



**REQUEST FOR PROPOSAL**

**ASPHALT PAVEMENT CRACK SEALING**

**RFP #201920-06**

**February 17, 2020**

**1. INSTRUCTIONS AND CONDITIONS**

A. No proposal will be considered for award unless submitted in the proposal format described in this Request for Proposal (RFP). The proposal must be fully complete and executed. Each response shall contain four (4) copies of the completed proposals which will include; three (3) bound and one (1) unbound copy with appropriate responses included.

Format: Proposal should be 8 ½ x 11 inches, printed two-sided on recycled paper with removable bindings, bound in a single document. Binding can be as simple as a staple. Original and copies may be submitted in one envelope/package.

Each proposal must be submitted in a sealed envelope addressed to Becky McCurdy, Procurement Services Manager, City of Madera, Purchasing-Central Supply, 1030 South Gateway Drive, Madera, California 93637, and delivered prior to the time and date specified in this document. Each sealed envelope containing a proposal must have, on the outside, the name of the proposer, proposer's address and the statement "DO NOT OPEN UNTIL THE TIME OF PROPOSAL OPENING" and in addition, must be plainly marked on the outside as follows:

**Proposal: Asphalt Pavement Crack Sealing**  
**RFP #: 201920-06**  
**Filing Deadline: Wednesday, March 18, 2020 - 3:00 P.M.**

B. Attention of proposers is especially directed to the specifications which, in addition to the proposal and these instructions, are basis for evaluation and will be part of any agreement with the successful proposer. Any deviations from the specifications in this notice shall be proper reason for rejection of all or any part of the proposal.

C. The City of Madera recognizes its policy of providing equal opportunity to all qualified persons and reaffirms its commitment that there shall be no discrimination against qualified applicants or employees on the basis of race, gender, color, national origin, religion, age, disability, sexual orientation or marital status.

D. The City reserves the right to reject or accept any or all proposals or parts thereof and to accept or reject the alternatives individually or jointly, for any reason.

E. The City reserves the right to consider any minor deviations from the specifications and

determine the acceptance or rejection of such deviation. The City reserves the right to seek supplementary information from any proposer at any time after official proposal opening and before the award. Such information will be limited to clarification or amplification of information asked in the original proposal.

F. The City reserves the right to modify this Request for Proposal (RFP) at any time. In the event it becomes necessary to modify or revise the RFP, a written amendment or addenda issued by City's Purchasing-Central Supply Division is the only method which should be relied on with respect to changes to the RFP. Proposer is responsible to contact City's Purchasing-Central Supply Division prior to submitting a proposal to determine if any amendments were made to the RFP. Documents, amendments, addenda, etc. will be posted to the City's Purchasing page at [www.madera.gov/purchasing](http://www.madera.gov/purchasing) under Bid Announcement and Results.

**Questions and suggestions concerning the RFP must be submitted in writing no later than 3:00 P.M. Wednesday March 11, 2020.** Written questions or inquiries should be e-mailed, mailed or faxed to:

Becky McCurdy  
Procurement Services Manager  
City of Madera  
Purchasing-Central Supply  
1030 South Gateway Drive  
Madera, CA 93637

[rmccurdy@madera.gov](mailto:rmccurdy@madera.gov)

FAX: (559) 661-0760

**No questions or inquiries should be directed to any individual(s) at the locations detailed in this document. All communications should be submitted in writing per the process described in this document.**

G. Proposals will be evaluated by the City. If a proposal is found to be incomplete or not in compliance with the format required, it will not be considered for evaluation. During the evaluation process, the City may find it beneficial to request additional information.

H. Any proposal may be withdrawn at any time prior to the hour fixed for the opening, provided that a request in writing executed by the proposer, or his/her duly authorized representative, for the withdrawal of such proposal is filed with Purchasing-Central Supply. The withdrawal of a proposal shall not prejudice the right of a proposer to file a new proposal prior to the time and date set as the filing deadline. After the expiration of the time and date for receipt of proposals, a proposal may not be withdrawn or altered.

I. Issuance of the RFP and receipt of proposals does not commit the City to award an agreement. The City reserves the right to postpone the RFP process for its own convenience, to accept or reject any or all proposals received in response to this RFP, to negotiate with other than the selected company should negotiations with the selected company be terminated, or to cancel

any section of this RFP. The City also reserves the right to apportion the award among more than one proposer.

J. An award will be made as soon as reasonably practical after the opening of Proposals. A one-year award will be made. The City has the option to extend the agreement for two additional one-year terms. The successful proposer shall enter into a formal Agreement with City which will be very similar in content to Attachment D: Draft Agreement which is provided for information purposes only and to help clarify City intent relevant to this RFP.

K. An award under this RFP will not be based solely on the lowest price. If an award is made, it will go to the proposer(s) with the best overall proposal. The successful proposal will be competitively priced and provide for adequate service to meet the City's needs.

L. The City may, at its sole option, terminate any contract/agreement that may be awarded as a result of this RFP at the end of any City Fiscal Year, for reason of non-appropriation of funds. In such event, the City will give proposer at least thirty (30) days written notice that such function will not be funded for the next fiscal period.

M. Prior to beginning any work or delivering any equipment or material to be furnished under this proposal, the proposer shall secure the appropriate Business License from the City of Madera along with a no-fee City of Madera Encroachment Permit. Business license information may be obtained by calling (559) 661-5454. Should the proposer already have his license, please indicate the license number and expiration date below:

City License No. \_\_\_\_\_ Expiration Date \_\_\_\_\_

Any Federal or State of California License/Certification required to provide the services will be required. The prime contractor on this project shall possess a valid State of California Class A, C-12 or C-32 Contractors license. A Certificate of Insurance in accordance with the Insurance Requirements for Contractors document included in this RFP as Attachment A will also be required.

N. Proposer's Proprietary Information: All documents provided by the successful proposer shall become public record.

O. It is the City's policy to encourage the purchase of supplies, services and equipment from vendors located within the boundaries of the City. Local vendors are sellers, vendors, suppliers and contractors who maintain places of business located within the limits of the City and who have a current City of Madera business license. The local vendor outreach policy shall not apply to those Agreements where State or Federal law, or other laws or regulations preclude such a preference.

Contractors will, to the greatest extent feasible, attempt to incorporate local area businesses as subcontractors and suppliers. Contractors will, upon request, provide records showing the outreach efforts made to local businesses to demonstrate that they have made a reasonable effort to inform local businesses of the opportunity.

P. The successful proposer will be required to post a Performance Bond in the amount of \$50,000 to be held by the City until the end of the 2020/2021 fiscal year. A sample bond is included as Attachment B.

Q. Prevailing Wages

1. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). Contractor will be responsible for verifying compliance with all prevailing wage laws and regulations for all subcontractors.

2. As required by § 1770 and subsequent sections of the California Labor Code, the Contractor and all subcontractors shall pay no less than the prevailing rate of wages as determined by the Director of the California Department of Industrial Relations as applicable to the date of the Construction Agreement.

3. A contractor or subcontractor shall not be qualified to submit a proposal on, be listed in a proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any contract for public work, as defined in the Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a proposal that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work at the time the contract is awarded. Refer to DIR website, [www.dir.ca.gov](http://www.dir.ca.gov), to register and to find the correct wage rates and answers to questions related to prevailing wage requirements.

4. The Contractor and all subcontractors must submit to the Labor Commissioner of the DIR, on regular intervals (weekly, biweekly, or monthly), electronic certified payroll records as specified by SB 854. Payroll records shall contain all the information required pursuant to Labor Code Section 1776 and be signed under penalty of perjury.

5. The Contractor will post job site notices prescribed by DIR regulation.

**2. SPECIFICATIONS**

A. The City of Madera is seeking quotes from responsive and responsible contractors for crack sealing at various locations throughout the City. The unit price per linear foot regardless of the crack width shall include the following:

Crack seal streets having transverse, longitudinal, block and/or reflective cracking ranging from ¼" to 1" wide. Crack sealing material shall be CRAFCO Polyflex Type 3 or approved equivalent. Contractor is not required to crack seal Alligator cracking. A light blotting of sand shall be applied to reduce tracking followed by a light post sweep of the sealed areas when applicable.

B. The contractor must provide traffic control and comply with all safety requirements as set forth in the 2015 Standard Caltrans Specifications Section 7 "LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC" and Section 12 TEMPORARY TRAFFIC CONTROL". The Contractor

shall be responsible for the control of traffic – vehicular and pedestrian – during all phases of the work and through the life of the contract; and shall furnish all barricades, traffic cones, lights, warning and directional signs, flagmen and any other control measures needed for safety of the public and the workmen while permitting public passage. The Contractor shall post temporary NO PARKING signs containing vehicle code 22654 and all written notification shall be approved by the City prior to any posting. It shall be the responsibility of the Contractor to maintain signs and barricades overnight and on weekends and until the completion of the contract the Contractor shall provide safe vehicular and pedestrian access ways for the public to reach the homes and businesses during the time of the project. All costs incurred for labor, material or equipment and supervision for public safety and public convenience shall be considered as being included in the bid amount and no additional payment will be made therefore.

C. All expenses including labor, materials, equipment, removal and disposal of existing debris, clean-up, traffic control, advanced warning and construction barricades and signing along with supervision for public safety and public convenience shall be included in your proposal.

D. The contractor shall sweep and clean the roadway within the specified limits to expose the cracks, clean out each individual crack using compressed air and fill with sealant. For cracks that are 1/2" wide or larger backer rod shall be installed. A hot pressure feed method shall be used and any leftover material in the cavity shall be squeegeed and made flush with the surface.

E. Backer rod shall be compressible, non-shrinking, non-staining, nonadsorbing material that is non-reactive with the joint sealant.

F. All work shall be done in accordance with City and State Standards and Specifications.

G. Locations may be added or deleted as need by written notice from the City's Project Manager. The proposed locations are as follows:

Priority	Project list				
	Name	From	To	Width	Length
1	<b>Almond Ave</b>	Madera Ave	Emily Way	50	1518
2	<b>E St</b>	4th St	Central Ave	48	1596
3	<b>B St</b>	6th St	Clinton St	48	992
4	<b>Westberry Blvd</b>	Riverview Dr	Howard Rd	48	4417
5	<b>K St</b>	Yosemite Ave	Olive Ave	48	2194
6	<b>E St</b>	Clinton St	Yosemite Ave	44	1401
7	<b>Pine St</b>	Sunset Ave	3rd St	48	1331
8	<b>Kennedy St</b>	Chapin St	Creekside Dr	38	2175
9	<b>Stadium Rd</b>	Pecan Ave	Gary Ln	47	1285
10	<b>C St</b>	12th St	Roosevelt Ave	48	1463

11	<b>Lilly St</b>	Sunrise Ave	Clinton St	48	2510
12	<b>Almond Ave</b>	Westberry Dr	Granada Dr	48	2626
13	<b>Merced St</b>	Ellis St	Kennedy St	52	1771
14	<b>Sonora St</b>	Sherwood Way	Adell St	48	1958
15	<b>Monterey St</b>	150 S of Olive Ave	Walnut St	36	1103
16	<b>Country Club Dr</b>	Cleveland Ave	Adell St	65	2756

A map of each of these streets can be seen in Attachment C.

H. Proposer shall commence work within 30 day of authorization of the contract. No mandated schedule is set. A limited list will be provided as needed to allow for the completion of work to the successful contractor and they will set their own schedule according to the amount of work on the list. The successful proposer will be required to notify the City’s Project Manager of their schedule to allow for inspection by the City and must complete all assigned work within 30 days of receipt of assignment. Both parties will agree upon finished areas prior to submittal for payment.

I. Estimated funding for project term is \$375,000. This Figure is an estimate but not a guarantee and may be adjusted during the term of the award.

**3. REFERENCES**

A. Proposer to supply a minimum of three (3) references with Proposal submittal; i.e. list other municipalities you are currently or were recently providing with similar services. Please use forms supplied with this Request for Proposal.

**4. FORM OF PROPOSALS**

Price shall include all costs, labor, fees, taxes and delivery, pickup or freight charges.

\* \* \* \* \*

**CITY OF MADERA**

**PROPOSAL FORM**

**ASPHALT PAVEMENT CRACK SEALING**

**RFP # 201920-06**

COMPANY NAME \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY / STATE \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_

EMAIL \_\_\_\_\_

PERSON PREPARING PROPOSAL \_\_\_\_\_

POSITION \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

PUBLIC WORKS CONTRACTORS  
REGISTRATION NUMBER \_\_\_\_\_

CONTRACTORS LICENSE NUMBER \_\_\_\_\_

Please complete your proposal in linear foot increments (including Backer rod as directed):

**PROPOSAL SCHEDULE 1**

From 1LF to 200LF

Item	Description	Unit of Measure	Approx. Quantity	Unit Price (\$)	Total Amount (\$)
1	¼" Width crack	LF	200		
2	½" Width crack	LF	200		
3	¾" Width crack	LF	200		
4	1" Width crack	LF	200		

TOTAL PROPOSAL SCHEDULE 1, 1 THROUGH 4, INCLUSIVE: \$ \_\_\_\_\_

Total Amount of Proposal (in words) is \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents.

In case of discrepancy between words and figures, the words shall prevail.

**PROPOSAL SCHEDULE 2**

From 201LF to 2000LF

Item	Description	Unit of Measure	Approx. Quantity	Unit Price (\$)	Total Amount (\$)
5	¼" Width crack	LF	2000		
6	½" Width crack	LF	2000		
7	¾" Width crack	LF	2000		
8	1" Width crack	LF	2000		

TOTAL PROPOSAL SCHEDULE 2, 5 THROUGH 8, INCLUSIVE: \$ \_\_\_\_\_

Total Amount of Proposal (in words) is \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents.

In case of discrepancy between words and figures, the words shall prevail.



**PROPOSAL SCHEDULE 3**

From 2001LF to 5000LF or more

Item	Description	Unit of Measure	Approx. Quantity	Unit Price (\$)	Total Amount (\$)
9	¼" Width crack	LF	5000		
10	½" Width crack	LF	5000		
11	¾" Width crack	LF	5000		
12	1" Width crack	LF	5000		

TOTAL PROPOSAL SCHEDULE 3, 9 THROUGH 12, INCLUSIVE: \$ \_\_\_\_\_

Total Amount of Proposal (in words) is \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents.

In case of discrepancy between words and figures, the words shall prevail.

TOTAL PROPOSAL (SCHEDULE 1 + SCHEDULE 2 + SCHEDULE 3)

\$ \_\_\_\_\_

Total Amount (in words) is \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents

**BUSINESS REFERENCES**

REFERENCE NO. 1

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

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Project Type & Date of completion: \_\_\_\_\_

REFERENCE NO. 2

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

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Project Type & Date of completion: \_\_\_\_\_

REFERENCE NO. 3

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

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Project Type & Date of completion: \_\_\_\_\_

## Attachment A

### Insurance Requirements for Contractors

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

#### *Minimum Scope and Limits of Insurance*

Contractor shall maintain limits no less than:

- \$2,000,000 **General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO forms CG 20 10 and CG 20 37 to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- \$2,000,000 **Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **Worker's Compensation** as required by the State of California and \$1,000,000 **Employer's Liability** per accident for bodily injury or disease. Contractor shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.

#### *Maintenance of Coverage*

Contractor shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Contractor, his agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

#### *Proof of Insurance*

Contractor shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

#### *Acceptable Insurers*

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

*Waiver of Subrogation*

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Contractor, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

*Enforcement of Contract Provisions (non estoppel)*

Contractor acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

*Specifications not Limiting*

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Contractor maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Contractor.

*Notice of Cancellation*

Contractor agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

*Self-insured Retentions*

Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

*Timely Notice of Claims*

Contractor shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

*Additional Insurance*

Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.

**ATTACHMENT B**

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called Principal, and (Corporation, Partnership or Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter call Surety, are held and firmly bound unto

\_\_\_\_\_  
(Name of Owner)

\_\_\_\_\_  
(Address of Owner)

hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars, (\$\_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2019, a copy of which is hereto attached and made a part hereof for the construction of:

**“A/C Crack Sealing at various locations throughout the City of Madera”**

NOW, THEREFORE, if the Principal shall willingly, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be null and void: otherwise it shall remain in full force and effect.

PROVIDED FURTHER, that 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 work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_  
\_\_\_\_\_ (number)  
counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of  
\_\_\_\_\_, 2020.

ATTEST: \_\_\_\_\_  
Principal  
\_\_\_\_\_  
BY: \_\_\_\_\_(s)  
(Principal) Secretary  
  
(Seal)

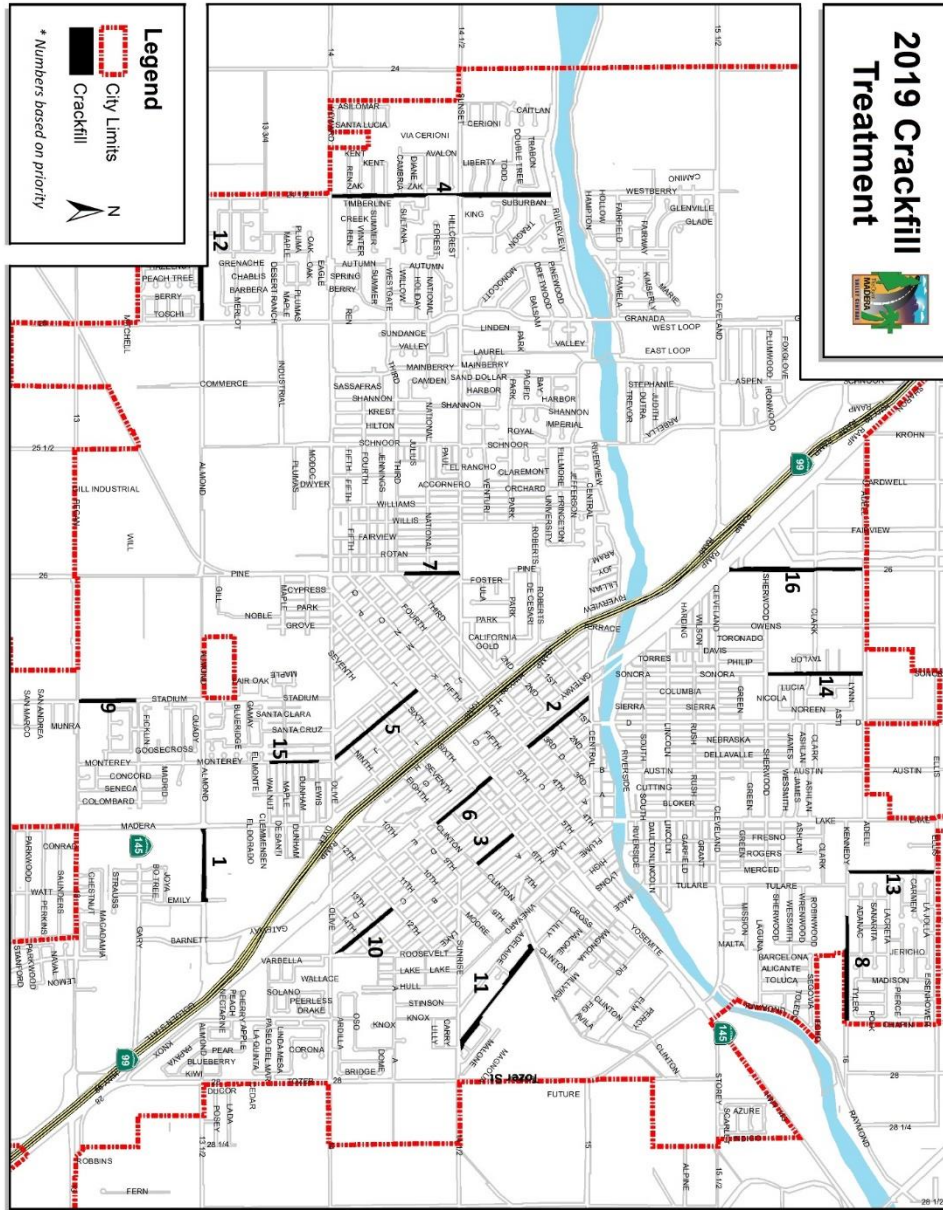
\_\_\_\_\_  
(Witness as to Principal) (Address) \_\_\_\_\_  
\_\_\_\_\_

ATTEST: \_\_\_\_\_  
(Surety) Secretary (Surety) \_\_\_\_\_  
  
(SEAL)

\_\_\_\_\_  
Witness as to Surety BY: \_\_\_\_\_  
Attorney in Fact  
  
\_\_\_\_\_  
(Address) (Address) \_\_\_\_\_  
\_\_\_\_\_

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners shall execute Bond.

# Attachment C



**DRAFT**  
**CITY OF MADERA**  
**ASPHALT PAVEMENT CRACK SEALING SERVICES**

THIS AGREEMENT made and entered into the \_\_\_day of\_\_\_, 2020, by and between the CITY OF MADERA, a municipal corporation of the State of California, hereinafter called "City" and \_\_\_\_\_ hereinafter called "Service Provider";

**RECITALS**

- A. The City is in need of Asphalt Pavement Crack Sealing services and the City has issued a Request for Proposals (RFP) for Asphalt Pavement Crack Sealing Service.
- B. City requires an Asphalt Pavement Crack Sealing Services Agreement from a qualified professional service provider.
- C. Service Provider is a firm having the necessary experience and qualifications to provide services under this Asphalt Pavement Crack Sealing Agreement.
- D. After conducting an RFP process for Asphalt Pavement Crack Sealing services and after review and consideration, City desires to retain Service Provider to provide said services.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, it is agreed by and between the City and the Service Provider as follows:

1. Services. The City hereby contracts with Service Provider to provide Asphalt Pavement Crack Sealing services, herein set forth at the compensation and upon the terms and conditions herein expressed, and Service Provider hereby agrees to perform such services for said compensation, and upon said terms and conditions City hereby authorizes Service Provider to commence work on \_\_\_\_\_, 2020.

2. Obligations, duties and responsibilities of Service Provider. It shall be the duty, obligation and responsibility of the Service Provider, in a skilled and professional manner, to perform, furnish and supply to the City the services and supplies in accordance with the minimum service requirements as listed below:

2.1. Scope of Maintenance Services. **INSERT SCOPE OF WORK**

3. Service Provider's fees and compensation: amount, how and when payable.



3.1 Fees. For all the work and services, including supplies and equipment, pertaining to the Asphalt Pavement Crack Sealing Agreement and supplies required to be furnished by the Service Provider to the City, City agrees to pay to Service Provider and Service Provider agrees to accept and receive as payment in full the following fees and compensation which shall be known as the “Fee” to be paid as hereinafter set forth.

a. Cost Schedule

**INSERT PAYMENT SCHEDULE**

4. Term of Agreement. This Agreement shall be effective on \_\_\_\_\_, 2020, after approval by the City Council at a duly scheduled meeting thereof and shall continue in full force and effect through \_\_\_\_\_, 2021, unless otherwise terminated earlier by one of the parties pursuant to Section 8 of this Agreement. This Agreement may be extended by mutual written consent annually thereafter, not to exceed two (2) additional years, by providing such notice to the parties as identified in Section 8 of this Agreement.

5. Hold Harmless and Insurance Requirements.

5.1 Independent contractor. In the furnishing of the services provided herein, the Service Provider is acting as an independent contractor and not as an employee of the City. Service Provider acknowledges and agrees that at all times, Service Provider or any agent or employee of Service Provider shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Service Provider, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Service Provider or any agent or employee of Service Provider shall not have employee status with City, not be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Service Provider or any agent or employee of Service Provider is liable for the acts and omissions of itself, its employees, and its agents. Service Provider shall be responsible for all obligations and payments, whether imposed by federal, state, or local laws, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Service Provider’s performing services and work, or any agent or employee of Service Provider providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Service Provider or any agent or employee of Service Provider. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Service Provider’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Service Provider performs work under this Agreement

5.2 Indemnification and Waivers. Contractor shall indemnify, defend, and hold harmless the City, its officers, employees, agents and volunteers (“City indemnitees”), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels’ fees and costs of litigation (“claims”), arising out of the Contractor’s performance of its obligations under this agreement or out of the operations conducted by Contractor, except for such loss or damage arising from the active negligence, sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Contractor’s performance of this agreement, the Contractor shall provide a defense to the City indemnitees, or at the City’s option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels’ fees, incurred in defense of such claims.

5.3 Insurance. During the term of this Agreement, Service Provider shall maintain, keep in force and pay all premiums required to maintain and keep in force liability and property damage insurance. The limits of such policy shall be as required by the City of Madera. A copy of the City’s requirements for such insurance coverage is attached hereto as Exhibit “A”.

5.4 The Service Provider shall submit a Performance Bond in the amount of \$50,000 and Insurance Certificates as specified in the contract documents prior to commencing any work.

6. Attorney’s Fees/Venue. In the event that any action is brought to enforce the terms of this Agreement, the party found by the court to be in default agrees to pay reasonable attorney’s fees to the successful party in an amount to be fixed by the Court. The venue for any claim being brought for breach of this Agreement shall be in Madera County.

7. Governing Law. The laws of the State of California shall govern the rights and obligations of the parties under this Agreement, including the interpretation of the Agreement. If any part of the Agreement is adjudged to be invalid or unenforceable, such invalidity shall not affect the full force and effect of the remainder of the Agreement.

8. Termination.

8.1 This Agreement may be terminated at any time by either party upon fifteen (15) calendar days written notice. In the event the Agreement is terminated by either party, Service Provider shall be compensated for services performed to the date of termination based upon the compensation rates and subject to the maximum amounts payable agreed to together with such additional services performed after termination which are authorized in writing by the City representative to wind up the work performed to date of termination.

8.2 City may immediately suspend or terminate this Agreement in whole or in part by written notice where, if in the determination of City, there is:

- a. An illegal use of funds by Service Provider;
- b. A failure by Service Provider to comply with any material term of this Agreement;
- c. A substantially incorrect or incomplete report submitted by Service Provider to City.

In no event shall any payment by City or acceptance by Service Provider constitute a waiver by such party of any breach of this Agreement or any default which may then exist on the part of either party. Neither shall such payment impair or prejudice any remedy available to either party with respect to such breach or default. City shall have the right to demand of Service Provider the repayment to City of any funds disbursed to Service Provider under this Agreement which, as determined by the appropriate court or arbitrator, were not expended in accordance with the terms of this Agreement.

All notices shall be mailed to the City:

City of Madera  
 Public Works – Streets Operation Mgr.  
 1030 South Gateway Drive  
 Madera, CA 93637

To Service Provider:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

9. Compliance with Laws.

9.1 Laws Incorporated by Reference. The full text of the laws listed in this Section, including enforcement and penalty provisions, are incorporated by reference into this Agreement.

9.2 Conflict of Interest. By executing this Agreement, Service Provider certifies that it does not know of any fact which constitutes a violation of Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

9.3. Proprietary Information. In the performance of Services, Service Provider may have access to City’s proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Service Provider, such information must be held by Service Provider in confidence and used only in performing the Agreement. Service Provider shall exercise the same standard of care to protect such information as a reasonably prudent Service Provider would use to protect its own proprietary or confidential information.

9.4. **Nondiscrimination Requirements.** Service Provider shall comply with all state and federal laws in the administration of this Agreement.

9.5. **Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Service Provider to remove from, City facilities personnel of any Service Provider or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

9.6. **Public Records Act.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et seq.). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

10. **Notices.** All notices and communications from the Service Provider shall be to City's Streets Operations Manager. Verbal communications shall be confirmed in writing. All written notices shall be provided and addressed as indicated above.

11. **Assignment.** Neither the City nor the Service Provider will assign its interest in this Agreement without the written consent of the other.

12. **Entire Agreement.** This contract sets forth the entire Agreement between the parties and supersedes all other oral or written provisions. Any changes to this Agreement requested by either City or Service Provider may only be effected if mutually agreed upon in writing by duly authorized representatives of the parties hereto. This Agreement shall not be modified or amended or any rights of a party to it waived except by such a writing.

13. **Venue.** The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation, and performance of this Agreement shall be in the County of Madera.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at Madera, California, the day and year first above written.

CITY OF MADERA

BY: \_\_\_\_\_  
Andrew Medellin, Mayor

BY: \_\_\_\_\_  
Insert Service Provider name

ATTEST:

\_\_\_\_\_  
Alicia Gonzales, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Hilda Cantú Montoy, City Attorney

## Exhibit A

### Insurance Requirements for Contractors

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

#### *Minimum Scope and Limits of Insurance*

Contractor shall maintain limits no less than:

- \$2,000,000 **General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO forms CG 20 10 and CG 20 37 to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- \$2,000,000 **Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **Worker's Compensation** as required by the State of California and \$1,000,000 **Employer's Liability** per accident for bodily injury or disease. Contractor shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.

#### *Maintenance of Coverage*

Contractor shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Contractor, his agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

#### *Proof of Insurance*

Contractor shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

#### *Acceptable Insurers*

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

*Waiver of Subrogation*

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Contractor, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

*Enforcement of Contract Provisions (non estoppel)*

Contractor acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

*Specifications not Limiting*

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Contractor maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Contractor.

*Notice of Cancellation*

Contractor agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

*Self-insured Retentions*

Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

*Timely Notice of Claims*

Contractor shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

*Additional Insurance*

Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.