

## Contract

This public works contract ("Contract") is entered into by and between the City of Cupertino ("City"), a municipal corporation, and Calstate Construction, Inc. ("Contractor"), for work on the **Sports Center Seismic Retrofit Project, Project No. 2020-05** ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal and accompanying Bid Schedule, a copy of which is attached for convenience as Exhibit A, to perform the Work to construct the Project. On July 21, 2020, City authorized award of this Contract to Contractor for the amount set forth in Section 4 below.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract:
  - 2.1 Notice Inviting Bids;
  - 2.2 Instructions to Bidders;
  - 2.3 Addenda, if any;
  - 2.4 Bid Proposal and attachments thereto;
  - 2.5 Contract;
  - 2.6 Payment Bond and Performance Bond;
  - 2.7 General Conditions;
  - 2.8 Special Conditions;
  - 2.9 Project Plans and Specifications;
  - 2.10 Change Orders, if any;
  - 2.11 Notice of Award;
  - 2.12 Notice to Proceed;
  - 2.14 The following: No other documents
3. **Contractor's Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.
4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor \$ 776,777 ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within 90 calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$ 1,500 per day for each day of unexcused delay in completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.

**7. Labor Code Compliance.**

**7.1 General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

**7.2 Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.

**7.3 DIR Registration.** City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code section 1725.5, subject to limited legal exceptions.

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

**9. Conflicts of Interest.** Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement or in violation of any California law, including Government Code section 1090 et seq., or the Political Reform Act, as set forth in Government Code section 81000 et seq. and its accompanying regulations. No officer, official, employee, consultant, or other agent of the City ("City Representative") may have, maintain, or acquire a "financial interest" in the Contract, as that term is defined under the Political Reform Act (Government Code section 81000, et seq., and regulations promulgated thereunder); or under Government Code section 1090, et seq.; or in violation of any City ordinance or requirement while serving as a City Representative or for one year thereafter. Any violation of this Section constitutes a material breach of the Contract.

**10. Independent Contractor.** Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.

**11. Notice.** Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

**City:**

Name: City of Cupertino  
Address: 10300 Torre Avenue  
City/State/Zip: Cupertino, CA 95014  
Phone: (408) 777-3354  
Attn: Alex Acenas, AIA, PW Project Manager  
Email: AlexA@cupertino.org  
Copy to: CapitalProjects@cupertino.org

**Contractor:**

Name: Calstate Construction, Inc.  
Address: 4165 Business Center Drive  
City/State/Zip: Fremont, CA 94538  
Phone: (510) 657-1800  
Attn: Andrew Borrego, President  
Email: aborrego@calstateci.com

## 12. General Provisions.

- 12.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.
- 12.2 Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Santa Clara County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedures Section 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside Santa Clara County, California.
- 12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.
- 12.6 Severability.** If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.
- 12.8 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code section 313.
- 12.9 Pandemic Health Laws.** Contractor's duty to comply with Laws includes compliance by the Contractor, including all Subcontractors, with all local, state, or federal Laws that have been or may be enacted in response to the Covid-19 pandemic (collectively, "Health Laws"), which include the County of Santa Clara Health Order dated May 18, 2020 (and updated on June 5, 2020) and Appendix B-1 or B-2, including any subsequent amendments thereto (the "Health Order"). Failure to fully comply with the Health Laws constitutes a material default, subject to all available remedies including suspension or termination.

*[Signatures are on the following page.]*

The parties agree to this Contract as witnessed by the signatures below:

**CONTRACTOR**

Calstate Construction, Inc.

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

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

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

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

**CITY OF CUPERTINO**

A Municipal Corporation

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

Deborah Feng

City Manager

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

APPROVED AS TO FORM:

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

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

City Attorney

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

ATTEST:

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

Kirsten Squarcia

City Clerk

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

Contract Amount: \$ 776,777

P.O. No. \_\_\_\_\_

Account No. \_\_\_\_\_

END OF CONTRACT

# Exhibit A

Bidder's Name: Calstate Construction, Inc.

## Bid Proposal

### Sports Center Seismic Retrofit Project No. 2020-05

< Calstate Construction, Inc. > ("Bidder") hereby submits this Bid Proposal to the City of Cupertino ("City") for the above-referenced project ("Project") in response to the Notice Inviting Bids and in accordance with the Contract Documents referenced therein.

- 1. Base Bid.** Bidder proposes to perform and fully complete the Work for the Project as specified in the Contract Documents, within the time required for full completion of the Work, including all labor, materials, supplies, and equipment and all other direct or indirect costs including, but not limited to, taxes, insurance and all overhead for the following price ("Base Bid"):

Base Bid: \$ 634,777

- 2. Bid Alternates.** Bidder submits the following prices for the specified bid alternates:

**Alternate #1:** Extend excavation across the width of the south elevation to install new waterproofing and French drainpipe and connect it to the nearest subterranean storm drain.

Add/Deduct: \$ 56,500

**Alternate #2:** Replace all remaining existing non-insulated storefront sections and doors NOT impacted by the seismic scope of work with new insulated sections, doors and glazing.

Add/Deduct: \$ 65,000

**Alternate #3:** Replace existing insulated glazing scheduled to be reused with new insulated glazing.

Add/Deduct: \$ 20,500

**TOTAL BID = Base Bid + Alt. #1 + Alt. #2 + Alt. #3 = \$ 776,777**

- 3. Addenda.** Bidder agrees that it has confirmed receipt of or access to, and reviewed, all addenda issued for this Bid. Bidder waives any claims it might have against the City based on its failure to receive, access, or review any addenda for any reason. Bidder specifically acknowledges receipt of the following addenda:

Addendum:	Date Received:	Addendum:	Date Received:
#01	_____	#04	_____
#02	_____	#05	_____
#03	_____	#06	_____

- 4. Bidder's Certifications and Warranties.** By signing and submitting this Bid Proposal, Bidder certifies and warrants the following:

- 4.1 Examination of Contract Documents.** Bidder has thoroughly examined the Contract Documents and represents that, to the best of Bidder's knowledge, there are no errors, omissions, or discrepancies in the Contract Documents, subject to the limitations of Public Contract Code section 1104.

Bidder's Name: Calstate Construction, Inc.

- 4.2 Examination of Worksite.** Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.
- 4.3 Bidder Responsibility.** Bidder is a responsible bidder, with the necessary ability, capacity, experience, skill, qualifications, workforce, equipment, and resources to perform or cause the work to be performed in accordance with the Contract Documents and within the Contract time.
- 4.4 Responsibility for Bid.** Bidder has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed Bid. All statements and information provided in this Bid Proposal and enclosures are true and correct to the best of Bidder's knowledge.
- 4.5 Nondiscrimination.** In preparing this Bid, the Bidder has not engaged in discrimination against any prospective or present employee or Subcontractor on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status.
- 4.6 Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Bidder is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.
- 5. Award of Contract.** By signing and submitting this Bid Proposal, Bidder agrees that if Bidder is awarded the Contract for the Project, within ten days following issuance of the Notice of Award to Bidder, Bidder will do all of the following:
- 5.1 Execute Contract.** Enter into the Contract with City in accordance with the terms of this Bid Proposal, by signing and submitting to City the Contract prepared by City using the form included with the Contract Documents;
- 5.2 Submit Required Bonds.** Submit to City a payment bond and a performance bond, each for 100% of the Contract Price, using the bond forms provided and in accordance with the requirements of the Contract Documents; and
- 5.3 Insurance Requirements.** Submit to City the insurance certificate(s) and endorsement(s) as required by the Contract Documents.
- 6. Bid Security.** As a guarantee that, if awarded the Contract, Bidder will perform its obligations under Section 4 above, Bidder is enclosing bid security in the amount of ten percent of its maximum bid amount in one of the following forms (check one):
- A cashier's check or certified check payable to City and issued by \_\_\_\_\_ [Bank name] in the amount of \$ \_\_\_\_\_.
- A bid bond, using the Bid Bond form included with the Contract Documents, payable to City and executed by a surety licensed to do business in the State of California.

Bidder's Name: Calstate Construction, Inc.

This Bid Proposal is hereby submitted on July 7, 2020.

Calstate Construction, Inc.

Bidder Business Name

Signature

Andrew Borrego, President

Name/Title (If Corporation: Chairman, President or Vice President)

856043

License #, Expiration Date, and Classification

4165 Business Center Drive

Address

Fremont, CA 94538

City, State, Zip

510.657.1800

Contact Phone

July 7, 2020

Date

Signature

Jared Perry, Officer

Name/Title (If Corporation: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer)

1000003356

DIR Registration #

510.657.1800

Phone

Andrew Borrego, President

Contact Name/Title

aborrego@calstateci.com

Contact Email

END OF BID PROPOSAL

Bidder's Name: Calstate Construction, Inc.

**Bid Schedule**

This Bid Schedule must be completed in ink and included with the sealed Bid Proposal. Pricing must be provided for each Bid Item as indicated. Items marked "(SW)" are Specialty Work that must be performed by a qualified Subcontractor. The lump sum or unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the "Extended Total Amount" column must be identical to the Base Bid price entered in Section 1 of the Bid Proposal Form.

LS = Lump Sum      EA = Each      LF = Linear Foot      CF = Cubic Feet      CY = Cubic Yard  
 SY=Square Yard      SF = Square Feet      LB = Pounds      TON = Ton (2000 lbs)      AL = Allowance

BID ITEM NO.	ITEM DESCRIPTION	QTY.	UNIT	AMOUNT
1	Seismic retrofit and associated work and ADA site improvements as shown in the plans.	1	LS	\$ 634,777

TOTAL BASE BID: \$ 634,777

ALT. NO.	ITEM DESCRIPTION	QTY.	UNIT	TOTAL
1	Extend excavation across the width of the south elevation to install new waterproofing and French drainpipe and connect it to the nearest subterranean storm drain.	1	LS	\$ 56,500
2	Replace all remaining existing non-insulated storefront sections and doors NOT impacted by the seismic scope of work with new insulated sections, doors and glazing.	1	LS	\$ 65,000
3	Replace existing insulated glazing scheduled to be reused with new insulated glazing.	1	LS	\$ 20,500

*Note: The amounts entered as the "Total Base Bid" and Bid Alternates should be identical to the Base Bid and Bid Alternate amounts entered in Sections 1 & 2 of the Bid Proposal form.*

END OF BID SCHEDULE