

City of Piedmont
COUNCIL AGENDA REPORT

DATE: September 6, 2022

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Consideration of a Tender Agreement with ARCH Insurance Company and Bay Construction Co. for Bay Construction to Perform the Contract for the Highland Guilford Steps and Handrail Project; Approval an Overall Construction Budget of \$388,000, and a Determination that the Project is Exempt from the Requirements of the California Environmental Quality Act

RECOMMENDATION

By a single motion, take the following actions regarding the Highland Guilford Steps and Handrail Project:

1. Approve a Tender Agreement with ARCH Insurance Company and Bay Construction Co. for Bay Construction to perform the Contract for the Highland Guilford Steps and Handrail Project, based on Bay Construction's submitted bid of \$310,000 and ARCH Insurance Company's agreement to pay the \$84,536 increase over the originally approved HM Construction bid for the project.
2. Approve the overall Estimated Construction Budget of \$388,000, which includes the construction cost, a 10% contingency of Bay Construction's bid and monies for construction management, inspection, and testing.
3. Determine the project to be exempt from the requirements of the California Environmental Quality Act (CEQA).

BACKGROUND

In Piedmont Park, the Highland/Guilford steps are located at the southern entrance to the Cherry Walk and the Tea House. The revised configuration of the pathway and steps will meet current building code and ADA requirements for exterior steps and provide adequate exterior lighting in a highly utilized part of Piedmont Park. The project design was presented to the Park Commission on January 6, 2021, and was brought before the City Council on September 7, 2021, where Council gave authorization to publicly bid the project. The previously approved design remains unchanged.

This project was originally awarded at the November 15, 2021 Council meeting to HM Construction, Inc., based on their low bid of \$225,464. At that time, Council approved an overall construction budget of \$295,010. The City obtained a signed contract with HM Construction in December 2021 and issued a notice of award with a construction start date in

early January 2022. Despite City staff's best efforts, HM Construction did not mobilize to start the project in January 2022 and they became unwilling or unable to provide communication to City staff. After several weeks without construction progress and numerous attempts to communicate with HM Construction, in consultation with the City Attorney's Office, City staff proceeded with termination of the construction agreement per the terms of our signed contract, and the agreement with HM Construction was officially terminated in April 2022. The contractor did not contest the termination or attempt to repair the breach of contract. No work was performed by HM Construction, nor was any money paid to HM Construction.

Immediately following the termination of HM Construction, City staff filed a claim with ARCH Insurance Company (ARCH), the insurance and bonding surety company that provided the construction performance bond for HM Construction. A performance bond is a document the City requires as part of the construction agreement to protect us in the event a contractor fails to complete its contractual obligations. The surety has several alternatives to comply with its obligation under the performance bond, and in this case ARCH found another qualified contractor, Bay Construction, for the City to hire to complete the work at no additional cost to the City. The City is still responsible for the original HM Construction bid amount of \$225,464, but ARCH is responsible for the additional costs of Bay Construction's bid. Since Bay Construction's bid is \$310,000, ARCH will pay the additional \$84,536 amount to the City under the Tender Agreement.

Re-Bid Process

The project was originally publicly bid in accordance with City Ordinances and the Public Contract Code. The original bids were opened on October 6, 2021 and eight bids were received. Bids ranged in price from \$225,464 to \$459,300. In order to perform under the performance bond and obtain the services of a qualified construction contractor that could complete the project, ARCH re-bid the project in July and August, 2022 and circulated the bid documents to the seven previous bidders. The low bid was Bay Construction, with a bid amount of \$310,000. City staff believes Bay Construction is qualified to perform the project work, and therefore is willing to accept Bay Construction as the replacement contractor. Bay Construction will provide its own bonds and insurance, and ARCH will pay the City the difference between HM Construction's original bid and Bay Construction's new bid. Except for a different schedule which City staff believes is acceptable (see below), Bay Construction has agreed to perform the work under the same terms and conditions as originally agreed by HM Construction.

Schedule of Construction

Under the Tender Agreement and accepted Bay Construction bid, Bay Construction will have 84 calendar days to complete the work. If approved, the work is estimated to start in mid to late October and be completed in early February 2023, subject to adjustment due to weather.

FISCAL CONSIDERATIONS

Project Costs

Based on ARCH and Bay Construction's Tender Agreement, staff is proposing the following overall budget (original budget also shown for reference):

	11/15/2021	9/6/2022
Construction Costs	\$225,464	\$310,000
Construction Contingency (10%)	\$22,546	\$31,000
Estimated Construction Management & Inspection	\$40,000	\$40,000
Estimated Testing Cost	\$7,000	\$7,000
TOTAL ESTIMATED CONSTRUCTION BUDGET	\$295,010	\$388,000

Project Funding

Thanks to the generosity of the Piedmont Beautification Foundation who exceeded their original \$50,000 pledge to this project, the proposed Facilities Capital Fund expenditure will be approximately \$23,000 less than originally allocated.

	11/15/2021	9/6/2022
Facilities Capital Fund	\$240,010	\$216,464
Donation Piedmont Beautification Fund	\$50,000	\$82,000
Piedmont Garden Club	\$5,000	\$5,000
ARCH Surety	\$0	\$84,536
TOTAL PROJECT FUNDING	\$295,010	\$388,000

ENVIRONMENTAL REVIEW

This project is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines section 15301(c), in that the project concerns the repair of existing facilities such as *"...sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety, and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, transit improvements such as bus lanes, pedestrian crossings, street trees, and other similar alterations that do not create additional automobile lanes)."*

CITY ATTORNEY REVIEW

The City Attorney has reviewed and approved the Tender Agreement as to form and legality.

By: Daniel Gonzales, Public Works Director
John Wanger, City Engineer

ATTACHMENTS

A. Tender Agreement

TENDER AGREEMENT

This Tender Agreement ("Agreement") is made and entered into effective _____ ("Effective Date"), by and between the City of Piedmont ("Owner"), Arch Insurance Company, a Missouri corporation ("Surety"), and Mark Lee & Yong Kay Inc. DBA Bay Construction Co ("Contractor").

RECITALS

WHEREAS, on or about November 15, 2021, HM Construction, Inc. ("HM") entered into a written contract attached hereto as Exhibit A ("Contract") with Owner to furnish all labor and material and to perform all work for a certain work of improvement commonly referred to as Highland Guilford Steps and Handrail Project ("Project"). The "Contract" shall be deemed and defined to include all Contract Documents as set forth in Article 7 of the Contract.

WHEREAS, shortly thereafter, Surety issued payment and performance bonds (Bond Number SU 1167273) in the sum of \$225,464.00, on behalf of HM, as principal, in connection with HM's work on the Project. The bonds described in this paragraph are the "Payment Bond" and "Performance Bond," respectively, and collectively are the "Bonds" and copies of the Bonds are attached hereto as Exhibit B.

WHEREAS, by letter dated April 22, 2022, Owner sent a letter informing HM that Owner was terminating HM for default. Owner subsequently demanded that Surety complete the Project.

WHEREAS, the balance of the Contract as of the Effective Date is \$225,464.00 (the "Contract Balance"). Contractor has agreed to complete the Project in exchange for payment in the total amount of \$310,000.00 ("Completion Cost").

WHEREAS, Surety has agreed, and hereby agrees, to tender the Contractor to Owner, and the Owner has agreed to accept the tender of the Contractor to complete the Contract, provided that Contractor commits itself to complete the work set forth in the Contract upon the terms and conditions set forth in the Contract and as stated in this Agreement.

WHEREAS, Surety has not received any claims of subcontractors and suppliers of HM, however Surety will process such claims, if any, made pursuant to the terms of its Payment Bond.

WHEREAS, Surety is desirous of satisfying its alleged obligations in accordance with the terms and conditions of its Performance Bond.

THEREFORE, Owner, Surety, and Contractor agree as follows:

Section 1.01 Surety agrees:

(a) Within five business days of complete execution of this Agreement, receipt of Owner's W-9 and a physical address for Owner's receipt of payment, to pay to Owner \$84,536.00, which represents the different between the Completion Cost and the Contract Balance.

(b) To tender Contractor to Owner to effectuate the completion of the Project.

(c) To pay all valid Payment Bond claims, if any, in accordance with the terms and conditions of the Payment Bond issued by Surety for the Project, and applicable law. This Agreement does not affect the terms, conditions or obligations of Surety pursuant to its Payment Bond which shall remain in full force and effect.

(d) To defend, indemnify and hold Contractor and Owner harmless from and against any losses, liabilities, costs, expenses, attorneys' fees, claims, disputes, arbitration or litigation brought or commenced by HM, or any subcontractor or supplier of HM of any tier, or any worker or union trust fund of HM, or any other third party claiming a right to payment relating to the Project for work performed prior to the Effective Date of this Agreement.

(e) To defend, indemnify and hold Owner harmless from and against any losses, liabilities, costs, expenses, attorneys' fees, claims, disputes, arbitration or litigation or any claims of delay brought or commenced by any trade contractor, subcontractor (of any tier), or any third party arising from the default and termination of HM. Owner agrees that Surety will be allowed to investigate the validity of any such claims presented to it by the Owner pursuant to this section and prior to the Surety's acknowledgement of any obligation owing to Owner hereunder. The Surety and Owner agree that the obligations of the Surety under this paragraph are limited by the penal sum of the Performance Bond and are not to be construed to be waived in any manner under Section 1.03.

Section 1.02 Contractor agrees:

(a) To furnish and pay for all labor, materials, tools, supplies, equipment, services, and all other things necessary to complete the Project, in accordance with the terms and conditions of the Contract, for payment of the Completion Cost. Contractor agrees it is substituted for HM in the Contract for purposes of Contract completion such that Contractor's relationship to Owner with respect to Contract completion is the same as if Contractor was the original contracting party with Owner in lieu of HM. Contractor agrees it will perform all requirements of the Contract. Provided, however, Contractor will not be responsible for the following items to the extent caused in whole or in part by HM: warranty work, latent defects, attorneys' fees or unpaid materials, suppliers, subcontractors or other bills, costs or expenses of HM. All work will be performed in a workmanlike manner and in accordance with all plans, specifications, terms and conditions of the Contract.

(b) In addition to, and not as a replacement of or substitution for any indemnification provisions contained within the Contract, to indemnify the Owner and Surety against any and all losses, liabilities, costs, expenses and attorneys' fees on account of any injury or claimed injury to persons or property damages incurred in respect to or arising out of the work of Contractor under the Contract and this Agreement. Contractor agrees to indemnify the Owner and Surety against any and all claims, suits or liability on account of any act or omission of the Contractor, or of its officers, agents, employees or servants. Contractor's indemnity obligation commences on the Effective Date. Provided, however, in no event shall Contractor be obligated to defend or indemnify Owner or Surety with respect to any losses, liabilities, costs, expenses or attorneys' fees arising from HM's performance or failures of performance under the Contract. Contractor agrees to maintain insurance of the same type and in the same amounts as required under the Contract and to cause the Owner and Surety to be named as Additional Insureds thereon. Prior to commencing work pursuant to this Agreement, Contractor agrees to deliver to the Owner and Surety a certificate of insurance showing such insurance to be in full force and effect, which policies shall provide that such insurance may not be canceled except upon ten (10) days written notice from the insurer to the Owner and Surety. Prior to commencing work pursuant to this Agreement and prior to issuing the Notice to Proceed as referenced below, Contractor agrees to deliver to the Owner all other required information and documents required under the Contract.

(c) All completion deadlines applicable to Contractor are subject to the time extension provisions stated in the Contract. Without limitation to any other provisions of the Contract, Contractor will be responsible for liquidated damages as provided for in the Contract for failing to Substantially Complete (as defined in the Contract) the Project in accordance with its proposal, which is attached hereto as Exhibit C. Owner agrees to waive and release any claims for liquidated damages against Surety, HM and Contractor only to the extent that any such delays supporting a claim for liquidated damages arose during HM's tenure on the Project or before this Agreement.

(d) Payment for all sums due the Contractor for work performed pursuant to this Agreement and the Contract will come from the Owner, and Surety shall have no payment obligations to Contractor under this Agreement. The Owner shall pay Contractor in accordance with the procedures provided for under the Contract.

(e) Contractor has familiarized itself with the Project, the work in place, remaining work, and the nature of the work to be performed, the availability and suitability of materials (on the site or otherwise), all required allowances, as well as the conditions of the work, Project and the site, and Contractor acknowledges that it is not relying upon any representation of the Owner, Surety or their respective agents and representatives in determining the quantity of the work remaining to be performed or the quality of the work previously performed. Except as set forth in Section 1.02 (a) above, Contractor agrees that it shall be solely responsible for full and final completion of all work required under the Contract regardless of what work was previously performed or not performed by HM or any other party.

(f) Contractor is not relying upon any warranties or representations of the Owner or Surety, their respective agents or representatives, concerning the current status of progress on the Project including, but not limited to, what work was or was not completed by HM, any materials stored on site (if any), either as to the quantity, quality or suitability of any such material for use in the completion of construction, or any other conditions of the Project, but Contractor is relying upon its right granted by the Owner to inspect all conditions of the Project and site as of the Effective Date and to take possession and use any stored material belonging to HM in the prosecution of the work if any such material is deemed to be suitable by the Owner. Surety has provided Contractor an inventory of materials belonging to HM on hand for use in completing the Project, and Surety and Owner warrant that said materials belonging to HM can be used by Contractor pursuant to this Agreement.

(g) Contractor recognizes that Surety is, through this Agreement, acting in its capacity as surety to HM and that by executing this Agreement, Surety is not assuming any obligations for liabilities beyond those set forth in its Performance Bond and this Agreement. In the event of any breach or default in the performance by Owner, Contractor agrees to make demand and look solely to Owner. Contractor shall make no demands and assert no claims against Surety under the Bonds or this Agreement.

(h) Prior to commencing work pursuant to this Agreement, Contractor will provide a Performance Bond and a Payment Bond, for its completion of this Agreement from an agreed upon surety company. The Performance Bond shall have a sum equal to 100% of the Completion Cost, and the Payment Bond shall have a sum equal to 100% of the Completion Cost. The bonds shall be in the form as set forth and required in the Contract, name the Owner as obligee, and shall comply with any other requirements set forth in the Contract.

Section 1.03 The Owner agrees:

(a) To pay Contractor the Completion Cost for the completion of the Contract using the Contract Balance and funds provided by Surety per Section 1.01(a), in accordance with the Contract and this Agreement.

(b) Surety is, through this Agreement, acting in its capacity as surety on the behalf of HM and that by executing this Agreement, Surety is not assuming any obligations for liabilities beyond those set forth in its Performance Bond and this Agreement. In the event of any breach or default in the performance by Contractor, Owner agrees to make demand and look solely to Contractor and Contractor's performance and payment bonds for the Project and any other remedies which may be available to Owner. Owner shall make no further demands and assert no further claim against Surety under the Bonds.

(c) Owner shall deliver to Surety the original Performance Bond upon execution of this Agreement, and upon such delivery, the Performance Bond shall forever become null and void for all purposes and shall have no legal effect therefrom.

(d) Upon full execution of this Agreement by all parties hereto, and except for the obligations set forth in, created by, arising out of or reserved by this Agreement, the Owner and Surety, on behalf of their respective board, divisions, departments, successors and assigns, does hereby fully and forever release, discharge, each other, and all of their respective current and former officers, directors, fiduciaries, shareholders, parents, subsidiaries, affiliates, agents, servants, attorneys, consultants, managers, predecessors, successors, subcontractors, suppliers, assigns, employees, insurers, and co-sureties from any and all claims, rights, demands, suits, actions or causes of action, losses, costs, obligations, liabilities, expenses, debts and duties of every kind or nature, known or unknown, suspected or unsuspected, asserted or unasserted, fixed or contingent, at law or in equity, made in, arising out of or relating to (i) the Project, (ii) the Contract, and (iii) the Performance Bond, including without limitation any and all claims for interest, attorneys' fees, costs, punitive damages, penalties, statutory penalties, whether arising in contract, tort or by statute. Owner and Surety hereby expressly waive and relinquish all rights and benefits that they may have against one another under Civil Code section 1542, related to (i) the Project, (ii) the Contract, and (iii) the Performance Bond. Section 1542 presently provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Section 1.04 All parties agree:

(a) This Agreement, including exhibits, represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations representations or agreements, either written or oral.

(b) That this Agreement is solely for the benefit of the Owner, Contractor, and Surety. This Agreement does not create any rights or increase the rights of third-party beneficiaries, nor shall extend to or increase the rights of third-party claimants.

(c) That Surety is entering into this Agreement and making payments as specified in this Agreement in order to satisfy its obligations as surety under the Performance Bond and the Payment Bond. Accordingly, it is expressly recognized that any payments made and costs incurred by Surety have been and are incurred to satisfy its obligations, and it is agreed that Surety's rights to be equitably subrogated, but only as it relates to HM, for all costs and expenses incurred and/or paid in connection with its Performance Bond and its Payment Bond are unaffected by this Agreement.

(d) Any notice or communication to the Owner under this Agreement shall be addressed to:

City of Piedmont
120 Vista Avenue

Piedmont, CA 94611

(e) Any notice or communication from Owner to Surety under this Agreement shall be addressed to:

Susan D. Neff, Esq.
Senior Surety Counsel
Arch Insurance Group, Inc.
550 S. Hope Street, Suite 2600
Los Angeles, CA 90071
sneff@archinsurance.com

Any notice or communication to Contractor under this Agreement shall be addressed to:

Mark Lee and Yong Kay
Bay Construction Co.
4026 Martin Luther King Jr. Way
Oakland, CA 94609
Email: yongkay@yahoo.com

(f) That each party hereto has reviewed this Agreement, and had the opportunity to revise this Agreement. Also, its legal counsel has had an opportunity to review and revise same. . The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement, or any amendments or exhibits hereto.

(g) That the persons executing this Agreement on its behalf are fully authorized by the party to do so.

(h) This Agreement may be executed in multiple counterparts and by facsimile signature or scanned signature, each of which when taken together shall constitute a single document.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

Dated: __, 2022

CITY OF PIEDMONT

By: _____
Theodora Gray King

Its: Mayor _____

Attest:

John Tulloch, City Clerk

Approved as to Form:

Michelle Marchetta Kenyon, City Attorney

Dated: __, 2022

ARCH INSURANCE COMPANY

By: _____
Susan D. Neff

Its: _____

Dated: __, 2022

Mark Lee & Yong Kay Inc. DBA
BAY CONSTRUCTION CO.

By: _____

Its: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

Dated: ____, 2022

CITY OF PIEDMONT

By: _____
Theodora Gray King

Its: Mayor _____

Attest:

John Tulloch, City Clerk

Approved as to Form:

Michelle Marchetta Kenyon, City Attorney

Dated: 8-26, 2022

ARCH INSURANCE COMPANY

By: Susan D. Neff
Susan D. Neff

Its: Senior Surety Counsel

Dated: ____, 2022

Mark Lee & Yong Kay Inc. DBA
BAY CONSTRUCTION CO.

By: _____

Its: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

Dated: ____, 2022

CITY OF PIEDMONT

By: _____
Theodora Gray King

Its: Mayor _____

Attest:

John Tulloch, City Clerk

Aproved as to Form:

Michelle Marchetta Kenyon, City Attorney

Dated: ____, 2022

ARCH INSURANCE COMPANY

By: _____
Susan D. Neff

Its: _____

Dated: 8/29, 2022

Mark Lee & Yong Kay Inc. DBA
BAY CONSTRUCTION CO.

By: _____


Its: President / Yong Kay

EXHIBIT A**AGREEMENT**

The City of Piedmont, a California Municipal Corporation ("City") enters into this Agreement, dated November 15, 2021, with HM Construction, Inc. ("Contractor").

RECITALS

- A. **NOTICE INVITING BIDS.** The City gave notice inviting bids to be submitted by 2:00 p.m., October 6, 2021, for the Highland Guilford Steps and Handrail Project by soliciting bids in accordance with the City of Piedmont City Code and other applicable law.
- B. **BID OPENING.** On October 6th, 2021, at 2:00 p.m., City representatives opened the bids for the Highland Guilford Steps and Handrail Project and read the bids aloud.
- C. **PROJECT AWARD.** On November 15, 2021, the City Council awarded the **Highland Guilford Steps and Handrail Project** to the Contractor and directed City staff to send the Contractor written notice of award of the project. The City Council conditioned award of the project on the Contractor's providing executed copies of all documents specified in the contract check list included in the bid package within ten (10) working days of receiving written notice of award of the project.
- D. **REQUIRED DOCUMENTS.** The Contractor has provided the City executed copies of all documents specified in the contract check list included in the bid package within ten (10) working days of receiving written notice of award.

AGREEMENT TERMS

The City and the Contractor agree as follows:

1. **THE WORK.** The Contractor shall furnish all equipment, tools, apparatus, facilities, material labor, and skill necessary to perform and complete in a good and workmanlike manner the Highland Guilford Steps and Handrail Project ("Work") as shown in the Technical Specifications and Project Plans in accordance with the Contract Documents and applicable law.
2. **LOCATION OF WORK.** The Work will be performed at the following location: corner of Highland Ave and Guilford Rd in Piedmont, California
3. **TIME FOR COMPLETION.** The Contractor must complete the Work in accordance with the Contract Documents within forty (40) working days from the date specified in the City's Notice to Proceed ("Time for Completion").
4. **REMEDIES FOR FAILURE TO TIMELY COMPLETE THE WORK.** If the Contractor fails to fully perform the Work in accordance with the Contract Documents by the Time for Completion, as such time may be amended by change order or other modification to this Agreement in accordance with its terms, and/or if the Contractor fails, by the Time for

Completion, to fully perform all of the Contractor's obligations under this Agreement that have accrued by the Time for Completion, the Contractor will become liable to the City for all resulting loss and damage in accordance with the Contract Documents and applicable law. The City's remedies for the Contractor's failure to perform include, but are not limited to, assessment of liquidated damages of **\$1,450 per day** in accordance with California Government Code Section 53069.85 and Section 5-1.02 of the General Provisions, and/or obtaining or providing for substitute performance in accordance with the Contract Documents.

5. CONTRACT PRICE AND PAYMENT. As full compensation in consideration of completion of the Work in accordance with the Contract Documents and in consideration of the fulfillment of all of the Contractor's obligations under the Contract Documents, the City will pay the Contractor in lawful money of the United States the total price of **\$225,464** (the "Contract Price") as specified in the Contractor's completed Bid Schedule dated October 6, 2021, and attached hereto and incorporated in this Agreement. Payment to the Contractor under this Agreement will be for Work actually performed in accordance with the Contract Documents and will be made in accordance with the requirements of the Contract Documents and applicable law. The City will have no obligation to pay the Contractor any amount in excess of the Contract Price unless this Agreement is first modified in accordance with its terms. The City's obligation to pay the Contractor under this Agreement is subject to and may be offset by charges that may apply to the Contractor under this Agreement. Such charges include but are not limited to, charges for liquidated damages and/or substitute performance in accordance with the Contract Documents.
6. PREVAILING WAGES. In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed. In accordance with California Labor Code Section 1773, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project. In accordance with California Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at the City Public Works Department and will be made available on request. Throughout the performance of the Work the Contractor must comply with all provisions of the Contract Documents and all applicable laws and regulations that apply to wages earned in performance of the Work.
7. THE CONTRACT DOCUMENTS. This Agreement consists of the following documents ("Contract Documents"), all of which are incorporated into and made a part of this Agreement as if set forth in full. In the event of a conflict between or among the Contract Documents, precedence will be in the following order:

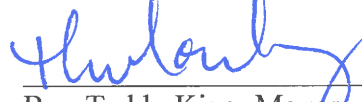
- 7.1 This Agreement and change orders and other amendments to this Agreement signed by authorized representatives of the City and the Contractor.
- 7.2 The General Provisions and change orders and other amendments to the General Conditions signed by authorized representatives of the City and the Contractor.
- 7.3 The Special Provisions, addenda to the Special Provisions signed by authorized representatives of the City and issued prior to bid opening, Equal Product Proposals accepted by the City and signed by authorized City representatives prior to bid opening, and change orders and other amendments to the Technical Specifications signed by authorized representatives of the City and the Contractor.
- 7.4 The Project Plans, addenda to the Project Plans signed by authorized representatives of the City and issued prior to bid opening, Equal Product Proposals accepted by the City and signed by authorized City representatives prior to bid opening, and change orders and other amendments to the Project Plans signed by authorized representatives of the City and the Contractor.
- 7.5 Notice Inviting Bids.
- 7.6 Instructions to Bidders.
- 7.7 The successful bidder's completed Proposal Form and Bidder's Sheet.
- 7.8 The successful bidder's completed Contractor License Information.
- 7.9 The successful bidder's completed List of Proposed Subcontractors.
- 7.10 The successful bidder's Workers Compensation Insurance Certification.
- 7.11 The successful bidder's completed Non-Collusion Declaration.
- 7.12 The successful bidder's Debarment Certification.
- 7.13 The successful bidder's completed Certificates of Insurance and Endorsements.
- 7.14 The successful bidder's executed Performance Bond.
- 7.15 The successful bidder's executed Payment Bond.
- 7.16 Executed Escrow for Deposit Agreement, if applicable.
- 7.17 Change Order Form.
- 7.18 The Maintenance Bond form included in the bid package that the Contractor must execute prior to release of final payment under the Contract.

- 7.19 The successful bidder's Qualification Statement, if any.
- 7.20 The successful bidder's signed Signature Form.
8. PROVISIONS INCORPORATED BY REFERENCE. Provisions or parts of provisions that are incorporated by reference and not set forth at length in any of the Contract Documents will only form a part of this Agreement to the extent the Contract Documents expressly make such provisions or parts of provisions a part of this Agreement. For example, published public works agreement provisions, such as those of the State of California Department of Transportation Standard Specifications (known as the Standard Specifications) are only a part of this Agreement to the extent expressly incorporated in this Agreement by section number, and references in the Standard Specifications incorporated by reference to other Standard Specifications do not make such other Standard Specifications a part of this Agreement. When such published provisions are made a part of this Agreement, references in the published provisions to other entities, such as the State, the Agency, or similar references, will be deemed references to the City as the context of this Agreement may require.
9. INTERPRETATION OF CONTRACT DOCUMENTS. Any question concerning the intent or meaning of any provision of the Contract Documents, including, but not limited to, the Technical Specifications or Project Plans, must be submitted to the Public Works Department, for issuance of an interpretation and/or decision by an authorized Public Works Department representative in accordance with the requirements of the Contract Documents. Interpretations or decisions by any other person concerning the Contract Documents will not be binding on the City. The decision of an authorized Public Works Department representative shall be final.
10. ASSIGNMENT PROHIBITED. The Contractor may not assign part or all of this Agreement, or any moneys due or to become under this Agreement, or any other right or interest of the Contractor under this Agreement, or delegate any obligation or duty of the Contractor under this Agreement without the prior written approval of an official authorized to bind the City and an authorized representative of Contractor's surety or sureties. Any such purported assignment or delegation without such written approval on behalf of the City and the Contractor's sureties will be void and a material breach of this agreement subject to all available remedies under this Agreement and at law and equity.
11. CERTIFICATION RE CONTRACTOR'S LICENSE. By signing this Agreement the Contractor certifies that the Contractor holds a valid Type A license issued by the California State Contractors Licensing Board, and that the Contractor understands that failure to maintain its license in good standing throughout the performance of the Work may result in discipline and/or other penalties pursuant to the California Business and Professions Code, and may constitute a material breach of this Agreement subject to all available remedies under this agreement and at law and equity.

12. SEVERABILITY. If any term or provision or portion of a term or provision of this Agreement is declared invalid or unenforceable by any court of lawful jurisdiction, then the remaining terms and provisions or portions of terms or provisions will not be affected thereby and will remain in full force and effect.
13. DEFINITIONS. All words as used in the Agreement shall be subject to the Definitions set forth in Section 1 of the General Provisions of the Notice to Contractors, Special Provisions, Proposal and Contract for the Highland Guilford Steps and Handrail Project.

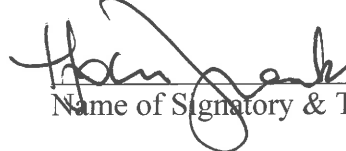
IN WITNESS WHEREOF, the parties have executed this Contract at Piedmont, California, the day and year first above written.

CITY OF PIEDMONT


By: Teddy King, Mayor

Name of Contractor

HM Construction, Inc


Name of Signatory & Title

Hocine Merzouk,
President.

Attest:


John O. Tulloch, City Clerk

Approved as to Form and Legality:

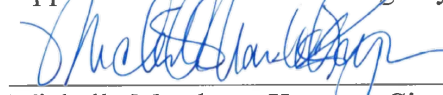

Michelle Marchetta Kenyon, City Attorney

EXHIBIT B**Bond No. SU1167273****PERFORMANCE BOND**

(NOTE: Bidders must use this form, use of any other bond form may render a bid non-responsive)

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City Council of the City of Piedmont has awarded to HM Construction, Inc. (designated as the "PRINCIPAL") a contract for the Highland Guilford Steps and Handrail Project, which contract and all of the contract documents as defined therein (designated as the "Contract") are hereby made a part hereof; and

WHEREAS, said PRINCIPAL is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

NOW, THEREFORE, WE, the PRINCIPAL and ARCH Insurance Company as surety (designated as "SURETY"), an admitted surety insurer authorized to do business in the State of California, are held and firmly bound unto the City (designated as "OBLIGEE"), in the penal sum of Two Hundred Twenty Five Thousand Four Hundred Sixty Four dollars (\$225,464.00), lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, if the above bound PRINCIPAL, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract and any alteration thereof made as therein provided, on his or their part to be kept and performed at the time and in the manner therein specified and in all respects according to their true intent and meaning, and shall defend, indemnify and save harmless the OBLIGEE, it's officials, officers, employees, volunteers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

And the said SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications or the plans accompanying the same or to any other part of the contract documents, as defined therein, shall in any way affect said SURETY's obligation on this bond, and the SURETY does hereby waive notice of any such change, extension of time, alteration or addition.

And the said SURETY, for value received, hereby stipulates and agrees that upon termination of the Contract for cause, the OBLIGEE reserves the right to refuse tender of the PRINCIPAL by the SURETY to complete the Contract work.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this 21st day of December, 2021, the name and corporate seals of each corporate party being hereto affixed and these presents duly signed by their undersigned representatives, pursuant to authority of their governing bodies.

(Corporate Seal)

PRINCIPAL HM Construction, Inc.

By _____

(Acknowledgment)

Title _____

(Corporate Seal)

SURETY ARCH Insurance Company

By _____
(Attorneys-in-fact)

(Acknowledgment)

Title Laura D. Mosholder, Attorney-In-Fact
Inquiries: 407-330-3990

(NOTE TO SURETY COMPANY: A certified copy of unrevoked resolution of authority for the attorney-in-fact must be submitted with and attached to the executed bond.)

Bond No. SU1167273

PAYMENT/LABOR AND MATERIALS BOND

(NOTE: Bidders must use this form, use of any other bond form may render a bid non-responsive)

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City Council of the City of Piedmont has awarded to HM Construction, Inc. (designated as the "PRINCIPAL") a contract for the Highland Guilford Steps and Handrail Project, which contract and all of the contract documents as defined therein (designated as the "Contract") are hereby made a part hereof; and

WHEREAS, pursuant to California Civil Code Section 9550, the PRINCIPAL is required, before entering upon the performance of the Contract, to file a payment bond with and have such bond approved by the officer or public entity by whom the Contract is awarded; and

WHEREAS, pursuant to California Civil Code Section 9554, such payment bond must be in a sum not less than one hundred percent (100%) of the total amount payable by the terms of the Contract, and must satisfy the other requirements specified in that section; and

WHEREAS, the PRINCIPAL is required in accordance with the Contract to furnish a payment bond in connection with the Contract to secure payment of claims of laborers, mechanics and materialmen employed on work under the Contract in accordance with applicable law;

NOW, THEREFORE, THESE PRESENTS WITNESSETH:

That the PRINCIPAL and the undersigned ARCH Insurance Company, as surety (designated as "SURETY"), an admitted surety insurer authorized to do business in the State of California are held and firmly bound unto all laborers, material men, and all other persons named in California Civil Code Section 9100 in the sum of Two Hundred Twenty Five Thousand Four Hundred Sixty Four dollars (\$225,464.00), lawful money of the United States, being a sum not less than one hundred percent of the total amount payable by the terms of the Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the PRINCIPAL or any of the PRINCIPAL's subcontractors, or the heirs, executors, administrators, successors, or assigns of any, all, or either of them, shall fail to pay any persons named in California Civil Code Section 9100, or fail to pay for any labor, materials, provisions, provender, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or fail to pay amounts due under the Unemployment Insurance Code with respect to such work or labor, or fail to pay for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the PRINCIPAL or any subcontractors of the PRINCIPAL pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work or labor, that the SURETY will pay for the same in an amount not exceeding the amount herein above set forth, and also, in case suit is brought upon this bond, will

pay a reasonable attorney's fee to be awarded and fixed by the Court; otherwise this obligation shall be void.

It is hereby expressly stipulated and agreed by the said Surety, for value received, that this bond shall inure to the benefit of any and all of the persons named in Section 9100 of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

It is hereby further expressly stipulated and agreed by the said Surety, for value received, that no change, extension of time, alteration or addition to the terms of the Contract or the specifications or drawings accompanying the same or to any other part of the contract documents, as defined therein, shall in any manner affect the obligations of the SURETY on this bond, and SURETY does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this 21st day of December, 2021, the name and corporate seals of each corporate party being hereto affixed and these presents duly signed by their undersigned representatives, pursuant to authority of their governing bodies.

(Corporate Seal) PRINCIPAL HM Construction, Inc.

By _____

(Acknowledgment) Title _____

(Corporate Seal) SURETY ARCH Insurance Company

By _____
(Attorneys-in-fact)

(Acknowledgment) Title Laura D. Mosholder, Attorney-In-Fact
Inquiries: 407-330-3990

(NOTE TO SURETY COMPANY: A certified copy of unrevoked resolution of authority for the attorney-in-fact must be submitted with and attached to the executed bond.)

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Note, Loan, Letter of Credit, Currency Rate, Interest Rate or Residential Value Guarantees.

POWER OF ATTORNEY**Know All Persons By These Presents:**

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the "Company") does hereby appoint:

Brett Rosenhaus of Delray Beach, FL

Charles D. Nielson, Charles J. Nielson, David R. Hoover and Jarrett Merlucci of Miami Lakes, FL (EACH) F. Danny Gann, Edward T. Ward and Audria R. Ward of Atlanta, GA (EACH)

John R. Neu and Kevin Wojtowicz of St. Petersburg, FL (EACH)

Laura D. Mosholder of Orlando, FL

its true and lawful Attorney(s)-in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed: Any and all bonds, undertakings, recognizances and other surety obligations, in the penal sum not exceeding Ninety Million Dollars (\$90,000,000.00). This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

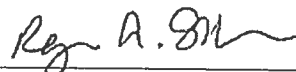
This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on December 10, 2020, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on December 10, 2020:

VOTED, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on December 10, 2020, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company. **In Testimony Whereof**, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 28th day of April, 2021.

Attested and Certified



Regan A. Shulman, Secretary

STATE OF PENNSYLVANIA SS
COUNTY OF PHILADELPHIA SS

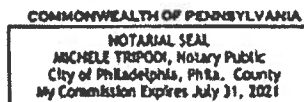


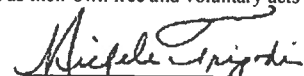
Arch Insurance Company



Stephen C. Ruschak, Executive Vice President

I, Michele Tripodi, a Notary Public, do hereby certify that Regan A. Shulman and Stephen C. Ruschak personally known to me to be the same persons whose names are respectively as Secretary and Executive Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.





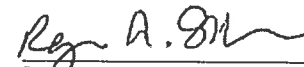
Michele Tripodi, Notary Public

My commission expires 07/31/2021

CERTIFICATION

I, Regan A. Shulman, Secretary of the Arch Insurance Company, do hereby certify that the attached **Power of Attorney dated April 28, 2021** on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said Stephen C. Ruschak, who executed the Power of Attorney as Executive Vice President, was on the date of execution of the attached Power of Attorney the duly elected Executive Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 21st day of December, 2021.



Regan A. Shulman, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:

Arch Insurance – Surety Division
3 Parkway, Suite 1500
Philadelphia, PA 19102



*To verify the authenticity of this Power of Attorney, please contact Arch Insurance Company at SuretyAuthentic@archinsurance.com
Please refer to the above named Attorney-in-Fact and the details of the bond to which the power is attached.*

Bond No. SU1167273

MAINTENANCE BOND

(NOTE: Bidders must use this form, use of any other bond form may render a bid non-responsive)

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City Council of the City of Piedmont has awarded to HM Construction, Inc. (designated as the "PRINCIPAL") a contract for the Highland Guilford Steps and Handrail Project, which contract and all of the contract documents as defined therein (designated as the "Contract") are hereby made a part hereof; and

WHEREAS, the PRINCIPAL is required under the terms of the Contract to furnish a bond for the correction of any defects due to defective materials or workmanship in the work performed under the Contract.

NOW, THEREFORE, we the PRINCIPAL and the undersigned ARCH Insurance Company, as surety (designated as "SURETY"), an admitted surety insurer authorized to do business in the State of California, are held and firmly bound unto the City of Piedmont, (designated as the "OBLIGEE"), in the penal sum of Twenty Two Thousand Five Hundred Forty Six Dollars (\$22,546.00), lawful money of the United States, being a sum not less than ten percent (10%) of the final Contract price, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that if, during a maintenance period of one (1) year from the date of acceptance by the OBLIGEE of the contracted work, the PRINCIPAL upon receiving written notice of a need for repairs which are directly attributable to defective materials or workmanship, shall diligently take the necessary steps to correct said defects within seven (7) days from the date of said notice, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

If any action shall be brought by the OBLIGEE upon this bond, a reasonable attorney's fee, to be fixed by the Court, shall be and become a part of OBLIGEE's judgment in any such action.

No right of action shall accrue on this bond to, or for the use of, any person or corporation other than the OBLIGEE named herein or the heirs, executors, administrator or successor of the OBLIGEE.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their seals this 21st day of December, 2021 the name and corporate seals of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

PRINCIPAL HM Construction, Inc.

By _____

(Acknowledgment)

Title _____

(Corporate Seal)

SURETY ARCH Insurance Company

By _____
(Attorneys-in-fact)

(Acknowledgment)

Title Laura D. Mosholder, Attorney-In-Fact
Inquiries: 407-330-3990

(NOTE TO SURETY COMPANY: A certified copy of unrevoked resolution of authority for the attorney-in-fact must be submitted with and attached to the executed bond.)

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Note, Loan, Letter of Credit, Currency Rate, Interest Rate or Residential Value Guarantees.

POWER OF ATTORNEY

Know All Persons By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the "Company") does hereby appoint:

Brett Rosenhaus of Delray Beach, FL

Charles D. Nielson, Charles J. Nielson, David R. Hoover and Jarrett Merlucci of Miami Lakes, FL (EACH) F. Danny Gann, Edward T. Ward and Audria R. Ward of Atlanta, GA (EACH)

John R. Neu and Kevin Wojtowicz of St. Petersburg, FL (EACH)

Laura D. Mosholder of Orlando, FL

its true and lawful Attorney(s) in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed: Any and all bonds, undertakings, recognizances and other surety obligations, in the penal sum not exceeding Ninety Million Dollars (\$90,000,000.00). This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on December 10, 2020, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on December 10, 2020:

VOTED, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on December 10, 2020, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company. In Testimony Whereof, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 28th day of April, 2021.

Attested and Certified

Regan A. Shulman

Regan A. Shulman, Secretary

STATE OF PENNSYLVANIA SS
COUNTY OF PHILADELPHIA SS

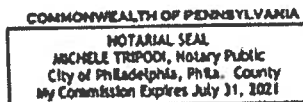


Arch Insurance Company

Stephen C. Ruschak

Stephen C. Ruschak, Executive Vice President

I, Michele Tripodi, a Notary Public, do hereby certify that Regan A. Shulman and Stephen C. Ruschak personally known to me to be the same persons whose names are respectively as Secretary and Executive Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.



Michele Tripodi

Michele Tripodi, Notary Public
My commission expires 07/31/2021

CERTIFICATION

I, **Regan A. Shulman**, Secretary of the Arch Insurance Company, do hereby certify that the attached Power of Attorney is dated April 28, 2021 on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said Stephen C. Ruschak, who executed the Power of Attorney as Executive Vice President, was on the date of execution of the attached Power of Attorney the duly elected Executive Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 21st day of December, 2021.

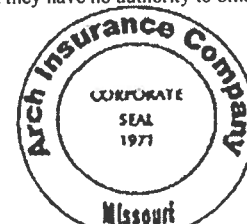
Regan A. Shulman

Regan A. Shulman, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:

Arch Insurance - Surety Division
3 Parkway, Suite 1500
Philadelphia, PA 19102



To verify the authenticity of this Power of Attorney, please contact Arch Insurance Company at SuretyAuthentic@archinsurance.com
Please refer to the above named Attorney-in-Fact and the details of the bond to which the power is attached.



Solicitation of Proposals
Highland Guilford Steps Project
Page 5 of 6

EXHIBIT C**PROPOSAL FOR COMPLETION OF THE
HIGHLAND GUILFORD STEPS PROJECT**

MARK LEE and YONG KAY, INC DBA
BAY CONSTRUCTION CO. INC.

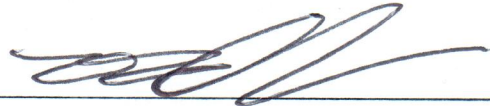
\$ 310,000 submits the Total Base Bid price of (from Bid Form Proposal) to fully complete the Highland Guilford Steps and Handrail Project per the terms of the original contract between OWNER and HM. Bidders will be responsible for completing all remaining HM contract obligations. Bidders should not include the price for future change order work, if any. Bidders are not responsible for HM liquidated damages or latent defects, if any, and should not include a contingency for such. Bidder must complete the provided Subcontractor List indicating the Subcontractors it intends to use for this Project.

Bidder intends to utilize THE OHIO CASUALTY INSURANCE CO. as its Surety (do not list broker or agent). Bidder will mobilize and begin construction 14 calendar days from Notice to Proceed from SURETY or OWNER. Bidder will complete the HM contract work in 84 calendar days from Notice to Proceed from SURETY or OWNER.

This proposal will remain in full force and effect for 90 days from the date indicated below. By signing below, we acknowledge receipt of the Solicitation of Proposals and all documents referenced therein.

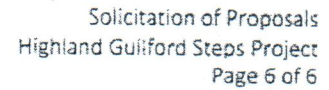
DATED: 8-1-2022

BAY CONSTRUCTION CO. INC
(Company Name)


(Signature)

YONG KAY
(Print Name)

PRESIDENT
(Title)



Bidders are required to list all Subcontractors that Bidders intend to use to complete the PROJECT. It is the Bidders' responsibility to confirm that all of the existing HM subcontracts that it intends to use cover the scopes necessary to complete the PROJECT. Any missing scope items that exist are the responsibility of the Bidders.

[illegible]

Attach additional sheets as necessary.

PROPOSAL

For: Construction of the Highland Guilford Steps and Handrail Project

For the City of Piedmont, Alameda County, California.

TO THE HONORABLE CITY COUNCIL OF THE CITY OF PIEDMONT

The undersigned, as bidder, declares that it has carefully examined the work, the annexed proposed form of contract, and agrees that if this Proposal is accepted to contract with the City of Piedmont, under the form of contract annexed hereto, to provide all the necessary tools, apparatus, and other means of accomplishing the work as specified in the contract in the manner and time herein prescribed, and in accordance with the requirements of the Public Works Department as therein set forth, and to take in full payment thereof the following prices of the work to be done completely performed to the satisfaction of the City of Piedmont, to-wit:

Contractor's Bid Proposal Highland Guilford Steps and Handrail Project

Item No.	Item Description	Estimated Quantity	Unit of Measure	Unit Cost (in figures)	Total Cost (in figures)
1	Mobilization	1	LS	25,732	25,732
2	Concrete Removal	880	SF	40	35,200
3	Clearing and Grubbing	1	LS	25,000	25,000
4	Minor Concrete, Steps	6	CY	1,000	6,000
5	Minor Concrete, Sidewalk/Landings	503	SF	56	28,168
6	Minor Concrete, Vertical Curb	34	LF	500	17,000
7	Minor Concrete, Flush Curb	27	LF	500	13,500
8	Minor Concrete, Retaining Curb	7	LF	1,000	7,000
9	Permeable Pavers	360	SF	75	27,000
10	Concrete Retaining Wall	12	CY	2,700	32,400
11	Stone Veneer	60	SF	300	18,000
12	Handrail	75	LF	400	30,000
13	Decorative Light	2	LF	10,000	20,000
14	Electrical System	1	LS	24,000	24,000
15	Irrigation System	1	LS	1,000	1,000
Total Bid:				\$	310,000

THREE HUNDRED TEN + 00/100 ————— Dollars
Written Amount

The undersigned further agrees to deliver and to complete the work within **40 working days**, from the date of issuance, by the Public Works Department, of instructions to proceed with the work, and within 10 days of the date of mailing of the notice of award, to enter into and execute and provide to the City the necessary contract with the necessary bonds and other required documents, and in case of default in executing the necessary contract within the time fixed by the Instructions to Bidders, the bidder's security accompanying this bid shall become the property of and be forfeited to the City of Piedmont.

Prime Contractor MARK LEE & YONG KAY INC. DBA BAY CONSTRUCTION CO. INC

License # 593411 Expiration Date 5/31/24

DIR Registration # 1000000066 Expiration Date 6/30/24

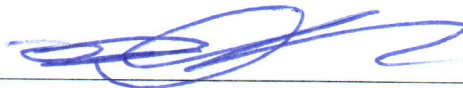
Contractor's License number and expiration date are herein stated under penalty of perjury.

By: Yong Kay Title: PRESIDENT

Dated this 1ST day of AUGUST, 2022

(Corporate Seal)

Corporate Signature



Street Address: 4026 MARTIN LUTHER KING JR. WAY

City, State, Zip Code: OAKLAND CALIF 94609

Phone No.: 510-658-7225

Email address: yongkay@yahoo.com

President's signature [Signature]

Secretary's signature [Signature]

Corporation organized under the laws of the State of CALIFORNIA

Partnership Name: N/A

Address: N/A

Names of Co-Partners and Addresses: N/A

Names of Individuals and Addresses: N/A

NOTE: Sign in proper space above.