

INVITATION TO BID

Pursuant to Public Contract Code Sections 1600 and 1601, all bids or proposals shall be submitted through the City's electronic bid management system (PlanetBids) at <https://www.planetbids.com/portal/portal.cfm?CompanyID=43375> by **2:00 pm Pacific Standard Time on or before December 15, 2022** for the project listed below. A bid submitted after the time set shall not be considered. Bidders are required to submit (upload) all items listed in the section 4(d) of Instructions to Bidders, including a copy of the required Bidder's Bond and acknowledgement of all addendums. Bids will be received by the City via the electronic submission up to the date and time shown in the Notice of Inviting Bids. The City will be responsible for bid tabulations. Bids will be opened and read out loud by the City Clerk's Office in Council Chambers at the date and time stated in the Notice of Inviting Bids. Bid results will be made available to the public on the City's website in the electronic bid management system once the bid tabulation has been completed.

The foregoing notwithstanding, the award of any contract shall be subject to approval by the City Council at a duly noticed City Council meeting and the City Council reserves the right to reject all Bids.

The Bidder, by submitting their electronic proposal, agrees to and certifies under penalty of perjury under the laws of the State of California, that the certification, forms and affidavits submitted as part of this proposal are true and correct. The Bidder, by submitting its electronic bid, acknowledges that doing so carries the same force and full legal effect as a paper submission with a longhand (wet) signature. By submitting an electronic bid, the Bidder certifies that the Bidder has thoroughly examined and understands the entire Contract Documents (which consist of the plans and specifications, drawings, forms, affidavits and the solicitation documents), and that by submitting the electronic bid as its Bid proposal, the Bidder acknowledges, agrees to and is bound by the entire Contract Documents, including any addenda issued thereto, and incorporated by reference in the Contract Documents.

Gibson Mariposa Storm Drain and Fencing Improvement Project, CIP 066

The proposed improvements are located within the Gibson Mariposa Skate Park. The improvements are necessary to provide safety enhancement features that will benefit the local community. The proposed improvements will consist of:

- Perimeter tubular steel fencing - The perimeter fencing design will be to provide safety measures to the existing skate park.
- Landscape / Hardscape and concrete Improvements
- Safety cameras
- Construction of a storm drainage system for the skate park

This is a federally assisted construction contract. Federal Labor Standards Provisions outlined in the HUD-4010 form, including prevailing wage requirements of the Davis-Bacon and Related Acts (DBRA), will be enforced.

The “current Federal Wage Decision” is the one in effect ten (10) days prior to the bid opening date and can be found online at <http://www.wdol.gov> In the event of a conflict between federal and state wage rates, the higher of the two will prevail. “The Contractor’s duty to pay State prevailing wages can be found under Labor Code Section 1770 et seq. and Labor Code Sections 1775 and 1777.7 outline the penalties for failure to pay prevailing wages and employ apprentices including forfeitures and debarment.” This Project is a “public work,” and thus, the Contractor and any Subcontractors must pay wages in accordance with the determination of the Director of the Department of Industrial Relations (“DIR”) regarding the prevailing rate of per diem wages. Copies of those rates are on file with the Director of Public Works and are available to any interested party upon request. The contractor shall post a copy of the DIR’s determination of the prevailing rate of per diem wages at each job site.

Section 3 Statement: This is a HUD Section 3 construction contract. First preference will be given to a bidder who provides a reasonable bid and is a qualified Section 3 Business Concern. Second preference will be given to a bidder who provides a reasonable bid and commits to achieving the Section 3 employment, training, and subcontracting opportunity goals by submitting a Declaration of Intent to comply with Section 3 requirements, including benchmarks. **A Section 3 MANDATORY Pre-Bid Meeting will be held at 10:00am on Tuesday, November 29, 2022 at Gibson Mariposa Skate Park, by the amphitheater 4140 Gibson Road, El Monte, CA, 91731,** to discuss the Section 3 bid preference and goals. A bidder who is not responsive to the Section 3 requirements of the Housing Development Act of 1968 (as amended), will not receive consideration for a bid preference.

A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. It is not a violation for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

Completion of Work: All work shall be completed within **ninety (90)** working days from the date designated on the Notice to Proceed.

Obtaining Contract Documents: Specifications and contract documents are posted in the City’s electronic bid management system (PlanetBids) at <https://www.planetbids.com/portal/portal.cfm?CompanyID=43375>. All Bidders must first register as a vendor on the City of El Monte PlanetBids System website to participate in a Bid or to be added to a prospective Bidders list. Only those parties that have registered with the City as a plan holder on a particular project will receive the addendum(a) for that project. The City is not responsible for notifications to those parties who do not directly register as a plan holder on the City’s database. It is the responsibility of all perspective

Bidders to register on the City's database to ensure receipt of any addendum(a) prior to Bid submittals. Additionally, information on any addendum(a) issued for any bid specifications for any project will be available on the City website at: <https://www.planetbids.com/portal/portal.cfm?CompanyID=43375>. The City reserves the right to reject as nonresponsive any bid that fails to include the information required by any addendum(a) posted on the City website.

Questions: Project-specific questions must be submitted in writing through the City's electronic bid management system (PlanetBids) at <https://www.planetbids.com/portal/portal.cfm?CompanyID=43375> by **4:00 p.m. Pacific Standard Time on or before Monday, December 5, 2022**. All posted questions will be answered in writing and conveyed via written addenda to all Bidders via posting on PlanetBids.

Mandatory Pre-Bid Meeting: A mandatory pre-bid meeting will be held on **Tuesday, November 29, 2022 10:00 a.m. at Gibson Mariposa Skate Park, 4140 Gibson Road, El Monte, CA, 91731. Every Bidder is required to attend the pre-bid meeting. Failure of a Bidder to attend will render that Bidder's Bid non-responsive.** No allowances for cost adjustments will be made if a Bidder fails to adequately examine the Project before submitting a Bid.

Submission of Proposals: All Bids or Proposals shall be submitted through the City's electronic bid management system (PlanetBids) at <https://www.planetbids.com/portal/portal.cfm?CompanyID=43375> no later than the date and time prescribed. All Bids must be signed by an authorized representative.

All required sections, including pricing, shall be submitted (uploaded) to PlanetBids via the website. The Bidder shall attach Subcontractor(s) Listing, Experience Form, Copy of Bid Security, and all other documents as listed in the BIDDER'S CHECKLIST to the PlanetBids Attachments Tab. The system will not accept a Bid for which any required information is missing. **Prior to the Bid due date and time, all Bidders shall submit the original Bid Security to:**

**Office of the City Clerk
City of El Monte – City Hall East
11333 Valley Blvd
El Monte CA, 91731**

The award of the contract by the City Council is contingent upon the Bidder submitting the required bonds and insurance, as described in the Contract, prior to the Bid due date and time. If the Bidder fails to comply with these requirements, the City may award the contract to the second or third lowest Bidder and the Bid security of the lowest Bidder may be forfeited.

Bids Remain Sealed Until Due Date and Time. Electronic Bids are transmitted into the City's bidding system via hypertext transfer protocol secure (https). Bids submitted prior to the due date and time are not available for review by anyone other than the submitter, who will have until the due date and time to change, rescind or retrieve its bid should they desire to do so. Upon the Bidder's entry of their bid, the system will ensure

that all required fields are entered. The system will not accept a Bid for which any required information is missing. This includes all necessary pricing, subcontractor listing(s) and any other essential documentation and supporting materials and forms requested or contained in these solicitation documents. All Bid submission information must be fully transferred from the Bidder server to the bid system server before bid closing. Bids still transmitting at the time of bid closing will not be accepted. Bidders will receive an e-bid confirmation number with a time stamp from the bid management system indicating their bid was submitted successfully. The City will only receive those bids that were transmitted successfully. DO NOT FAX OR EMAIL.

Bid Security: Each proposal must be accompanied by a Bid Security in the form of a cashier's check, certified check, or bid bond executed on the prescribed form, in an amount not less than ten percent (10%) of the total bid price payable to the City of El Monte. Bidders are hereby notified that in accordance with the provisions of Public Contract Code section 22300, securities may be substituted for any monies which the City may withhold pursuant to the terms of this Contract to ensure performance.

Prior to the bid due date and time, all Bidders shall submit the original Bid Security to the City Clerk. Proof of delivery that is date/time stamped and signed for by the City Clerk from other couriers other than Certified mail will be accepted. A copy of the proof of delivery shall be submitted with the bid package by the bid due date.

Contractor's License: Bidder must possess a current **Class "A" - General Engineering Contractor license** issued by the State of California, at the time the bid is submitted.

Contractor Registration: All Bidders and listed subcontractors must have registered with the California State Department of Industrial Relations pursuant to Labor Code section 1725.5 prior to submitting a Bid. Furthermore, a Contractor and all subcontractors must be registered pursuant to Labor Code section 1725.5 before entering into a contract to work on a public project.

City's Right to Postpone Opening of Bids. The City reserves the right to postpone the date and time for the opening of Bids at any time prior to the date and time initially announced in this Invitation to Bid in accordance with applicable law.

Opening of Bids. Bids will be received by the City via the electronic submission up to the date and time shown in the Notice of Inviting Bids. The City will be responsible for bid tabulations. Bids will be opened and read out loud by the City Clerk's Office in Council Chambers at the date and time stated in the Notice of Inviting Bids. Bid results will be made available to the public on the City's website in the electronic bid management system (**PlanetBids**) at <https://www.planetbids.com/portal/portal.cfm?CompanyID=43375> once the bid tabulation has been completed.

Award: The award shall be made to the lowest responsible Bidder whose proposal complies with the specified requirements. The foregoing notwithstanding, the award of any contract shall be subject to approval by the City Council at a duly noticed City Council meeting. Contractor shall execute the Contract within ten (10) days after it has received the Contract from the City. The City reserves the right to waive any irregularity in the

proposals. No bid may be withdrawn for a period of sixty (60) days after the opening of bids.

Rejection of Bids: The City reserves the right to reject any and all Bids. The City further reserves the right to waive immaterial irregularities in any Bid. Any Bid not conforming to the intent and purpose of the Contract Documents may be rejected. The City reserves the right to make all awards in the best interest of the City.

Disqualification of Bidder: If there is a reason to believe that collusion exists among any Bidders, none of the Bids of the participants in such collusion will be considered and the City may likewise elect to reject all bids received.

Wage Rates: Bidders are hereby notified that the California Department of Industrial Relations has determined the general prevailing rate of wages for each craft, classification, or type of worker needed to execute the work. Copies of the current schedules for prevailing wages applicable to this project are on file in the City's office. It shall be mandatory for the Contractor and any subcontractor under it to pay not less than the said specified rates to laborers and workmen employed by them in the execution of the Contract. The contractor's duty to pay State prevailing wages can be found under Labor Code, Section 1770 et seq. Labor Code Sections 1775 and 1777.7 outline the penalties for failure to pay prevailing wages and employ apprentices including forfeitures and debarment.

This public works construction project is also funded in whole or in part with federal funds. Accordingly, federal labor standards provisions including prevailing wage requirements of the David-Bacon and Related Acts (DBRA) will be enforced. In the event of a conflict between Federal and State prevailing wage rates, the higher of the two will prevail.

Bonds: The successful Bidder will be required to furnish a payment bond in an amount equal to one hundred percent (100%) of the Contract price, and a faithful performance bond in an amount equal to one hundred percent (100%) of the Contract price.

Conflict of Interest: in the procurement of supplies, equipment, construction, and services by the sub-recipients, the conflict of interest provisions in 24 CFR 85.36 OMB Circular A-110, and 24 CFR 570.611, respectively, shall apply. No employee, officer, or agent of the sub-recipient shall participate in selection or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

[End of Invitation to Bid]

INSTRUCTIONS TO BIDDERS

Each bid shall be in accordance with the Contract Documents.

1. Plans

Specifications and contract documents may be obtained from the City of El Monte

PlanetBids System Vendor Portal website as specified in the Invitation to Bid.

2. Local Conditions

(a) The quantities of work or material stated in the unit price items of the Bid Schedule are given only as a basis for the comparison of Bids, and the City does not represent or warrant that the actual amount of work or material will correspond therewith, but reserves the right to increase or decrease the quantity of any unit price item of the work as may be deemed necessary or expedient by the City Engineer.

(b) The Bidder shall examine carefully the site of the work contemplated and the Contract Documents. The submission of a proposal shall be conclusive evidence that the Bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality and quantities of work to be performed and the materials to be furnished, and as to the requirements of the Contract Documents.

(c) Where the City Engineer has made investigations of surface and subsurface conditions in areas where work is to be performed under the Contract, or in other areas, some of which may constitute possible local material sources, such investigations were made only for the purpose of study and design. Where such investigations have been made, Bidders or Contractor may, upon written request, inspect the records of the City Engineer as to such investigations subject to and upon the conditions hereinafter set forth. Such inspection of records may be made at the office of the City Engineer.

(d) The records of such investigations are not a part of the Contract and are made available for inspection solely for the convenience of the Bidder or Contractor. It is expressly understood and agreed by Bidder or Contractor that neither the City nor the City Engineer assumes any responsibility whatsoever with respect to the sufficiency or accuracy of the investigations thus made, the records thereof, or of the interpretation set forth therein or made by the City Engineer in his use thereof and there is no representation, warranty or guarantee, either express or implied, that the conditions indicated by such investigations or records thereof are correct or representative of those existing throughout such areas or any part thereof, or that unanticipated developments may not occur or that materials other than, or in proportions different from, those indicated may not be encountered.

(e) The availability or use of information described in this section or the Supplemental and Special Conditions is not to be construed in any way as a waiver of the provisions of this section and a Bidder or Contractor is cautioned to make such an investigation and examination as it deems necessary to satisfy itself as to conditions to be encountered in the performance of the work and, with respect to possible local material sources, the quality and quantity of material available from such property and the type and extent of processing that may be required in order to produce material conforming to the requirements of the Specifications.

(f) No information derived from such inspection of records of investigations or compilations thereof made by the City Engineer or designee, will in any way relieve the Bidder or Contractor from any risk or from properly fulfilling the terms of the Contract.

(g) Information derived from inspection of topographic maps, or from plans showing location of utilities and structures will not in any way relieve the Contractor from any risk, or from properly examining the site and making such additional investigations as it may elect, or from properly fulfilling all the terms of the Contract.

(h) Each Bidder shall inform itself of, and the Bidder awarded a Contract shall comply with, federal, state and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, applicable regulations concerning payment of prevailing wages, employment of labor, protection of public and employee safety and health, protection, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees, and similar subjects.

3. Form of Bid and Signature

(a) Bids shall be submitted only on the forms attached hereto and shall be submitted (uploaded) via the PlanetBids website as hereinafter directed. The Bidder shall state in figures the unit prices or the specific sums as the case may be, for which it proposes to supply the labor, materials, supplies or machinery, and perform the work required by the Specifications. Bid prices will be deemed to include all applicable fees and taxes including sales tax. If the Bid is made by an individual, it shall be signed by the individual and the individual's full name and address shall be given; if it is made by a partnership, it shall be signed with the co-partnership name by a member of the partnership, who shall also sign the member's own name, and the name and address of each member of such partnership shall be given; and, if it is made by a corporation, the name of the corporation shall be given and it shall be signed by its duly authorized officer or officers attested by the corporate seal, the name and titles of all officers of the corporation shall be given, and the address of the corporation and the state in which incorporated shall be stated.

(b) Bids will be considered only from persons or entities licensed as required under applicable provisions of the Contractor's License Law (Cal. Bus. and Prof. Code section 7000, et seq.) and rules and regulations adopted pursuant thereto; and each Bidder shall insert its type of contractor's license, license number, and other requested information in the place provided in the bid. No oral, telephonic or facsimile Bid or modification of a Bid will be considered.

4. Submittal of Bids

(a) All Bids must be submitted not later than the time prescribed, in the manner set forth in the Invitation to Bid. Bids must be made on the prescribed Bid Forms and submitted (uploaded) via the PlanetBids website. A complete Bid requires submission of all documents identified in subsection (d) below. Each Bid must be submitted through the City's electronic bid management system (PlanetBids) at <https://www.planetbids.com/portal/portal.cfm?CompanyID=43375> by 2:00 p.m. Pacific Standard Time on or before December 15, 2022 . Bidder is solely responsible for "on time" submission of their electronic Bid. The bid management system will not accept late Bids and no exceptions shall be made.

(b) Bids shall include all addenda or clarifications issued during the bidding

period acknowledged by the Bidder's signature thereon. Failure to so include or acknowledge an addendum or clarification may result in the Bid being rejected as not responsive.

(c) Bids shall be opened and Bid tabulations will be available on PlanetBids immediately following the bid closing at the time specified in the Invitation to Bid, unless changed by addendum.

(d) Bid documents to be submitted shall include the following:

- (1) Completed Bid Schedule (If applicable)
- (2) Proposal Signature Sheet
- (3) Bid security (if a bid bond, to be accompanied by power of attorney, both executed and notarized). Original bid security shall be submitted to the City Clerk prior to the bid due date and time. Proof of delivery that is date/time stamped and signed for by the City Clerk from other couriers other than Certified mail will be accepted. A copy of the proof of delivery shall be submitted with the bid package by the bid due date.
- (4) Non-Collusion Declaration
- (5) Experience Qualification Form
- (6) Completed Subcontractor List
- (7) Bidder's Checklist
- (8) Addendum(a) Acknowledgement Form
- (9) All required Federal DBE/HUD documentation

5. Preparation of Bid

Blank spaces in the Bid shall be properly completed. The phraseology of the Bid must not be changed, and no additions shall be made to the items mentioned therein. Unauthorized conditions, limitations or provisions attached to a Bid will render it informal and may cause its rejection. If erasures, interlineations or other changes appear on the form, each erasure, interlineation or change must be initialed by the person signing the Bid. Alternative bids will not be considered unless specifically provided for in the Bid Schedule. No Bid received after the time fixed or received at any place other than the place stated in the Invitation to Bid will be considered. All bids will be opened and read publicly. Bidders, their representatives and other interested parties are invited to be present at the opening. Where bonds are required, the Bidder shall name in its Bid the surety or sureties who have agreed to furnish said bonds.

6. Bid Security

(a) All Bids shall be accompanied by a Bid Security. Such Bid Security shall include cash, cashier's or certified check made payable to the City or a Bid Bond executed by an admitted surety insurer. The amount of the Bid Security shall be not less than ten percent (10%) of the total amount of the Bid. The original bid security shall be submitted to the City Clerk prior to the bid due date and time. Proof of delivery that is date/time stamped and signed for by the City Clerk from other couriers other than Certified mail will be accepted. A copy of the proof of delivery shall be submitted with the bid package by the bid due date. The amount of the Bid Security shall be not less than ten percent (10%) of the total amount of the Bid.

(b) The Attorney-in-Fact (resident agent) who executes the Bid Bond on behalf of the surety company must attach a copy of its Power of Attorney as evidence of its authority. A notary shall acknowledge the power as of the date of execution of the surety bond which it covers.

(c) Bid Bonds must be provided on the Bid Bond form furnished by the City. The Bid Bond must be furnished by a company, acceptable to the City, that is authorized and licensed by the Insurance Commissioner as an "admitted surety insurer" and that maintains at least one office in California for conducting business.

7. List of Subcontractors

(a) Each Bidder shall set forth in its Bid on the form provided the following information in accordance with the provisions of Public Contract Code sections 4100-4113:

- (1) The name, contractor's license number, and the location of the place of business of each Subcontractor who will perform work or labor or render service to the prime Contractor in or about the construction of the work or improvement, or a Subcontractor licensed by the State of California who, under subcontract to the prime Contractor, specifically fabricates and installs a portion of the work or improvement according to the Contract Documents, in any amount in excess of one-half of one percent (0.5%) of the prime Contractor's total Bid, or ten thousand dollars (\$10,000), whichever is greater.
- (2) The portion of the work which will be done by each such Subcontractor. Only one Subcontractor shall be listed for each such portion of the work as defined in the Bid.
- (3) The Bidder is considered the Prime Contractor and shall perform at least fifty (50%) of the work, as determined by a percentage of the value of the work.

(b) If the Bidder fails to specify a Subcontractor for any portion of the work to be performed under the Contract, the Bidder agrees to perform that portion of the work itself.

8. Interpretation of Contract Documents

Any explanation desired by the Bidders regarding the meaning or interpretation of any of the Contract Documents must be submitted in writing at least five (5) calendar days prior to the bid opening. Requests for clarification received after the above noted deadline may be answered at the discretion of the Project Manager. Any such explanations or interpretations will be made in the form of Addenda to the documents and will be furnished to all Bidders who shall submit all addenda with their Bids. Neither the City Engineer nor any representative of the City is authorized to give oral explanations or interpretations of Contract Documents, and a submission of a Bid constitutes agreement by the Bidder that it has placed no reliance on any such oral explanation or interpretation. However, the City Engineer may, upon inquiry by Bidder, orally direct the Bidder's attention to specific provisions of the Contract Documents which cover the subject of the inquiry.

Requests for Clarifications must be made in writing through the City's electronic bid management system (PlanetBids) at <https://www.planetbids.com/portal/portal.cfm?CompanyID=43375> by 4:00 p.m. Pacific Standard Time on or before **December 5, 2022**. All posted questions will be answered in writing and conveyed via written addenda to all Bidders and Proposers via posting on PlanetBids on or before **December 7, 2022**.

9. Modification of Bids

E-bids are sealed and cannot be viewed by the City or any other person or entity until the closing date and time. A Bidder may modify its Bid at any time prior to bid closing via PlanetBids.

10. Withdrawals of Bids

Bids may be withdrawn any time before the bid deadline, by selecting "withdraw" on PlanetBids. No bid may be withdrawn after the hour affixed for opening Bids without rendering the accompanying Bid Security subject to retention as liquidated damages in like manner as in the case of failure to execute the Contract after award, as in the Contract Documents herein provided. Negligence on the part of the Bidder preparing its Bid shall not constitute a right to withdraw the Bid subsequent to the opening of Proposals.

11. Discrepancies

In the case of discrepancy between unit prices and totals, unit prices will prevail and the City will recalculate the bid total based on the unit prices and estimated quantities. In case of discrepancy between words and figures, words will prevail.

12. Servicing and Maintenance

Each Bidder must, if requested, furnish evidence that there is an efficient service organization which regularly carries a stock of repair parts for the proposed equipment to be furnished and installed in the work and that the organization is conveniently located for prompt service.

13. Disqualification of Bidders

(a) More than one Bid from an individual, firm, partnership or corporation under the same or different names will not be considered. Reasonable grounds for believing that any individual, firm, partnership or corporation is interested in more than one Bid for the work contemplated may cause the rejection of all Bids in which the individual, firm, partnership or corporation is interested. If there is reason for believing that collusion exists among the Bidders, any or all Bids may be rejected. Bids in which the price is obviously unbalanced may be rejected.

(b) All Bidders are put on notice that any collusive agreement fixing the prices to be bid so as to control or affect the awarding of this Contract is in violation of the competitive bidding requirements of the Public Contract Code and may render void any Contract let under such circumstances.

14. Opening & Award of Contract

The City will be responsible for bid tabulations. Bids will be opened and read out loud by the City Clerk's Office in Council Chambers at the date and time stated in the Notice of Inviting Bids. Bid results will be made available to the public on the City's website in the electronic bid management system once the bid tabulation has been completed.

(a) The City reserves the right to accept or reject any and all Bids for a period of sixty (60) days after the date of opening, and to waive any informality or irregularity in any Bid. No Bid can be withdrawn during that period, except pursuant to Public Contract Code section 5100, et seq.

(b) The City reserves the right to reject any or all Bids, including, without limitation, the right to reject any non-conforming, non-responsive, unbalanced, or conditional bids.

(c) Before a Bid is considered for award, the City may, in addition to the Experience Qualifications form included in the bid documents, require a Bidder to submit a statement of facts and detail as to its business, technical organization and financial resources and equipment available and to be used in performing the work. Additionally, the City may require evidence that the Bidder has performed other work of comparable magnitude and type. The City expressly reserves the right to reject any Bid if it determines that the business and technical organization, equipment, financial and other resources or other experience of the Bidder (including the Bidder's Subcontractors) is not sufficiently qualified for the work bid upon and, therefore, justifies such rejection.

(d) The award of the Contract, if it is awarded, will be to the lowest responsive responsible Bidder whose Bid complies with the requirements set forth herein.

(e) The issuance by the City of a notice to the successful Bidder of the award of the Contract ("Notice of Award") shall be deemed the Award of Contract.

(f) Non-responsive and non-responsible bids will be disqualified per the Public

Contract Code.

15. Bid Protests

The lack of prompt procedures to resolve disputes regarding the bidding process would impair the City's ability to carry out its purpose of constructing this project in a timely manner. Therefore, to the maximum extent authorized by law and notwithstanding any other procedures specified in documents referenced herein, all disputes and/or protests regarding the bidding process shall be subject to the following procedure. In submitting a Bid to the City for this project, the Bidder agrees to comply with and to be bound by this procedure. Any Bid protest must be submitted in writing to the Office of the City Clerk located at El Monte City Hall – East, 11333 Valley Boulevard, El Monte, California by or before 5:00 p.m. on the fourth (4th) working day following the Bid opening.

(a) Required contents of Bid protest:

- (1) Name, address, fax and telephone number of the protester, and the name, address and telephone number of the person representing the protesting party. Only qualified responsive bidders who submit a timely bid may protest.
- (2) Name and Solicitation of contract number.
- (3) Detailed statement of the legal and factual grounds for the protest (“Detailed Written Statement”), including, without limitation, a description of resulting prejudice to the protester, legal authorities and arguments in support of the grounds for the bid protest, specific references to each and every section of the Contract Documents upon which the bid protest is based, the manner in which protestor believes an alleged violation(s) of the terms of the Contract Documents occurred, and a detailed explanation of why protestor, and not the apparent low bidder, should have been selected as the recipient of the award of the Project.
- (4) All legal and factual contentions set forth in the Detailed Written Statement must be supported by credible evidence, documents and/or materials. Such evidence, documents and/or materials must be submitted together with the bid protest. Failure to provide credible evidence, documents and/or proof is grounds for the City to deem the protest as frivolous. Once a bid protest is submitted, the City will not accept or consider any evidence, documents and/or materials that were not simultaneously submitted with the bid protest.
- (5) Request for a specific ruling by the City.
- (6) Specific statement as to the form of relief requested.
- (7) All information establishing that the protester is a qualified responsive bidder who submitted a timely bid for the purpose of filing a protest.

- (8) For all protests, protester must specify each and every reason that all other bidders who may be in line for the contract award should not be awarded the contract.
 - (9) All information establishing the timeliness of the protest.
 - (10) Any exhibits submitted with the Detailed Written Statement shall be paginated, and the pertinent text referred to in the Detailed Written Statement must be referenced by page number, section and/or paragraph and line number, as appropriate.
 - (11) If the City requests additional information, the protester must provide the requested information within the time period specified by the City
 - (12) Once submitted, the Detailed Written Statement shall not be amended. Any matters not set forth in the Detailed Written Statement at the time it is submitted shall be deemed waived.
 - (13) Any bid protest not conforming to this section shall be rejected as invalid.
- (b) Written protests submitted via e-mail must be e-mailed to the City Clerk at cityclerk@elmonteca.gov. Written protests must be in the physical possession of the City Clerk by or before the deadline for submitting protests. Protests mailed with a postmark that precedes the deadline, but which is not received until after the deadline shall be deemed untimely and will not be considered. The delivery of written protests to any person (including any other official, officer or employee of the City) other than the City Clerk shall be deemed defective and such protest shall be deemed to have not been delivered to the City. For purposes of this Instructions to Bidders, the term “working day” means any day of the week excluding Saturday, Sunday or any federal holiday. The term “City business day” is defined to mean those days of the week in which the City of El Monte is open for business and excludes Saturday, Sunday, Friday and any City-observed holiday.
 - (c) Protests based on alleged apparent improprieties in a solicitation shall be filed before Bid opening or the closing date for receipt of proposals or bids. In all other cases, protests shall be filed no later than ten (10) days after the basis of protest is known or should have been known, whichever is earlier. The City, for good cause shown, or where it determines that a protest raises issues significant to the City’s acquisition system, may consider the merits of any protest which is not timely filed.
 - (d) The party filing the protest must have actually and timely submitted a Bid for the Work. A subcontractor of a party submitting a Bid for the Work may not submit a Bid protest.
 - (e) The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest which may be adversely affected by the outcome

of the protest. Such parties shall include all other Bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest. The Bid protest must be accompanied by a proof of service declaring under penalty of perjury that a copy of the written protest was concurrently delivered to all such affected parties, including any Bidder(s) against whom the protest is made.

- (f) The protested Bidder will have until 5:00PM on the fourth (4th) working day after the deadline for submitting initial protests to submit a written response. The responding Bidder shall transmit the response to the protesting Bidder concurrent with delivery to the City in the manner prescribed for submitting initial protests, above.
- (g) The procedure and time limits set forth in this section are mandatory and are the Bidder's sole and exclusive remedy in the event of Bid protest. The Bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue a Bid protest, including filing a Government Code Claims Act claim or legal proceedings. A Bidder may not rely on a protest submitted by another Bidder, but must timely pursue its own protest.
- (h) Action upon receipt of protest by City.
 - (1) Upon receipt of a protest before a Notice of Award is issued, a Contract may not be awarded, pending City resolution of the protest, unless Contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the City. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to City procedures.
 - (2) If a Notice of Award is withheld pending resolution of the protest, the contracting officer will inform the other Bidders whose Bids might become eligible for award of the Contract. If appropriate, the Bidders should be requested, before expiration of the time for acceptance of their Bids, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of Bids, consideration should be given to proceeding with a Notice of Award pursuant to paragraph (h)(1) of this section.
- (i) City shall make its best effort to resolve protests within thirty-five (35) days after the Bid protest is filed.
- (j) City Bid protest decisions shall be well-reasoned and shall explain the City position. The Bid protest decision shall be provided to the protester in writing using a method that provides evidence of the protester's receipt.

16. Contract Bonds

- (a) The successful Bidder shall furnish both a Performance Bond and a

Payment Bond in the amount of one hundred percent (100%) of its Total Bid Price.

(b) These Bonds shall be furnished in the forms enclosed following the Contract and shall be satisfactory to the City and shall be obtained from a responsible corporate surety (or sureties) acceptable to the City, which is admitted by the State of California to act as surety upon bonds and undertakings and which maintains in this State at least one office for the conduct of its business. The surety (or sureties) shall furnish reports as to its financial condition from time to time as requested by the City. The premiums for said Bonds shall be paid by the successful Bidder.

(c) These Bonds shall be furnished by companies who are authorized and licensed by the Insurance Commissioner as an "admitted surety insurer." The surety shall provide the City with the documentation required by Section 995.660 of the California Code of Civil Procedure.

(d) If any surety becomes unacceptable to the City or fails to furnish reports as to its financial condition as requested by the City, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the City and of persons supplying labor or materials in the prosecution of the work contemplated by this Contract.

(e) In the event of any conflict between the terms of the Contract and the terms of the Bonds, the terms of the Contract shall control, and the Bonds shall be deemed to be amended thereby. Without limiting the foregoing, the City shall be entitled to exercise all rights granted to it by the Contract in the event of default, without control thereof by the surety, provided that the City gives the surety notice of such default at the time or before the exercise of any such right by the City, and, regardless of the terms of said Bonds, the exercise of any such right by the City shall in no manner affect the liability of the surety under said Bonds.

17. Substitution of Securities for Monies Withheld

Bidders are hereby notified that in accordance with the provisions of Public Contract Code section 22300, securities may be substituted for any monies which the City may withhold pursuant to the terms of the Contract to insure performance.

18. Execution of Contract

The successful Bidder will be notified in writing by the City of the award of the Contract within sixty (60) days after opening of Bids. Accompanying the City's Notice of Award will be the Contract, in triplicate, which the successful Bidder will be required to execute and return, together with the Performance and Payment Bonds, and the required certificates and policies of insurance together with the required endorsements thereto for the Contractor and the workers compensation certificate to the City within ten (10) days following receipt of such Notice of Award. Failure to do so shall be just cause for annulment of the award and for forfeiture of the Bid Security which shall be retained as liquidated damages, and it is agreed that the bond sum is a fair estimate of the amount of damages that the City will sustain by reason of such failure. The City will promptly determine whether such Contract, Bonds and insurance are as required by the Contract

Documents, and upon such determination will forward a fully executed copy of the Contract and a Notice to Proceed with the work to the successful Bidder. Signature by both parties constitutes execution of the Contract. In the event of failure of the lowest responsible Bidder to sign and return the Contract with acceptable Bonds and insurance as prescribed herein, the City may award the Contract to the next lowest responsible Bidder, and, in the event that Bidder fails to sign and return the Contract with acceptable Bonds and insurance, the City may award the Contract to the then next lowest responsible Bidder, etc.

19. Return of Bid Securities

All Bid Securities will be held until the Contract has been finally executed, after which all Bid Securities, other than any Securities which have been forfeited, will be returned to the respective Bidders.

20. Power of Attorney

The Attorney-in-Fact (resident agent) who executes the Performance Bond and Payment Bond on behalf of the surety company must attach a copy of its Power of Attorney as evidence of its authority. A notary shall acknowledge the power as of the date of the execution of the surety bond which it covers.

21. Time of Completion

The time of completion of the work to be performed under this Contract is the essence of the Contract. Delays and extensions of time may be allowed in accordance with the provisions of the General Conditions. The time allowed for the completion of the work is stated in the Contract.

22. Licensing and Registration Requirements for Contractors

All Bidders, including general contractors and specialty contractors, shall hold such licenses as may be required by the laws of the State of California for the performance of the work specified in the Contract Documents. All Bidders and listed subcontractors must have registered with the California State Department of Industrial Relations pursuant to Labor Code section 1725.5 prior to submitting a bid. Furthermore, all contractors and subcontractors must be registered pursuant to Labor Code section 1725.5 before entering into a contract to work on a public project.

23. Escrow of Bid Documents

Upon award of the job to the successful Bidder, and at the time of execution of this Contract, Contractor shall present all documentation used by the successful Bidder in arriving at the bid upon which the Contract was awarded ("Bid Documentation") to the City Engineer's office. Such documentation shall be presented in a sealed envelope or box. Notice to Proceed will not be granted until Bidder receives notice that such documentation has been received. This Bid Documentation shall include, but not be limited to any documents, pictures, or writings which relate to, arise out of, or constitute in any way notes, memoranda, phone logs, subcontractor and materialmen estimates, computations, or the

like used by, complied by, or drafted by the successful Bidder or its agents in arriving at its bid for the Project. The City Engineer and Project Manager may consult the Bid Documents as needed during the course of the Project and in connection with the resolution of all such disputes. After Project Completion and payment and the resolution of such disputes, the Bid Documents will be returned to the Contractor.

24. Prevailing Wages

Copies of the prevailing rate of per diem wages may also be obtained from the Department of Industrial Relations, P.O. Box 420603, San Francisco, CA 94142-0603, Attn: Chief, Division of Labor Statistics and Research or online at: <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>. **The “current Federal Wage Decision” is the one in effect ten (10) days prior to the bid opening date and can be found online at <https://sam.gov>. In the event of a conflict between federal and state wage rates, the higher of the two will prevail.**

25. Preconstruction Conference

A preconstruction conference will be convened after the Contractor has delivered the necessary bonds, insurance certificates and signed agreement in proper form as required in the invitation to bid, bid proposal and general conditions of these specifications. Prior to any work, the Contractor shall provide the City Engineer with a list of key personnel assigned to the project and the telephone numbers where they may be reached at any time. The list shall be made available in sufficient copies and presented at the preconstruction conference.

26. Use of City’s Franchised C&D Solid Waste Hauler

The disposal, removal, recycling and diversion of all construction and demolition waste and debris generated by the Project must be performed exclusively by the City’s duly authorized and duly franchised construction and demolition solid waste hauler. The fees, charges and other costs of the City’s duly authorized and duly franchised construction and demolition waste hauler must be factored into any bid. The City’s construction and demolition hauler is Valley Vista Services whose contact information is as follows: Joel Simonian (626) 736-7782, or joels@myvvs.com.

The rates are subject to annual increase based on the Los Angeles County Consumer Price Index and it is the Bidder’s responsibility to confirm rates with Valley Vista Services at the time of the bid.

Haul route is Valley Blvd to Durfee Avenue to Stoddard Way to 2044 Gilman Road in City of Industry.

[End of Instructions to Bidders]