

**CONTRACT FOR  
2015 PAVEMENT MAINTENANCE PROJECT**

**Contract No.** \_\_\_\_\_

This contract ("Contract") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2015, by and between the Wallace Lake Estates Community Services District ("District") whose address is P.O. Box 398, Wallace, CA 95254 and \_\_\_\_\_ ("Contractor") whose address is \_\_\_\_\_.

RECITALS

The District has awarded to the Contractor the Contract for doing the Work and furnishing the materials and equipment for the work relating to the 2015 Pavement Maintenance Project.

This Contract is for the performance of that Work, as specified in Section 1.2 of this Contract, below.

The Contractor represents that it is fully qualified to perform the Contract and further represents that it is willing to accept responsibility to perform the Contract in accordance with the terms and conditions set forth in this Contract.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, District and Contractor agree as follows:

**1. Definitions**

- 1.1. "Contract Documents:" The Contract Documents consist of the Invitation to Bid issued by District on \_\_\_\_\_; the Plans, Specifications and Details; and Contractor's Bid dated \_\_\_\_\_.
- 1.2. "Bid Items Descriptions:" The Work to be performed under this Contract, which is generally set forth in Contractor's Bid dated \_\_\_\_\_, which is attached hereto as "Exhibit A," and fully incorporated herein by this reference.
- 1.3. "Contract Sum:" The total sum which the District agrees to pay Contractor in consideration for the full performance of all the Work agreed upon by the Board and as specified under this Contract, and which was specified in Contractor's Bid dated \_\_\_\_\_, which is attached hereto as "Exhibit B."

- 1.3.1 Any additional Work under this Agreement that may be necessary as a result of the issuance of a Change Order that exceeds the

Contract Sum shall be paid on an agreed lump sum price if work not directed with a Quotation Request. No such Work shall be performed without the written consent of the District.

- 1.3.2 Disputes involving the original Contract Sum and additional costs estimated in the event of conditions shall be negotiated and shall be addressed by change order.

## **2. The Work of this Contract**

- 2.1 The Contractor agrees to do all the work and furnish all the labor, material, equipment and appliances to complete the Work as described in the Scope of Work inclusive of additive bid items as directed by the Board. Contractor shall completely and totally perform the Contract Work in a good workmanlike manner, to the satisfaction of the District and in complete accordance with the Plans and Specifications prepared for the District.

## **3. Date of Commencement and Final Completion**

- 3.1 The date of commencement of the Work shall be \_\_\_\_\_. And Final completion of the Work shall be completed by \_\_\_\_\_.

## **4. Payments**

- 4.1 Final Payments
  - 4.1.1 Payment will be made within 45 days following invoicing for such work, with the exception of a five percent (5%) retention. The retention shall be released within sixty (60) days after completion of the work. Contractor may substitute securities in lieu of retention.
  - 4.1.2 Payment for disputed amounts will be made within 60 days after resolution of the dispute.
  - 4.1.3 It is further agreed by the parties that before each payment is made as provided above, receipts and releases of liens of all kinds for all labor and materials and all other indebtedness connected with the work shall be presented to the District by the Contractor upon the request of the District.

## **5. Labor and Material Bonds**

- 5.1 The Contractor shall furnish a labor and material bond as required by law in a sum not less than 100 percent of the Contract Sum.

## **6. Permits**

- 6.1 Permits and licenses necessary for the performance of the Work under this Contract shall be secured and paid for by the Contractor unless otherwise specified.
- 6.2 Contractor shall give all required notices and comply with all laws, ordinances, rules, regulations, and codes regarding the Work as specified. If the Contractor observes that the drawings and specifications are at variance with any of the aforementioned laws, ordinances, rules, regulations and codes, it shall promptly notify the District in writing, and any necessary changes shall be made by Change Order, and compensated as set forth in Section 1.3.1 of this Contract.

## **7. General Provisions**

- 7.1 Contractor shall possess a current Contractor' license at the time it submitted its Proposal to perform the Work under this Contract, and that such license shall have been issued in accordance with the laws of the State of California.
- 7.2 Contractor shall remedy, at its sole expense, any defects in the Work which shall appear within a period of twelve (12) months from the date of the final acceptance of the work.
- 7.3 If the Work under this Contract requires trenching to a depth of four (4) or more feet, Contractor shall:
- a. Notify the District of hazardous materials, subsurface or latent physical site conditions different from those indicated in information about the site made available to Contractor, and any unusual site conditions.
  - b. Upon notice, the District shall investigate the site.
- 7.4 8 hours' labor constitutes a day's work.

- 7.5 Pursuant to Labor Code section 1773.2, Contractor agrees to pay to each craft, classification or type of workman the prevailing wage determined by the State of California, Director of Industrial Relations, in the published wage scale determination, a copy of which is available at the office of the Engineer for District, and which Contractor shall post at the project site. Anticipated craft wage determinations are included in Appendix C, made part of these specifications.
- 7.6 Contractor shall be responsible for compliance with the statutory requirements of Labor Code section 1776, relating to maintaining certified copies of payroll records, their certification, and availability for inspection.
- 7.7 The statutory provisions for penalties for failing to comply with the State of California wage and labor laws will be enforced, as well as that for failing to pay prevailing wages.
- 7.8 Contractor shall not perform Work under this Contract utilizing any subcontractor who is ineligible to do so, pursuant to Section 1777.1 or 1777.7 of the California Labor Code.
- 7.9 All provisions of the California Occupational Safety and Health Act of 1973 (CALOSHA), as amended, shall be adhered to.
- 7.10 The provisions of Labor Code §§1777.5 and 1777.6 shall apply to the employment of apprentices by Contractor or any subcontractor under him.
- 7.11 The Contractor shall comply with Labor Code §3700, and the certification by Contractor of such compliance, attached to this Contract, must be completed and returned with this Contract.
- 7.12 In entering into this Contract, Contractor offers and agrees to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or subcontract. This assignment is made and becomes effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the parties.
- 7.13 It is expressly understood and agreed that a waiver of any of the conditions or covenants of this Contract shall not be considered a waiver of any of the provisions hereof.

## **8. Insurance Coverage to Be Maintained by Contractor:**

- 8.1 Contractor shall maintain at its own expense during the life of this Contract, insurance coverage in the indicated amounts, and under the terms and conditions as follows:
  - 8.1.1 Workers' Compensation and Employer's Liability
    - 8.1.1.1 Workers' Compensation: coverage as required by law
    - Employers' Liability limits of at least \$1,000,000.00 per occurrence
  - 8.1.2 Comprehensive General Liability
    - 8.1.2.1 Minimum Combined Single Limit - \$1,000,000.00 for each occurrence.
  - 8.1.3 Automobile Liability
    - 8.1.3.1 Combined Single Limit - \$1,000,000.00 per accident, for bodily injury and property damage.
- 8.2 The automobile and general comprehensive liability policies may be combined in a single policy with a combined single limit of \$2,000,000.00 per occurrence/accident.
- 8.3 The Contractor shall provide the District with a copy of each underlying insurance policy and all of its endorsements. Each policy shall contain an endorsement providing written notice shall be given to the District at least 30 calendar days prior to termination, cancellation, or reduction of coverage in the policy.
- 8.4 The Workers' Compensation and Employer's Liability policy shall show evidence of the following endorsements to the policy of insurance:
  - 8.4.1 Wallace Lake Estates Community Services District shall be named as an additional insured under the policy.
  - 8.4.2 The policy shall not be subject to cancellation except after written notice to the District not less than thirty (30) days prior to the effective date thereto.
  - 8.4.3 The insurer shall waive all rights of subrogation and contribution against the additional insureds.
- 8.5 The Bodily Injury and Property Damage Liability policies shall contain the following:

- 8.5.1 Wallace Lake Estates Community Services District, and its respective officials, officers, attorneys, agents, employees, and volunteers shall be named as additional insureds under the policy. The additional insureds have no liability for the payment of any premiums or assessments under the policy.
- 8.5.2 The insurance coverages afforded the additional insureds under the policy shall be primary insurance, and no other insurance maintained by the additional insureds shall be called upon to contribute with the insurance coverage's provided by the policy.
- 8.5.3 Each insurance coverage under the policy shall apply separately to each additional insured against whom claim is made or suit is brought except with respect to the limits of the insurance company's liability.
- 8.6 Nothing in the contract of insurance shall be construed to preclude coverage of a claim by one insured under the policy against another insured under the policy. All such claims shall be covered as third-party claims; i.e., in the same manner as if separate policies had been issued to each insured. This provision shall not operate to increase or replicate the insurance company's limits of liability as provided under the policy.
- 8.7 The insurance afforded by the policy for contractual liability insurance (subject to the terms, conditions and exclusions applicable to such insurance) shall include the liability assumed by the Contractor under the indemnification and hold harmless provisions executed in conjunction with the written contract between the Contractor and the additional insureds.
- 8.8 The insurance company shall waive all rights of subrogation and contribution against the additional insureds, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to the perils insured against in relation to the contract with regard to operations performed by or on behalf of the Contractor regardless of any prior, concurrent, or subsequent active or passive negligence by the additional insureds.
- 8.9 The laws of the State of California shall apply to and govern the validity, construction, interpretation, and enforcement of any contract of insurance.
- 8.10 Promptly on execution of the Contract and prior to commencement of any work, the Contractor shall deliver to District copies of all required certificates, policies and endorsements thereto.

- 8.11 The Contractor shall require and verify similar insurance on the part of its Subcontractors, including a provision waiving the subcontractor's and its insurer's rights of subrogation against District and its co-indemnitees as provided above.
- 8.12 The foregoing requirements as to the types, limits, and District approval of insurance coverage to be maintained by the Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Contract.
- 8.13 The cost of all insurance shall be included in the Contractor's Contract Sum.

## **9. Indemnification**

- 9.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend Wallace Lake Estates Community Services District, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors, or omissions of Contractor or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of District's choice.
- 9.2 District shall have the right to offset against the amount of any compensation due to Contractor under this Contract any amount due District from Contractor as a result of the Contractor's failure to pay District promptly any indemnification arising under this Section and related to Contractor's failure to either (i) pay taxes on amounts received pursuant to this Contract or (ii) comply with applicable worker's compensation laws.
- 9.3 The obligations of Contractor under this Section will not be limited by the provisions of any worker's compensation act or similar act. Contractor expressly waives any statutory immunity under such statutes or laws as to District, its officers, agents, employees and volunteers.
- 9.4 District does not, and shall not; waive any rights that it may possess against Contractor because of acceptance by District, or the deposit with District, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

- 9.5 Contractor shall provide satisfactory evidence of payments for Work completed upon request of District and to indemnify, defend, and hold harmless the District from all suits, liens, or other claims of any nature arising from its failure to make such payments.

## **10. Claims and Dispute Resolution**

- 10.1 "Claim" means a separate demand by the Contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the District.
- 10.2 Claim submittals and related procedures shall be in accordance with California Public Contract Code sections 20104 *et. seq.*
- 10.3 The District shall notify Contractor in writing within ten (10) days of receipt of any third-party claims related to this Contract.
- 10.4 Should any unresolved claim result in litigation, the venue shall be the Superior Court of the County of San Joaquin.

## **11. Termination or Suspension**

- 11.1 Termination by the District for Cause

11.1.1 The District may terminate the Contract if the Contractor:

- 11.1.1.1 Repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- 11.1.1.2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and subcontractors;
- 11.1.1.3 Repeatedly disregards applicable law, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- 11.1.1.4 Otherwise is guilty of substantial breach of a provision of the Contract Documents.

11.1.2 When any of the above reasons exist, the District, may without prejudice to any other rights or

remedies of the District and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- 11.1.2.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- 11.1.2.2 Accept assignment of subcontracts.
- 11.1.2.3 Finish the Work by whatever reasonable method the District may deem expedient. Upon written request of the Contractor, the District shall furnish to the Contractor a detailed accounting of the costs incurred by the District in finishing the work.
- 11.1.3 When the District terminates the Contract for one of the reasons stated in Section 11.1.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

This Contract shall not be modified except by written document executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, on the day and year first above written.

“DISTRICT”  
WALLACE LAKE ESTATES  
COMMUNITY SERVICES DISTRICT

“CONTRACTOR”  
\_\_\_\_\_

\_\_\_\_\_  
Mike Jones, Board President

\_\_\_\_\_  
Name / Title