part 570.207(b)(1). Such equipment may be used by Contractor in the Project for which it was acquired as long as needed, regardless of whether such Project continues to be supported by federal funds; at that time, equipment may be used in other activities currently or previously supported by a federal agency. Use of such equipment is also subject to provisions of 24 CFR Part 85.32(c)(2)(3) and (4). Contractor will establish procedures that meet the requirements of 24 CFR Part 85.32(d) for managing equipment. Further, proceeds from disposition of such equipment must be treated as program income as specified in sections 0 and 0 above.

9. REQUESTS FOR TECHNICAL ASSISTANCE

Contractor will refer to the Neighborhood Services Department any regulatory or procedural questions regarding operation of its CDBG-funded Services. All formal requests for technical assistance must be submitted in writing. Requests should specify the problem area; particular assistance being requested and proposed solution if applicable. Informal questions regarding day-to-day program operation may be directed to the designated City representative.

10. RECORDS AND REPORTS

- 10.1 Contractor understands and agrees that City may, at any time, request additional information that may be required for the purpose of making necessary reports to the Department of Housing and Urban Development, and State Department of Housing and Community Development, or for otherwise evaluating Contractor's progress and performance under this Contract. In the event of such requests,

Contractor will comply by providing the appropriate data within 10 working days from the date of any such request.

- 10.2 Contractor further understands and agrees that the records and additional information described in this section 0 must be retained on a continuing basis for a period of five (5) years after this Contract has expired, as required for compliance with HUD regulations.

11. CONTRACT RESPONSIBILITY FOR MONITORING AND RECORDS

- 11.1 HUD, City, designated representatives of City, and other appropriate officials must have access to all personnel records, management information, and fiscal data of Contractor and any agency or contractor with whom Contractor executes a subcontract necessary to carry out any CDBG-funded Services for monitoring purposes. Contractor will respond in a timely manner to all identified corrective action needs as a result of HUD, County, or other monitoring. Contractor will submit to City all required reports and monitoring corrective action plans on a timely basis, as delineated by City. Records must be maintained as follows:

- (A) Contractor agrees to retain all pertinent records under CDBG and HOME, including financial records, until advised by City that further retention is unnecessary. Generally, records must be retained for a period for five (5) years from the end of the fiscal year in which the last project covered by City's annual agreement with HUD is completed. Records must be open and available for inspection by auditors and other staff assigned by HUD or City during the normal business hours of Contractor. If at the end of such five-year period, there is ongoing litigation or an audit involving Contractor's or City's records, Contractor will retain the records until the resolution of such litigation or audit and written notice by City that such records may be disposed of.
- (B) Records for nonexpendable property must be retained for a period for five (5) years after final disposition of the property, if applicable.

12. TERMINATION

- 12.1 *Termination of Contract for Convenience:* In accordance with 24 CFR Part 85.44, the Contract may be terminated by either party after thirty (30) days written notice of intention to terminate, setting forth the reasons and the effective date of such termination, has been given to the other party, provided, however, that no notice of termination given by Contractor is effective unless HUD has agreed to release City from its obligations with respect to the Program Activity(ies). Alternatively, the Contract automatically terminates in the event that the United States Government terminates the CDBG or HOME Program or terminates the Program Activity(ies) that are the subject of the Contract.

- 12.2 *Termination of Contract for Cause:* In accordance with 24 CFR Part 85.43, the parties hereto understand that by City's execution of the HUD application, City assumed responsibility as to the performance of the Services. If through any cause Contractor fails to fulfill in a timely and proper manner its obligations under this Contract to undertake, conduct or perform the Services identified in this Contract, or if Contractor violates any of the covenants, agreements, or stipulations of this Contract, City thereupon has the right to terminate this Contract by giving written notice of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. Notwithstanding the above, Contractor is not relieved of liability to City for damages sustained by City by virtue of any payments to Contractor for the purpose of set-off until such time as the exact amount of damages due City from Contractor is determined.
- 12.3 Contractor hereby expressly waives any and all claims for damages for compensation arising under this Contract except as set forth in this section in the event of such termination.