

# **CITY OF VICTORVILLE**



## **REQUEST FOR BID FOR**

### **CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES**

**BID OPENING DATE AND TIME:  
JULY 16, 2021  
AT  
2:30 PST**

**CITY OF VICTORVILLE**  
**CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES**

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# **SECTION A SPECIAL PROVISIONS**

**CITY OF VICTORVILLE**  
**CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES**

**INSTRUCTIONS TO BIDDERS**

I. **INTRODUCTION:** The City of Victorville is soliciting bids from qualified contractors that may lead to award a contract for On-Call LMAD & DFAD Block Wall Repair Services on as needed or urgent basis only. As the need arises, the Contractor shall perform, coordinate, and manage its services to ensure the completion of tasks as deemed necessary.

II. **CONTRACT DOCUMENTS:** The complete bid documents and applicable addenda are available at the City of Victorville's website at <http://www.victorvilleca.gov> under Bids and to Ebidboard.com. Complete bid package may also be obtained from City of Victorville by emailing Celeste Calderon at [cmcalderon@victorvilleca.gov](mailto:cmcalderon@victorvilleca.gov) or by calling at (760) 955-5082.

III. **BIDS DUE:** Bids for furnishing all labor, services, materials, tool, equipment, supplies, transportation, trucking, utilities, management and all other items and facilities necessary for completion of the project shall be received by the Finance Department of the City of Victorville, 14343 Civic Drive, Victorville, CA 92392, until **2:30 p.m. PST on JULY 16, 2021**. Late bids will not be accepted.

IV. **PROJECT QUESTIONS:** Any prospective bidder desiring an explanation or interpretation of the solicitations, specifications, etc., must request in writing (via email is acceptable) to the Purchasing Section by no later than **10:00 a.m. PST JULY 12, 2021**, in order to allow a reply to reach all prospective bidders before submission of their bids. Oral explanations or instructions given before the award of Contract will not be binding. Any information given a prospective bidder concerning this solicitation will be furnished promptly to all prospective bidders as an addendum to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders. Email all your question(s) to Celeste Calderon at [cmcalderon@victorvilleca.gov](mailto:cmcalderon@victorvilleca.gov).

V. **AWARD OF CONTRACT:** The City of Victorville reserves the right to reject any and all bids and waive any irregularities or informalities in any bid or in the bidding. The award of the Contract, if any, will be made to the lowest responsible bidder whose bid is responsive to all the requirements set forth in Contract Documents. Such award, if made, shall be made within ninety (90) calendar days after opening of the Bid Proposals. The Contractor's signature on the Bid Proposal Form shall constitute a commitment on the part of the bidder to perform all the work necessary to complete the project as set forth in the Bid Proposal Form, Scope of Work, Plans and the Special Provisions. The bidder to whom the Contract is awarded shall be notified upon approval of the Contract by the City Council.

VI. **EXECUTION OF CONTRACT:** The Contract shall be signed by the successful bidder and returned, together with contract bonds, copies of insurance policies, and copy of City of Victorville Business License within 10 days, not including Saturday, Sunday, and legal holidays, after the bidder has received the Contract for execution. A fully executed Construction Agreement will be provided to the awarded Contractor during the pre-construction meeting. All submittals must be approved by the Project Manager and a Notice to Proceed will be issued prior to beginning of work.

VII. **FAILURE TO EXECUTE CONTRACT:** Failure of the lowest responsible bidder, the second lowest responsible bidder, or the third lowest responsible bidder to execute the Contract and file acceptable bonds as provided herein within 10 days, not including Saturday, Sunday, or legal holidays, after the bidder has received the Contract for execution, shall be just cause for the

forfeiture of the proposal guaranty. The successful bidder may file with the City a written notice, signed by the bidder or the bidder's authorized representative, specifying that the bidder will refuse to execute the Contract if it is presented. The filing of this notice shall have the same force and effect as the failure of the bidder to execute the Contract and furnish acceptable bonds within the time hereinbefore prescribed.

**VIII. PROHIBITED INTEREST**

No member, officer, or employee of the City of Victorville engaged in the selection, award, or administration of this Contract shall have any prohibited conflict of interest, whether real or apparent, in this Contract or the proceeds thereof.

Furthermore, the parties hereto covenant and agree that to their knowledge no member, officer, or employee of the City has any interest, whether contractual, non-contractual, financial, or otherwise, in this transaction or in the business of the contracting party other than the City, and if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of such information will be made, in writing, to the other party or parties; even if such interest would not be considered conflict of interest under Article 4 (commencing with Section 1090) or Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code of the State of California.

**IX. AFFIRMATIVE ACTION:** The City hereby notifies all bidders that it will affirmatively ensure that, in any Contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, or national origin in consideration of award.

**X. RELIEF OF BIDDERS:** Attention is directed to the provisions of Public Contract Code Sections 5100 to 5107, inclusive, concerning relief of bidders if the bidder claims a mistake was made in the bid presented, the bidder shall give the City written notice within 5 days after the opening of bids, not including Friday, Saturday, Sunday or legal holidays, of the alleged mistake, specifying in the notice in detail how the mistake occurred.

**XI. PAYMENT:** Upon completion of the work, the Contractor may request full payment of their work, and after acceptance of the work by the PW/Water Director or his designee, the City will make final payment upon receipt of appropriate invoices and payroll proof of submission.

The Contractor will be required, in requests for payment, to certify, under penalty of perjury, the following:

1. No workmen were required or permitted to work more than eight (8) hours in any one calendar day, except in cases of emergency, and except as provided by law.
2. Not less than the prevailing rates, as set forth in the Contract for this work, have been paid all laborers, workmen, and mechanics employed to perform this work.
3. There were no substitutions of subcontractors, no assignments or transference of subcontractors, except as approved by the PW/Water Director or his designee.
4. All of the provisions of the Victorville Municipal Code, pertaining to non-discrimination in employment have been complied with.

5. The Record Drawings maintained on the job have been noted with all changes made subsequent to the previous request for payment.
6. The Map and Drawings have been submitted and approved by the Contractor or the PW/Water Director, or the designee, as applicable.

**PROOF OF PAYROLL AND LIEN RELEASES - The City shall make payments on any properly completed payment request submitted by the Contractor.** Contractor and subcontractors on all public works projects must use the Department of Industrial Relations Electronic Certified Payroll Reporting system to furnish certified payroll records (CPRs) to the Labor Commissioner. Contractors and subcontractors who have been submitting PDF copies of their CPRs for earlier projects must also begin using the new system. For more information please go to [www.dir.ca.gov](http://www.dir.ca.gov) under Labor Law Public Works.

Proof of Payroll submissions and appropriate Lien Releases are required with each invoice to the City. Payment of the invoice may be delayed when Proofs of Payroll submissions and/or lien releases are not included with the invoice. An error on the part on any awarding body does not relieve the Contractor from responsibility for payment of the prevailing wage of per diem wages and penalties pursuant to Labor Code (1770 - 1776).

If payments are to be made for materials or equipment not incorporated in the work but delivered and suitably stored at the site, or at some other location agreed upon in writing, such payments shall be conditional upon submission by the Contractor of bills of sale or such other procedures satisfactory to the City to establish the City's title to such materials or equipment or otherwise protect the City's interest, including applicable insurance and transportation to the site.

The Contractor warrants and guarantees that title to all work, materials and equipment covered by an application for payment will pass to the City of Victorville upon receipt of such payment by the Contractor, free and clear of all liens, claims, security interests, or encumbrances - hereinafter referred to in this section as "liens"; and that no work, materials or equipment covered by a request for payment will have been acquired by the Contractor, or by any other person performing the work at the site or furnishing materials and equipment to the project.

## **XII. GUARANTY AND BONDS:**

A material and workmanship guaranty for a period of twelve (12) months from the date of acceptance of the work will be required. A guaranty form for this purpose is included in the Proposal.

For projects over \$25,000.00 (including labor and materials), the Contractor, simultaneously with execution of the Contract, shall furnish a surety bond in an amount equal to one hundred percent (100%), of the contract price as security for the faithful performance of the Contract, and a separate surety bond in an amount equal to one hundred percent (100%) of the contract price as security for the payment of all persons performing labor and furnishing materials in connection with the Contract. Bonds must be issued by an admitted surety insurer in the State of California, as set forth in the Public Contract Code, Section 20170.

Full compensation for furnishing the guaranty and bonds will be considered as included in the contract price or prices paid for the items or work involved and no additional compensation will be allowed therefor.

**XIII. SENATE BILL 854 REQUIREMENTS:** Senate Bill 854 established a new public works contractor registration program which collects fees to fund compliance monitoring and

enforcement. All contractors and subcontractors intending to bid or perform work on public works projects will be required to register, and annually renew, online for the program. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5.

**XIV. PREVAILING WAGES:** In accordance with the provisions of California Labor Code Sections 1720, 1770-1776, 1810, 1813, and 1815, as amended, the Director of the DIR has determined the general prevailing rate of per diem wages in accordance with the standards set forth in Labor Code Section 1773 for the locality in which the Work is to be performed. It shall be mandatory upon the Contractor to whom the Work is awarded and upon any subcontractor under the Contractor to pay not less than said specified rates to all workers employed by them in the execution of the Work, and shall post a copy of said wage rates at the project site.

**AB219 (as applicable)** adds Section 1720.9 to the Labor Code the hauling and delivery of ready-mixed concrete to carry out a public works contract, with respect to contracts involving state agency and subdivision of the state Section 1720.9 defines the term “ready-mixed” concrete and specifies that the rate of pay shall be the current prevailing wage “for the geographical area in which the factory or batching plant is located” as determined by the DIR. The statute also requires a written agreement between the party hauling or delivering the ready-mixed concrete and the party that engaged its services.

The delivery company shall provide certified payroll records under Labor Code section 1776(1) to the party that engaged its services and to the general contractor. The time record must be certified by each driver for the performance of job duties.

The contractor and all subcontractors shall comply with **all** applicable Federal and State laws, regulations, and guidelines required in the performance of the contract. Copies of the updated Wage Determination rates are available to any interested party, by visiting [www.dir.ca.gov](http://www.dir.ca.gov) for State of California. Additionally, copies of the State prevailing rate of per diem wages rates are on file at the City of Victorville Finance Division and shall be made available for review to any interested party on request.

**Contractor shall be solely responsible for using the correct wage decision and performing accordingly. An error on the part of any awarding body does not relieve the Contractor from the responsibility for payment of the correct State prevailing wage and compliance with the maintenance and inspection of payroll records, posting of prevailing wage rates at work site, employment of apprentices, and other requirements of California Labor Code (1720, 1770-1776, 1810, 1813, and 1815, as amended), California Code of Regulations, Title 8, Section 16000 et seq.; and all other applicable State labor laws. Contractor further acknowledges and agrees that it will be independently responsible for reviewing the applicable laws and regulations and effectuating compliance with those laws. Contractor will require the same of all its subcontractors.**

**XV. ELECTRONIC CERTIFIED PAYROLL REPORTING (eCPR):** Contractors and subcontractors on all public works projects awarded on or after April 1, 2015, must use this system to furnish certified payroll records (CPRs) to the Labor Commissioner. Contractors and subcontractors who have been submitting PDF copies of their CPRs for earlier projects must also begin using the new system. For more information, please go to [www.dir.gov](http://www.dir.gov) under Labor Law Public Works. A copy of proof of payroll submission is required with each invoice to the Utilities Department.

This project is subject to compliance monitoring and enforcement by the DIR.



**XVI. CONTRACTOR'S LICENSE:** All contractors shall be licensed in accordance with the laws of State of California, must hold a valid **C-29 Masonry Contractor license**. Any contractor not so licensed shall be subject to penalties imposed by such laws. Contractor shall possess the appropriate license prior to award of Contract.

**XVII. EVALUATION OF BIDS:** The City reserves the right to accept or reject any and all bids and to award a Contract to the bidder who best meets its requirements. Relevant factors that shall be considered in evaluating the bids are: completeness and accuracy of bid; length and nature of warranties; anticipated length of life of materials; as well as the lowest and best price.

**XVIII. TERMINATION FOR CONVENIENCE:** The City of Victorville may, by written notice, terminate this Contract in whole or in part, when deemed in the City's interest. Upon termination of this Contract, the City of Victorville shall only be liable for payment under the payment provisions of this Contract for services rendered or supplies furnished prior to the effective date of termination.

**XIX. TERMINATION FOR DEFAULT:** In the event either party fails to perform its obligations hereunder, the non-defaulting party shall provide the defaulting party written notice of such default. The defaulting party shall have ten (10) calendar days to cure the default; provided that, if the default is not reasonably susceptible to being cured within said ten (10) calendar days, the defaulting party shall have a reasonable time to cure the default, not to exceed a maximum of thirty (30) calendar days, so long as the defaulting party commences to cure such default within ten (10) calendar days of service of such notice and diligently prosecutes the cure to completion; provided further that if the default is an immediate danger to the health, safety and general welfare, the defaulting party shall take such immediate action as may be necessary. Notwithstanding the foregoing, the non-defaulting party may, in its sole and absolute discretion, grant a longer cure period. Should the defaulting party fail to cure the default within the time period provided in this Section, the non-defaulting party shall have the right, in addition to any other rights the non-defaulting party may have at law or in equity, to terminate this Agreement. Compliance with the provisions of this Section shall be a condition precedent to bringing any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured.

**XX. DISPUTES:** Except for such claims as defined in covered by California Public Contract Code section 9404 any controversy or claim arising out of or relating to the provisions of any Construction Contract awarded for this project, or the breach thereof shall be settled by arbitration, in accordance with the Rules of the American Arbitration Association, unless the parties agree, in writing, to some other form of alternative dispute resolution.

**XXI. ATTORNEY'S FEES:** Should any litigation, specifically including but not limited to, arbitration and other non-judicial resolution of disputes be commenced between the parties to this agreement concerning this agreement or the rights and duties of either in relation thereto, the parties prevailing in such litigation or other proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney fees in such litigation where the proceeding which, if not agreed upon by the parties, shall be determined by the court or other entity in which such litigation or other proceeding is brought.

**XXII. INDEMNIFICATION:** Notwithstanding the limits of any insurance, Contractor shall indemnify the City, its officials, officers, agents, volunteers and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising or alleged to arise out of or in connection with the negligent performance of the work, operations or activities of

Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising or alleged to arise from the negligent acts or omissions of Contractor hereunder, or arising or alleged to arise from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities or portion of such claims or liabilities arising or alleged to arise from the negligence or willful misconduct of the City its officials, officers, agents, volunteers or employees, and in connection therewith:

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

The Contractor's indemnification obligations pursuant to this Section shall survive the termination of this Agreement. Contractor shall require the same indemnification from all subcontractors.

**XXIII. UNFAIR BUSINESS PRACTICE CLAIMS:** In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body 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. Sec. 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 public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body renders final payment to the Contractor without further acknowledgment by the parties. (Sec. 7103.5, California Public Contract Code).

**XXIV. SEVERABILITY:** In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable

by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Construction Agreement meaningless.

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

**XXVI. SUBSTITUTION OF SECURITIES:** Pursuant to California Public Contract Code Section 22300, substitution of eligible equivalent securities for any moneys withheld to ensure performance under the Contract for the work to be performed will be permitted at the request and expense of the successful bidder.

**XXVII. APPRENTICES ON PUBLIC WORKS:** The Contractor shall comply with all applicable provisions of Section 1775.5 and 1777.6 of the California Labor Code relating to employment of apprentices on public works projects. Prior to commencing work on a contract for public works, Contractor shall submit Contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public works. Contractor and Subcontractor shall provide and keep accurate payroll records and shall be available for inspection by the Labor Standards Enforcement (full texts of these codes are available at [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)).

**XXVIII. INSURANCE REQUIREMENTS:** During the term of the Agreement, the Contractor shall procure and maintain, for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work here under by the Contractor, their agents, representatives, employees or subcontractors.

#### Minimum Scope of Insurance

### **COMMERCIAL GENERAL AND AUTOMOBILE LIABILITY INSURANCE**

Contractor shall be required to procure and maintain at its own expense, commercial general liability insurance, of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the wrongful or negligent acts by the Contractor or its officers, employees, servants, volunteers, and agents and independent contractors.

Contractor shall further be required to procure and maintain, at its own expense, during the Term of this Agreement, commercial vehicle liability insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) Combined Single Limit, covering any vehicle(s) utilized by Contractor or its officers, employees, servants, volunteers, or agents and independent contractors in performing the services required by this Agreement.

## **COURSE OF CONSTRUCTION/INLAND MARINE INSURANCE**

Contractor, and or any of its subcontractors, suppliers, vendors, employees, or person whom it performing any work under this agreement shall be required to purchase, and maintain insurance to the full contract and insurable value thereof commonly referred to as a Course of Construction, Builders' Risk, or an Inland Marine policy that offers "Installation" coverage for all materials, supplies, equipment, and property obtained by, or for Contractor, which is to become part of the work while such equipment and property is stored at the jobsite, at temporary locations, or while in transit to the project from such temporary locations. **Contractor, and or any of its subcontractors, suppliers, vendors, employees, or person whom is performing any work under this agreement shall** also be responsible for insuring their owned, leased/rented or borrowed equipment. Insurance should also include a Loss Payee, and a Waiver of Subrogation Endorsement(s) in favor of the City of Victorville.

## **ADDITIONAL INSURED**

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation coverage, shall bear an endorsement whereby it is provided that, the City and its officers, employees, servants, volunteers, and agents and independent contractors, including, without limitation, the City Attorney, are named as Additional Insureds.

## **WAIVER OF SUBROGATION RIGHTS**

Contractor shall require the carriers of all required insurance policies to waive all rights of subrogation against the City and its officers, volunteers, employees, contractors, and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

## **WORKERS' COMPENSATION INSURANCE**

Contractor shall procure and maintain, at its own expense, during the Term of this Agreement, workers' compensation insurance, providing coverage as required by the California State Workers' Compensation Law. If any class of employees employed by Contractor is not protected by the California State Workers' Compensation Law, Contractor shall provide adequate insurance for the protection of such employees to the satisfaction of the City.

In conformance with current statutory requirements of Section 1860 et seq., of the Labor Code of the State of California, the undersigned confirms the following as their certification:

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the work of this Agreement.

## **PROOF OF INSURANCE COVERAGE; REQUIRED PRIOR TO COMMENCEMENT OF SERVICES**

a. Contractor shall secure from a good and responsible company or companies authorized to do insurance business in the State of California the policies of insurance required by this Agreement and furnish to the City Clerk certificates of said insurance at least one (1) day prior to the commencement of any services to be performed under this Agreement.

b. The certificates of insurance shall bear an endorsement whereby it is provided

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

c. The certificates of insurance shall bear an endorsement whereby it is provided that the respective insurance policy shall not be terminated or expire without first providing thirty (30) days written notice to the City of such termination or expiration.

d. The certificates of insurance shall indicate that the respective insurance policy will be maintained throughout the Term of this Agreement.

e. The Commercial General Liability and vehicle liability policies shall be endorsed to contain the following provision: "For any claims related to this Agreement, Contractor's service coverage shall be primary with respect to the City. Any insurance maintained by the City shall be in excess of Contractor's insurance and shall not contribute to it.

Contractor shall review the sample agreement, attached hereto, for additional required insurance criteria.

**XXIX. PROTECTION OF EXISTING UTILITIES:** The Proposer shall call Underground Service Alert (USA) at (800) 422-4133, two (2) working days in advance of beginning work so they can mark utilities. Whenever the improvement requires the relocation or replacement of an existing utility under the Contract, this information will be shown on the Plans. Unless this notation is shown on the Plans, the Proposer shall assume that the utility is to remain in place or be relocated or replaced by others.

The Proposer is responsible for the protection of any utilities and for any damage to any such utility during the prosecution of the work. Any damage to a utility shall be repaired to the satisfaction of the organization owning the facility. City reserves the right, if so requested by the owning utility, to permit the owning utility to repair such damage, and all expenses of whatever nature arising from such damage shall be borne by the Proposer.

**XXX. AMERICAN WITH DISABILITIES:** The proposer shall comply with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.) which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

**XXXI. TRENCHES OR EXCAVATIONS:** Pursuant to California Public Contract Code Section 7104, in the event the work included in this Agreement requires excavations more than four (4) feet in depth, the following shall apply.

(a) Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any: (1) material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class 1, Class 11, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the site different from those indicated; or (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(b) The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order per Section 1.8 of this Agreement.

That, in the event that a dispute arises between the City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. Contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

"Contractor to operate within all Cal-Osha regulations regarding excavations, shoring, or other hazards that exist while completing the assigned project."

**XXXII. GUARANTY:** A material and workmanship guaranty for a period of twelve (12) months from the date of acceptance of the work will be required. A guaranty form for this purpose is included in the Proposal.

**XXXIII. AWARD OF CONTRACT TO MORE THAN ONE CONTRACTOR:** The City will have the right to award the contract to more than one contractor. Awards will be based on the same criteria as outlined elsewhere in this document. It is the City's intent to use the contractors on a as-needed-basis, no minimum service amount is guaranteed

**XXXIV. TERM OF CONTRACT:** The term of this contract shall be from the date of award by the Council, until the end of **2021-2022** fiscal year (June 30, 2022); with the option to extend the contract up to four (4) fiscal years (July 1 through June 30), subject to satisfactory performance as determined by PW/Water Director or his designee.

**SECTION C**  
**SAMPLE**  
**SCOPE OF SERVICES**

**CITY OF VICTORVILLE  
CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES**

**SAMPLE SCOPE OF WORK**

Scope of Work:

- Contractor is to demo and rebuild approximate section of block wall based off of the lineal footage of the damaged area multiplied by no more than 6' or the LMAD standard wall height as originally built due to damage incurred from vehicle impact, vandalism, disaster, natural wear and tear, invasive tree roots or other factors (See LMAD Block Wall Standard Detail attached)
- Bid should be calculated by total square footage of the repair area
- All vertical and horizontal steel is to match existing wall.
- Wall is to be completely grouted and capped to match existing.
- Wall height must match existing wall height of the block wall to be repaired.
- All wall material, type, style, wall cap and color are to match the existing block wall.
- If any changes to these items are preferred or required, a City representative authorized by the Director of Public Works and Water must approve in writing.
- Building Division permit is required and must be paid in full by the contractor prior to the start of work.
- Pictures of the damaged block wall repair area shall be attached for reference with each repair request made during the annual agreement.
- All leftover material and any trash or dust must be removed and the site left broom clean daily, upon completion.
- Disposal of materials to be taken to designated City location and cost of disposal should not be included in the bid.
- Contractor to provide after photo(s). After picture(s) are required by the contractor of the wall repair area completed and shall match the same angle of the before photo(s) provided.
- Repairs shall be performed per LMAD Block Wall Standard Detail
- Bid should include price with footings and price without footings

***Note: Sample Scope of Work is provided as best estimate and parameter for bidders to formulate their quotations***



# **SECTION D PROPOSALS AND SUBMITTALS**

**CITY OF VICTORVILLE  
CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES**

**SUBMISSION CERTIFICATION**

I hereby submit to the City of Victorville the following bid proposal for work outlined in the Request for Bid entitled On-Call LMAD & DFAD Block Wall Repair Services. All of the following documents (check below) are completed, fully executed, signed and included in my bid as required in the bid documents:

- \_\_\_\_\_ Submission Certification
- \_\_\_\_\_ Proposal Instruction
- \_\_\_\_\_ Bid Proposal Form
- \_\_\_\_\_ Bidder Identification
- \_\_\_\_\_ Customer References
- \_\_\_\_\_ Worker's Compensation
- \_\_\_\_\_ Signature Authorization
- \_\_\_\_\_ List of Subcontractors
- \_\_\_\_\_ PCC Section 10162 Questionnaire
- \_\_\_\_\_ Non-Collusion Declaration
- \_\_\_\_\_ Senate Bill 854
- \_\_\_\_\_ Debarred Certification
- \_\_\_\_\_ Acknowledgement Pages for All Bid Addenda

My signature on this submittal Certification is affirmation that all items listed above are fully completed and executed and are hereby submitted with proposal as required. I understand that failure to complete and/or submit any of the required documents may be cause for rejection of my bid proposal.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Telephone Number

**CITY OF VICTORVILLE  
CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES  
PROPOSAL INSTRUCTION**

Bids are required for the entire work. The amount of the bid for comparison purposes will be the total of all items.

The bidder shall set forth for each item of work, in clearly printed figures, the unit price and total for the line item in the respective spaces provided for this purpose. In the case of unit basis items, the amount set forth under the "Total" column shall be the product of the unit price bid and the estimated quantity for the item.

In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price shall prevail, except as provided in (a) or (b), as follows:

- (a) If the amount set forth as a unit price is unreadable or otherwise unclear, or is omitted, or is the same amount as the entry in the item total column, then the amount set forth in the item total column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price;
- (b) (Decimal Errors) If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, or one-hundredth, etc. from the entered total, the discrepancy will be resolved by using the entered unit price or item total, whichever most closely approximates percentage-wise the unit price or item total in the City's Final Estimate of cost.

If both the unit price and the item total are unreadable or otherwise unclear, or are omitted, the bid may be deemed irregular. Likewise if the item total for a lump sum item is unreadable or otherwise unclear, or is omitted, the bid may be deemed irregular unless the project being bid has only a single item and a clear, readable total bid is provided.

Symbols such as commas and dollar signs will be ignored and have no mathematical significance in establishing any unit price or item total or lump sums. Written unit prices, item totals and lump sums will be interpreted according to the number of digits and, if applicable, decimal placement. Cents symbols also have no significance in establishing any unit price or item total since all figures are assumed to be expressed in dollars and/or decimal fractions of a dollar. Bids on lump sum items shall be item totals only; if any unit price for a lump sum item is included in a bid and it differs from the item total, the items total shall prevail.

The foregoing provisions for the resolution of specific irregularities cannot be so comprehensive as to cover every omission, inconsistency, error or other irregularity, which may occur in a bid. Any situation not specifically provided for will be determined in the discretion of the City, and that discretion will be exercised in the manner deemed by the City to best protect the public interest in the prompt and economical completion of the work. The decision of the City with respect to the amount of a bid, or the existence or treatment of an irregularity in a bid, shall be final.

**CITY OF VICTORVILLE  
 CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES  
 BID PROPOSAL FORM**

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

The undersigned declares that he/she has carefully evaluated the proposed Scope of Work, Special Provisions, and other Contract Documents; and being familiar with all of the conditions surrounding the Scope of Work, including the availability of materials, labor, and inspections hereby proposes to furnish all labor, materials, tools, equipment, and incidentals to complete On-Call LMAD & DFAD Block Wall Repair services. Unit Price should include all labor, materials, tools, equipment, and incidentals within the designated table field provided below. Bid proposal table is for comparative purposes using a standard of 10 lineal feet wide x 6 foot high (60 sq ft) of block wall repair area per City LMAD Standard Detail. All of the aforementioned shall be done in accordance with the said Scope, Instructions to Bidders, and Contract Documents and all applicable addenda.

ITEM#	DESCRIPTION	QTY	UNIT PRICE	EXT. PRICE
1.	CMU BLOCK			
2.	WALL CAPS			
3.	MORTAR			
4.	REBAR			
5.	SOLID GROUT (PER LMAD BLOCK WALL STANDARD DETAIL)			
6.	BOND BEAM			
7.	INSTALL FOOTING (IF REQUIRED AFTER INSPECTION)			
8.	STUCCO/PAINT			
	<b>SUBTOTAL</b>			
	<b>8.75% TAX ON MATERIALS (IF PURCHASED IN VICTORVILLE)</b>			
	<b>LABOR</b>			
	<b>TOTAL BID</b>			

Expected Response Time: 30 days after notice to proceed. \_\_\_\_\_

Contractor: \_\_\_\_\_

By: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

Name & Title Authorized to sign the Contract: \_\_\_\_\_

\_\_\_\_\_  
Signature Date

**CITY OF VICTORVILLE  
CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES**

**BIDDER IDENTIFICATION**

1. Legal name of Proposer: \_\_\_\_\_
2. Street Address: \_\_\_\_\_
3. Mailing Address: \_\_\_\_\_
4. Business Telephone: \_\_\_\_\_
5. Facsimile Telephone: \_\_\_\_\_
6. Email Address: \_\_\_\_\_
7. Type of Business:  
 Sole Proprietor    Partnership    Corporation  
Other: \_\_\_\_\_  
If corporation, indicate State where incorporated: \_\_\_\_\_
8. Business License number issued by the City where the Proposer's principal place of business is located.  
Number: \_\_\_\_\_ Issuing City: \_\_\_\_\_
9. Federal Tax Identification Number: \_\_\_\_\_
10. Contractor's License Number and Expiration Date: \_\_\_\_\_
11. Bidder's Project Manager: \_\_\_\_\_
12. Name & Title of Authorized to sign legal document: \_\_\_\_\_

**CITY OF VICTORVILLE  
CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES**

**CUSTOMER REFERENCES**

Bidder: \_\_\_\_\_

<b>LIST FOUR (4) YOU HAVE DONE BUSINESS WITH WITHIN THE LAST THREE YEARS – PREFERABLY PUBLIC AGENCIES WITH SIMILAR WORK</b>		
1.	Name of Agency	
	Address	
	Contact Person Name:	
	Contact Person Phone:	
	Email Address:	
2.	Name of Agency	
	Address	
	Contact Person Name:	
	Contact Person Phone:	
	Email Address:	
3.	Name of Agency	
	Address	
	Contact Person Name:	
	Contact Person Phone:	
	Email Address:	
4	Name of Agency	
	Address	
	Contact Person Name:	
	Contact Person Phone:	
	Email Address:	

**CITY OF VICTORVILLE  
CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES**

**WORKERS' COMPENSATION**

The Proposer shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and on behalf of my firm, I will comply with such provisions before commencing the performance of the services of any contract entered into.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Business License Number

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**CITY OF VICTORVILLE  
CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES**

**SIGNATURE AUTHORIZATION**

Contractor/Bidder: \_\_\_\_\_

- A. I hereby certify that I have the authority to offer this proposal/bid to City of Victorville for the above listed individual or company. I certify that I have the authority to bind myself/this company in a contract should I be successful in my proposal/bid.

\_\_\_\_\_  
SIGNATURE

The following information relates to the legal Contractor listed above, whether an individual or a company. Place check marks as appropriate:

1. If successful, the contract language should refer to me as:

An Individual  
 A Partnership, Partners' names:  
 A Company  
 A Corporation

2. My tax identification number is \_\_\_\_\_  
(For individuals, this number is usually the Social Security Number)

3.  I am a certified small business and Small Business Preference is applicable to this proposal/bid. A copy of my certification from the Office of Small and Minority Business is attached.

I have recently filed for Small Business Preference but have not yet received certification.

I am not a Small Business.

4.  My business is owned by a minority whose ethnicity is: \_\_\_\_\_

My business is owned by a woman.

My business is owned by a disabled veteran.

My business is owned by a woman.

**CITY OF VICTORVILLE  
CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES  
LIST OF SUBCONTRACTORS**

The bidder is required to furnish the following information in accordance with the provisions of Section 4100 to 4113, inclusive, of the California Public Contract Code.

The contractor shall perform with its own organization contract work amounting to not less than 30 percent (30%) of the total original contract price, excluding any specialty items designated by the City. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the amount of work required to be performed by the contractor's own organization.

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Name Subcontractor is licensed under: \_\_\_\_\_

License Number and Classification: \_\_\_\_\_

Address of Subcontractor: \_\_\_\_\_

Percent (%) of Total Contract: \_\_\_\_\_ %

Specific Description of Subcontract: \_\_\_\_\_

DIR Registration number: \_\_\_\_\_

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Name Subcontractor is licensed under: \_\_\_\_\_

License Number and Classification: \_\_\_\_\_

Address of Subcontractor: \_\_\_\_\_

Percent (%) of Total Contract: \_\_\_\_\_ %

Specific Description of Subcontract: \_\_\_\_\_

DIR Registration Number: \_\_\_\_\_

---

---

Name Subcontractor is licensed under: \_\_\_\_\_

License Number and Classification: \_\_\_\_\_

Address of Subcontractor: \_\_\_\_\_

Percent (%) of Total Contract: \_\_\_\_\_ %

Specific Description of Subcontract: \_\_\_\_\_

DIR Registration Number: \_\_\_\_\_

**If no sub please initial here: \_\_\_\_\_**

**CITY OF VICTORVILLE  
CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES**

**QUESTIONNAIRE**

**PCC Section 10162**

In accordance with Government code Section 14310.5, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the Bidder, any officer of the Bidder, or any employee of the Bidder who has a proprietary interest in the Bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a Federal, State, or local government project because of a violation of law or a safety regulation?

Yes \_\_\_\_ No

If the answer is yes, explain the circumstances in the following space:

*NOTE: This questionnaire constitutes a part of the Proposal and signature on the signature portion of this Proposal shall constitute signature of this questionnaire.*

**CITY OF VICTORVILLE  
CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES**

**NON-COLLUSION DECLARATION  
TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID  
(Public Contract Code Section 7106)**

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing bid. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [date], at \_\_\_\_\_ [city], \_\_\_\_\_ [state].

\_\_\_\_\_

Signature

\_\_\_\_\_

Company Name

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Title

**CITY OF VICTORVILLE  
CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES  
SENATE BILL 854**

Senate Bill 854 signed into law on June 20, 2014, became effective immediately. It established a new public works Contractor registration program which will collect fees to fund compliance monitoring and enforcement, determine prevailing wage and public works coverage, and hear enforcement appeals.

All Contractors and subcontractors intending to bid or perform work on public works projects will be required to register, and annually renew, online for the program. This is a Department of Industrial Relations (DIR) fee paid to the State of California. The City will not register a Contractor/subcontractor, nor collect funds for registration.

Starting July 1, 2017, the new annual registration fees for public works contractors have increased to \$400.00, and contractors on small projects are exempt from public works registration and electronic certified payroll reporting requirements.

Small Project Exemption:

Contractors who work exclusively on small public work projects are not required to register as a public works or file electronic certified payroll reports for those projects. Contractors are still required to maintain certified payroll records on a continuous basis and provide them to the Labor Commissioner's Office upon request.

The small project exemption applies for public works projects that do not exceed:

- \$25,000 new construction, alteration, installation, demolition, or repair
- \$15,000 for maintenance

Subcontractor Eligibility: Contractor acknowledges that under Public Contract Code Section 6109 no contractor or subcontractor who is ineligible to bid or work on, or be awarded, a public works project under Labor Code Section 1777.1 or 1777.7 may bid on, be awarded, or perform work as a subcontractor on, a public works project. Contractor is prohibited from performing work on a public works project with a subcontractor who is ineligible to perform work on the public works project under Labor Code Section 1777.1 or 1777.7

The City as applicable will be required to fill out a form alerting the DIR of the services you are providing the City. Detailed information is required to complete this form. You may be asked to provide information needed to complete the DIR form. You will be asked to complete this in a timely manner to avoid interruption in the services you are providing.

Are you currently registered with the DIR?

**Yes** \_\_\_\_\_ **No** \_\_\_\_\_ If yes, what is your registration number? \_\_\_\_\_  
**(please submit proof of your registration)**

Bidder: \_\_\_\_\_ Federal I.D. No: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name Printed: \_\_\_\_\_ Title: \_\_\_\_\_

**CITY OF VICTORVILLE  
CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES**

**DEBARRED CERTIFICATION ACKNOWLEDGEMENT**

(a)(1) The Offeror/Bidder certifies, to the best of its knowledge and belief, that—

(i) The Offeror/Bidder and/or any of its Principals—

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have not, within a three-year period preceding this solicitation, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of bids; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;

(ii) The Offeror/Bidder has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principal," for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

This certification concerns a matter within the Jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code.

(b) The Offeror/Bidder shall provide immediate written notice to the City if, at any time prior to contract award, the Offeror/Bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's/Bidder's responsibility. Failure of the Offeror/Bidder to furnish a certification or provide such additional information as requested by the City may render the Offeror/Bidder nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror/Bidder is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror/Bidder

knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate the contract resulting from this solicitation for default.

**The Offeror/Bidder certifies that the foregoing is true and correct:**

Offeror/Bidder: \_\_\_\_\_ Federal I.D. No: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name Printed: \_\_\_\_\_ Title: \_\_\_\_\_

# **SAMPLE CONSTRUCTION AGREEMENT**



\*\*\*\*\*

**CONSTRUCTION AGREEMENT  
BY AND BETWEEN  
THE CITY OF VICTORVILLE  
AND  
CONTRACTOR  
FOR  
PROJECT TITLE AND PROJECT NUMBER**

THIS CONSTRUCTION AGREEMENT (the "Agreement") is made and entered into by and between the City of Victorville, a municipal corporation located in the County of San Bernardino, State of California, hereinafter referred to as the "City", and **CONTRACTOR NAME, FORM OF BUSINESS (CORPORATION, GENERAL CONTRACTOR, ETC.)** hereinafter referred to as the "Contractor". The City and the Contractor are sometimes hereinafter referred to as a "Party" or and collectively referred to as the "Parties."

**RECITALS:**

**WHEREAS**, the City requires **PROJECT TITLE AND PROJECT NUMBER** (the Project);  
and

**WHEREAS**, in light of the facts set forth above, the City desires to retain Contractor in connection with **PROJECT TITLE**; and

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

**Section 1.            RECITALS**

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

**Section 2.            TERM OF AGREEMENT**

This Agreement shall commence within **NUMBER (QTY) OF CALENDAR DAYS** after issuance of Notice to Proceed (the "Commencement Date") and shall terminate upon completion of the Project **NUMBER (QTY) OF CALENDAR DAYS** after Commencement Date (**the "Termination Date"**), unless sooner terminated in accordance with the provisions of this Agreement (the "Term"). From and after the Termination Date, and upon subsequent agreement by the Parties, this Agreement may continue on a month-to-month basis until terminated pursuant to Section 3 below.

This Agreement may be extended for **FOUR (4) additional one-year periods** (hereinafter "Option Period"), at the option of City, subject to satisfactory performance as determined by the City. City shall give Contractor sixty (60) days advance written notice prior to the expiration the initial Term and sixty (60) days advance written notice prior to the expiration date of each subsequently exercised Option Period, if any, should the City decide to exercise its option(s) to extend. In the event City

does not give Contractor such written notice of its option to extend, this Agreement shall terminate at the end of the then-current Term or Option Period without further notice from either Party, unless terminated earlier pursuant to the provisions of Section 3 below. Should the City fail to give Consultant the sixty (60) days written notice of its intention to exercise any Option Period, the City may, in its sole discretion, elect to exercise any Option Period at a later date, following written inquiry from Contractor.

### **Section 3.                    TERMINATION OR SUSPENSION**

a.        This Agreement may be terminated or suspended without cause by either Party at any time, provided that the Party initiating the termination provides the other Party at least thirty (30) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory work rendered or supplies actually furnished prior to the effective date of termination.

b.        This Agreement may be terminated or suspended with cause by either Party at any time, provided that the Party initiating termination provides the other Party at least ten (10) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory work rendered or supplies actually furnished prior to the effective date of termination.

### **Section 4.                    CONTRACT DOCUMENTS; PRIORITY**

The contract documents shall include the following documents, attached hereto as exhibits and/or incorporated herein by this reference as though set forth in full (the "Contract Documents"):  
**(AMEND AS APPLICABLE)**

- This Agreement.
- Exhibits:
- Notice Inviting Bids for the Project;
- City Specifications for the Project;
- Special Provisions;
- Accepted Proposal.

In the event of any conflict between or among the Contract Documents, or any dispute as to the meaning of any term or provision, the Contract Documents shall be given priority according to the order listed herein above. In the event of any conflict or dispute that cannot be resolved by reference to the Contract Documents, the following documents may be used to clarify or interpret any term therein:

**(AMEND AS APPLICABLE)**

- Non-Collusion Affidavit;
- Bidder's Bond;
- List of Subcontractors;
- Faithful Performance Bond;
- Payment Bond; and
- Guaranty.

### **Section 5.                    CONTRACTOR'S OBLIGATIONS**

Contractor shall complete the Project as specifically set forth in the Contract Documents. Contractor shall furnish, at its own cost and expense, all labor, services, material, tools, equipment, supplies, transportation, and any other items and facilities necessary therefore, as provided in the Contract Documents.

## **Section 6. COMPENSATION**

The Contractor agrees to receive and accept the following amount, not to exceed **SPELL OUT DOLLAR AMOUNT and 00/100 Dollars (\$000.00)**, as full compensation for furnishing; all materials, doing all the work contemplated and embraced in this contract, all loss or damage arising out of the nature of the work aforesaid, the action of the elements, any unforeseen difficulties or obstructions which may arise or be encountered in the execution of the work until its acceptance by the City, and for all risks of every description connected with the work, all expenses incurred by or in consequence of the suspension or discontinuance of work well and faithfully completing the whole work, thereof, according to **the requirements of the agreement documents and to the satisfaction of INSERT DEPT. HEAD NAMD AND TITLE**, or his designee, to wit: See **Exhibit "A", Scope of Work**.

## **Section 7. BID PROPOSAL FORMS (REVISE, AS APPLICABLE-PROPOSAL, QUOTE, ETC.)**

The City shall pay Contractor as provided in the Bid Proposal Forms, attached hereto as **Exhibit "B"**, and incorporated herein by this reference as though set forth in full, subject to approval of the City, when applicable.

## **Section 8. PREVAILING WAGES**

a. In accordance with the provisions of the California Labor Code (1720,1770-1776, 1810, 1813 and 1815, as amended and applicable), the State Director of Industrial Relations has determined the general prevailing rates of per diem wages in the locality where the Project is to be done. Copies of the updated Wage Determination rates are available from the State of California via the internet at [www.dir.ca.gov](http://www.dir.ca.gov). Additionally, copies of the prevailing rate of per diem wages are on file at the City of Victorville Finance Division, and shall be made available for review to any interested party on request. Notwithstanding anything in the Contract Documents to the contrary, Contractor and all subcontractors shall pay not less than said specified State of California rates to all workers employed by them in the execution of the work contemplated by this Agreement. Contractor shall be responsible for using correct and current prevailing wage rates.

b. **AB219 (as applicable)** adds Section 1720.9 to the Labor Code, the hauling and delivery of ready-mixed concrete to carry out a public works contract, with respect to contracts involving state agency or any political subdivision of the state. Section 1720.9 defines the term "ready-mixed" concrete and specifies that the rate of pay shall be the current prevailing wage "for the geographical area in which the factory or batching plant is located" as determined by the DIR. The statute also requires a written agreement between the party hauling or delivering the ready-mixed concrete and the party that engaged its services.

c. The delivery company shall provide certified payroll records under Labor Code section 1776(a) to the party that engaged its services and to the general contractor within five working days after the employee has been paid, accompanied by a written time record within five working days after the employee has been paid, accompanied by a written time record. The time record must be certified by each driver for the performance of job duties.

d. An error on the part of any awarding body does not relieve the Contractor from the responsibility for payment of the correct State prevailing wage and compliance with the maintenance and inspection of payroll records, posting of prevailing wage rates at work site, employment of

apprentices, and other requirements of California Labor Code Section 1720, *et seq.*; California Code of Regulations, Title 8, Section 16000 *et seq.*; and all other applicable State labor laws. Contractor further acknowledges and agrees **that it will be independently** responsible for reviewing the applicable laws and regulations and effectuating compliance with those laws. Contractor will require the same of all its subcontractors.

**NOTE:** This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). Confirmation of certified payroll submittal to the Department of Industrial Relations (DIR) is required with each invoice to the City. Payment of the invoice may be delayed when proof of certified payroll submittal is not included with the Contractor's invoice.

## **Section 9. WORKERS' COMPENSATION INSURANCE**

Contractor shall procure and maintain, at its own expense, during the Term of this Agreement, workers' compensation insurance, providing coverage as required by the California State Workers' Compensation Law. If any class of employees employed by Contractor is not protected by the California State Workers' Compensation Law, Contractor shall provide adequate insurance for the protection of such employees to the satisfaction of the City.

In conformance with current statutory requirements of Section 1860 *et seq.*, of the Labor Code of the State of California, the undersigned confirms the following as their certification:

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the work of this contract.

## **Section 10. NOTICE TO PROCEED**

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

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

Contractor shall comply with all local, state, and federal laws and regulations applicable to the performance of the work required by the Contract Documents, including any rule, regulation, or bylaw governing the conduct or performance of Contractor, its employees, officers, board members, **agents, independent contractors, and subcontractors.** **Unless otherwise specified in the Contract Documents, all required permits and licenses shall be held or obtained by the Contractor at its sole expense.**

## **Section 12. COMMERCIAL GENERAL AND AUTOMOBILE LIABILITY INSURANCE**

Contractor shall procure and maintain at its own expense, during the term of this Agreement, commercial general liability insurance, of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the wrongful or negligent acts by the Contractor or its officers, employees, servants, volunteers, and agents and independent

contractors.

Contractor shall further procure and maintain, at its own expense, during the Term of this Agreement, commercial vehicle liability insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) Combined Single Limit, covering any vehicle(s) utilized by Contractor or its officers, employees, servants, volunteers, or agents and independent contractors in performing the services required by this Agreement.

**Section 13. COURSE OF CONSTRUCTION/INLAND MARINE INSURANCE**

Contractor, and or any of its subcontractors, suppliers, vendors, employees, or person whom it performing any work under this agreement shall purchase, and maintain insurance to the full contract and insurable value thereof commonly referred to as a Course of Construction, Builders' Risk, or an Inland Marine policy that offers "Installation" coverage for all materials, supplies, equipment, and property obtained by, or for Contractor, which is to become part of the work while such equipment and property is stored at the jobsite, at temporary locations, or while in transit to the project from such temporary locations. **Contractor, and or any of its subcontractors, suppliers, vendors, employees, or person whom is performing any work under this agreement shall** also be responsible for insuring their owned, leased/rented or borrowed equipment. Insurance should also include a Loss Payee, and a Waiver of Subrogation Endorsement(s) in favor of the City of Victorville.

**Section 14. ADDITIONAL INSURED**

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation coverage, shall bear an endorsement whereby it is provided that, the City and its officers, employees, servants, volunteers, and agents and independent contractors, including, without limitation, the City Attorney, are named as Additional Insureds.

**Section 15. WAIVER OF SUBROGATION RIGHTS**

Contractor shall require the carriers of all required insurance policies to waive all rights of subrogation against the City and its officers, volunteers, employees, contractors, and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

**Section 16. PROOF OF INSURANCE COVERAGE; REQUIRED PRIOR TO COMMENCEMENT OF SERVICES**

a. Contractor shall secure from a good and responsible company or companies authorized to do insurance business in the State of California the policies of insurance required by this Agreement and furnish to the City Clerk certificates of said insurance at least one (1) day prior to the commencement of any services to be performed under this Agreement.

b. The certificates of insurance shall bear an endorsement whereby it is provided that, in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the City shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or amendment is effective. In the case of non-payment, ten (10) days' advance written notice shall be given.

c. The certificates of insurance shall bear an endorsement whereby it is provided that the respective insurance policy shall not be terminated or expire without first providing thirty (30) days written notice to the City of such termination or expiration.

d. The certificates of insurance shall indicate that the respective insurance policy will be maintained throughout the Term of this Agreement.

e. The Commercial General Liability and vehicle liability policies shall be endorsed to contain the following provision: "For any claims related to this Contract, Contractor's service coverage shall be primary with respect to the City. Any insurance maintained by the City shall be in excess of Contractor's insurance and shall not contribute to it.

**Section 17. TIME OF THE ESSENCE**

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

**Section 18. INDEMNIFICATION**

Notwithstanding the limits of any insurance, Contractor shall indemnify the City, its officials, officers, agents, volunteers and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising or alleged to arise out of or in connection with the negligent performance of the work, operations or activities of Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising or alleged to arise from the negligent acts or omissions of Contractor hereunder, or arising or alleged to arise from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities or portion of such claims or liabilities arising or alleged to arise from the negligence or willful misconduct of the City its officials, officers, agents, volunteers or employees, and in connection therewith:

a. Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

b. Contractor will promptly pay any judgment rendered against the City, its officials, officers, agents or employees for any such claims or liabilities arising or alleged to arise out of or in connection with Contractor's (or its agents', employees', subcontractors' or invitees') negligent performance of or failure to perform such work, operations or activities hereunder; and Contractor agrees to save and hold the City, its officials, volunteers, officers, agents, and employees harmless there from;

c. In the event the City, its officials, officers, agents, volunteers or employees is made a Party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising or alleged to arise out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor shall pay to the City, its officials, volunteers officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees for counsel acceptable to City;

d. Contractor's duty to defend and indemnify as set out in this Section shall include any claims, liabilities, obligations, losses, demands, actions, penalties, suits, costs, expenses or damages or injury to persons or property arising or alleged to arise from, in connection with, as a consequence of or pursuant to any state or federal law or regulation regarding hazardous substances, including but not limited to the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Resource Conservation and Recovery Act of 1976 ("RCRA"), the Hazardous and

Solid Waste Amendments of 1984, the Hazardous Material Transportation Act, the Toxic Substances control Act, the Clean Air Act, the Clean Water Act, the California Hazardous Substance Account Act, the California Hazardous Waste Control Law or the Porter-Cologne Water Quality Control Act, as any of those statutes may be amended from time to time;

The Contractor's indemnification obligations pursuant to this Section shall survive the termination of this Agreement. Contractor shall require the same indemnification from all subcontractors.

#### **Section 19.           REPORTS**

Upon request by **INSERT DEPT. HEAD NAME AND TITLE**, or his designee, Contractor shall prepare and submit reports concerning Contractor's performance of the work required by this Agreement.

#### **Section 20.           RECORDS**

a. Contractor shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable **INSERT DEPT. HEAD NAME AND TITLE**, or his designee, to evaluate the cost and the performance of such services.

b. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles.

c. **INSERT DEPT. HEAD NAME AND TITLE**, or his designee, shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

d. Records and supporting documents pertaining to the use of funds paid to Contractor hereunder shall be retained by Contractor and made available to **INSERT DEPT. HEAD NAME AND TITLE**, or his designee, for purposes of performing an audit for a period of five (5) years from the date of termination of this Agreement.

#### **Section 21.           MODIFICATIONS AND AMENDMENTS**

This Agreement may be modified or amended only by a written instrument signed by both Parties.

#### **Section 22.           ENTIRE AGREEMENT**

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

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

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

**Section 23.**                **AMBIGUITIES**

This Agreement is in all respects intended by each Party hereto to be deemed and construed to have been jointly prepared by the Parties and the Parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

Notwithstanding the foregoing, the Parties agree that **Exhibits “A” and “B” (amend as applicable)** are attached hereto for reference purposes and to the extent there are any ambiguities, inconsistencies or conflicts between the terms of this Construction Agreement and **Exhibits “A” and “B”**, the terms of this Construction Agreement shall control and nothing set forth in **Exhibits “A” and “B”** shall be deemed to supersede any of the provisions of this Construction Agreement.

**Section 24.**                **NOTICES**

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

To the City:                                **INSERT DEPT. HEAD NAME & TITLE**  
City of Victorville  
14343 Civic Drive  
Victorville, CA 92392

To Contractor:                            **CONTRACTOR REP. NAME AND TITLE**  
**COMPANY NAME**  
**ADDRESS**  
**CITY, STATE, ZIP**

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

**Section 25.**                **NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

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

**Section 26.**                **REVIEW BY ATTORNEYS**

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

**Section 27.**                **CARE OF WORK**



Contractor must adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by the City, except those losses or damages as may be caused by the City's own negligence. The performance of the work by Contractor or the payment of money by the City shall not relieve Contractor from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the City, when such inaccuracies are due to the negligence of Contractor.

**Section 28. CAPTIONS AND HEADINGS**

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

**Section 29. SUCCESSORS, HEIRS, AND ASSIGNS**

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties.

**Section 30. GENDER; PLURAL**

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

**Section 31. SEVERABILITY**

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

**Section 32. GOVERNING LAW**

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

**Section 33. CUMULATIVE REMEDIES**

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

**Section 34. VENUE**

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

County, California.

**Section 35. ATTORNEY'S FEES**

Should any litigation, specifically including but not limited to, arbitration and other non-judicial resolution of disputes be commenced between the Parties to this agreement concerning this agreement or the rights and duties of either in relation thereto, the Parties prevailing in such litigation or other proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney fees in such litigation where the proceeding which, if not agreed upon by the Parties, shall be determined by the court or other entity in which such litigation or other proceeding is brought.

**Section 36. EFFECTIVENESS OF AGREEMENT**

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

**Section 37. REPRESENTATIONS OF PARTIES AND PERSONS EXECUTING AGREEMENT**

a. Each of the Parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the Parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

**Section 38. COUNTERPARTS**

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

(END OF THIS PAGE)

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

**THE CITY OF VICTORVILLE**

**CONTRACTOR**

By: \_\_\_\_\_  
**INSERT DEPT. HEAD NAME AND TITLE  
OR MAYOR**

By: \_\_\_\_\_  
**CONTRACTOR NAME AND TITLE**

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

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

**ATTEST (AS APPLICABLE)**

By: \_\_\_\_\_  
**Charlene Robinson, City Clerk**

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

**THE CITY OF VICTORVILLE**

**APPROVED AS TO STANDARD FORM**

By: \_\_\_\_\_  
**John Preston  
Risk Manager**

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

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

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

# GUARANTY FORM

**CITY OF VICTORVILLE  
CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES  
GUARANTY**

TO THE CITY OF VICTORVILLE, CALIFORNIA

The undersigned guarantees the completion of "**CC22-003 ON-CALL LMAD & DFAD BLOCK WALL REPAIR SERVICES PROJECT**" Should any of the materials or equipment prove defective or should the work as a whole prove defective, due to faulty workmanship, material furnished, or methods of installation, or should the work or any part thereof fail to operate properly as originally intended and in accordance with the Plans and Specifications and/or manufacturers specifications, due to any of the above causes, all within twelve (12) months after date on which this Contact is accepted by the City, the undersigned agrees to reimburse the City, upon demand, for its expenses incurred in restoring said work to the condition contemplated in said project, including the cost of any such equipment or materials replaced and the cost of removing and replacing any other work necessary to make such replacement or repairs, or, upon demand by the City, to replace any such materials and to repair said work completely without cost to the City so that said work will function successfully as originally contemplated.

The City shall have the unqualified option to make any needed replacements or repairs itself or to have such replacements or repairs done by the undersigned.

In the event the City elects to have said work performed by the undersigned, the undersigned agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within the time limit designated by the City. If the undersigned shall fail or refuse to comply with their obligations under this guaranty, the City shall be entitled to all costs and expenses, including attorney's fees, reasonably incurred by reason of said failure or refusal.

SIGNED: \_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_ Title: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

NOTE: This Guaranty shall be executed by the successful bidder in accordance with instructions in the Special Provisions. The bidder may execute the Guaranty on this page at the time of submitting the bid.