



REPORT TO CITY COUNCIL

Approved by:

Ismael Hernandez
Ismael Hernandez, Director of Public Works

Arnoldo Rodriguez
Arnoldo Rodriguez, City Manager

Council Meeting of: September 6, 2023

Agenda Number: D-1

SUBJECT:

Agreement for On-Call Asphalt and Concrete Patching Services

RECOMMENDATION:

Adopt a Resolution approving an agreement with Witbro, Inc. for on-call asphalt and concrete patching services for \$590,000

SUMMARY:

The City employs contractors for permanent asphalt and concrete patching services to repair small to medium-service trenches due to the repair of sewer and water infrastructure and failed asphalt areas in streets and alleyways throughout the City. Based on prior years, the City estimates that between 7,000 to 20,000 square feet of asphalt and concrete patching needs to be done annually to repair sewer, water, and other small to medium service trenches and other failed asphalt areas on streets. The annual average cost of asphalt and concrete street patching is \$200,000. The amount of required patching varies based on the amount of infrastructure work and climate conditions such as rain. On average, the City spends \$390,000 repairing failed asphalt areas in alleyways. The annual average amount spent on asphalt and concrete patching for streets and alleyways is \$590,000.

DISCUSSION:

The City released a request for proposals (RFP) for asphalt and concrete on-call patching services on July 21, 2023. A notice of Invitation for Bid (Notice) was advertised in the Madera Tribune on July 22, 2023 and again on July 29, 2023. The notice was also forwarded to 5 construction journals on July 21, 2023, which include:

- Construction Bidboard (Ebidboard)
- Dodge Data & Analytics
- Placer County Contractor's Association & Builder's Exchange

- Builder's Exchange of San Joaquin
- Central California Builder's Exchange

In an effort to reach local businesses, the City sent the Notice to 23 firms that have active business licenses with the City and work in the same category as the RFP. The notice was published on the online platform Planet Bids, where the system notified 27 vendors that are licensed to do the work. In total, 8 vendors expressed interest in submitting a bid but only one bid was submitted to the City.

The sole bidder Witbro, Inc. who does business as Seal Rite Paving and Grading (Seal Rite) submitted the lone bid on August 8, 2023. Under the proposed agreement, Seal Rite must complete work within 30 days of being assigned by the City. The aggregate amount spent under this agreement may not surpass \$590,000 per fiscal year. The agreement is for the fiscal year of 2023/2024 with the option of a one-year extension with the mutual agreement of the City and Seal Rite. The table below lists the costs under the proposed agreement.

Table 1: Seal Rite Paving and Grading Costs			
Description	Unit of Measure	Approximate Quantity	Unit Price
Concrete Patching plus CQS-1H Fog Seal	Square Feet	000-499 SQ/FT	\$18.58
Concrete Patching plus CQS-1H Fog Seal	Square Feet	500-699 SQ/FT	\$18.58
Concrete Patching plus CQS-1H Fog Seal	Square Feet	700+ SQ/FT	\$17.87
Saw Cutting	Linear Feet	All	\$5.00

FINANCIAL IMPACT:

Under the agreement, costs may not exceed \$590,000 for the fiscal year. Patching for streets is funded through Measure T, whereas funding for patching alleyways comes from the solid waste fund, paid by ratepayers through their solid waste bills. These amounts are budgeted under the Streets Department for Public Works.

ALTERNATIVES:

Potential Council alternatives include:

- Not approve the proposed Agreement
- Direct staff to re-release RFP for Asphalt/Concrete Patching on-call services

ATTACHMENTS:

1. Resolution
2. Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA APPROVING AN AGREEMENT WITH WITBRO, INC. DOING
BUSINESS AS SEAL RITE PAVING AND GRADING FOR ON-CALL
ASPHALT/CONCRETE PATCHING SERVICES**

WHEREAS, the City of Madera ("City") has a need for Asphalt/Concrete on-call patching services for streets and alleyways; and

WHEREAS, the City issued a Request for Proposal (RFP) City for Asphalt/Concrete Patching on-call services on July, 21, 2023; and

WHEREAS, the City posted the RFP to the online platform, PlanetBids where the system notified 27 vendors, and the City advertised the RFP in the Madera Tribune on July 22, 2023 and again on July 29, 2023; and

WHEREAS, the City notified 23 local businesses; and

WHEREAS, the City sent the RFP to 5 Construction journals which included the Construction Bidboard, Dodge Data & Analytics, Placer County's Contractor's Association & Builder's Exchange, Builder's Exchange of San Joaquin, and Central California Builder's Exchange; and

WHEREAS, the City received one responsive bid in response to the RFP; and

WHEREAS, Witbro, Inc. doing business as Seal Rite Paving and Grading (Seal Rite) was the sole bidder; and

WHEREAS, an agreement has been prepared between the City and Seal Rite.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY finds, orders, and resolves as follows:

1. The above recitals are true and correct.
2. The City Council approves the Agreement with Witbro, Inc., dba Seal Rite Paving and Grading, which is attached hereto as Exhibit 1, as to its material terms. The Mayor is authorized to execute the same subject to approval as to legal form by the City Attorney.
3. This resolution is effective immediately upon adoption.

* * * * *

CONSTRUCTION AGREEMENT
IFB 202324-02 Fiscal Year 23/24 Asphalt-Concrete Patching On-Call Services Contract

This **Construction Agreement ("Agreement")** is made between the City of Madera, hereinafter called "**OWNER,**" and Witbro, Inc. dba Seal Rite Paving & Grading, doing business as (an individual), or (a partnership), or (a corporation), hereinafter "**CONTRACTOR**" and collectively called "**Parties.**" The Agreement is effective on the last date signed by the Parties at the end of this Agreement.

WITNESSETH: The Parties agree as follows:

1. Project. The **CONTRACTOR** shall commence and complete all **WORK** required for the "IFB 202324-02 FY23/24 Asphalt-Concrete Patching, Various Locations."
2. Materials, Supplies, Equipment. The **CONTRACTOR** shall furnish all of the material, supplies, tools, equipment, labor, and other services necessary for the construction and completion of the **WORK** described in this Agreement.
3. Commencement of Work; Term of Agreement. The **CONTRACTOR** shall commence the **WORK** required by the **CONTRACT DOCUMENTS** within ten (10) calendar days after the date of the **NOTICE TO PROCEED** and will complete the same within 30 calendar days per assigned location. The **CONTRACTOR** shall submit a Payment Bond and Performance Bond in the amount of \$590,000.00, each and Insurance Certificates as specified in the **CONTRACT DOCUMENTS** prior to commencing any **WORK** within fifteen (15) working days after being notified of the award of the contract, and before **OWNER** executes this **AGREEMENT**.

This Agreement shall be effective on September 15, 2023, after approval by the City Council at a duly scheduled meeting thereof and shall continue in full force and effect through June 10, 2024, unless otherwise terminated earlier by one of the parties pursuant to Section 21 of this Agreement. The term may be extended by the City Manager in writing, if extension limited to term only, and if mutually agreed to at least 90 days in advance of expiration, for a period not to exceed one (1) additional one-year extension. An extension which includes compensation modifications will be submitted to the Council for approval.

4. The Contract Amount. **OWNER** agrees to pay, and **CONTRACTOR** agrees to accept, the sum not to exceed Five Hundred Ninety Thousand Dollars (\$590,000.00) ("Contract Price") subject to adjustments for changes in work as may be directed in writing by **OWNER** as payment in full for the **WORK** described in the **CONTRACT DOCUMENTS**. **WORK** performed at unit prices proposed in the **CONTRACT DOCUMENTS** will be paid based on actual quantities of work performed and accepted.

5. Contract Documents. The **CONTRACTOR** shall commence and complete all **WORK** required in accordance with the following **CONTRACT DOCUMENTS**, attached hereto as **Exhibit A:**

- (A) CONTRACTOR Bid Schedule, Unit Prices
- (B) Signed Non-Collusion Affidavit
- (C) Signed Conflict of Interest Disclosure
- (D) Insurance Requirements for Contractors
- (E) Payment Bond
- (F) Performance Bond
- (G) Scope of Work

6. Liquidated Damages. In the event the **CONTRACTOR** does not complete the **WORK** within the time limit specified in Section 3 or within such further time as authorized, the **CONTRACTOR** shall pay to the **OWNER** liquidated damages in the amount of **two hundred dollars (\$200.00)** per day for each and every calendar day delay in finishing the **WORK** beyond the completion date so specified.

7. Payment to Contractor. The **OWNER** will pay to the **CONTRACTOR** in the manner and at such times as set forth in the General Conditions such amounts as required by the **CONTRACT DOCUMENTS**. For any moneys earned by the **CONTRACTOR** and withheld by the **OWNER** to ensure the performance of the Contract, the **CONTRACTOR** may, at his request and expense, substitute securities equivalent to the amount withheld in the form and manner and subject to the conditions provided in Division 2, Part 5, Section 22300 of the Public Contract Code of the State of California.

8. Disputes. In the event of a dispute between the **OWNER** and the **CONTRACTOR** as to an interpretation of any of the specifications or as to the quality or sufficiency of material or workmanship, the decision of the **OWNER** shall for the time being prevail and the **CONTRACTOR**, without delaying the job, shall proceed as directed by the **OWNER** without prejudice to a final determination by negotiation, arbitration by mutual consent or litigation, and should the **CONTRACTOR** be finally determined to be either wholly or partially correct, the **OWNER** shall reimburse him for any added costs he may have incurred by reason of work done or material supplied beyond the terms of the contract as a result of complying with the **OWNER'S** directions as aforesaid. In the event the **CONTRACTOR** shall neglect to prosecute the work properly or fail to perform any provisions of the **CONTRACT**, the **OWNER**, after three days written notice to the **CONTRACTOR**, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to the **CONTRACTOR**, subject to final settlement between the parties as in this paragraph herein above provided.

8A. Claims Resolution Process For Disputes.

It is the intent of this Contract that disputes regarding the Contract be resolved promptly and fairly between the Contractor and the Owner. However, it is recognized that some disputes will require detailed investigation and review by one or both parties before a determination and resolution can be reached. For the protection of the rights of both the Contractor and the Owner, the following provisions are provided for the resolution of disputes which cannot be resolved by

the Owner and the Contractor within three business days after either party gives verbal notice of dispute or potential dispute to the other's attention and prior to the commencement of such work.

The following provisions are intended by Contractor and Owner to comply with Public Contract Code Sections 9204 and 20104 *et. seq.*

1) Claims:

The term "claim" refers to a separate demand by Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

- a) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by Owner under this Contract.
- b) Payment by the Owner of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled.
- c) Payment of an amount that is disputed by the Owner.

2) The Claim Must Be Timely and in Writing:

For all claims the claim must be in writing and include the documents necessary to substantiate the claim. A notice of potential claim must be filed within five (5) business days of Contractor's completion of work that is a potential claim. Notice of an actual claim must be filed on or before the date of final payment.

3) Receipt of Claim by Owner:

Upon receipt of a claim pursuant to this section, the Owner will conduct a reasonable review of the claim and, within a period not to exceed 45 days from the date of receipt, will provide the Contractor with a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, Owner and Contractor may, by mutual agreement, extend the time period provided in this section.

The Contractor shall furnish reasonable documentation to support the claim. If additional information is thereafter required, it shall be requested and provided upon mutual agreement by the Owner and the Contractor. The District's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation.

4) City Council Approval:

If the Owner needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the Owner shall have up to three days following the next duly publicly noticed regular meeting of the City Council after the 45-day period or extension expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

5) Payment of Claim:

Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the Owner issues its written statement. If the Owner fails to issue a written statement, paragraph F below shall apply.

6) Meet and Confer:

If the Contractor disputes the Owner's written response, or if the Owner fails to respond to a claim issued pursuant to this section within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the Owner shall schedule a meet and confer conference within 30 days for settlement of the dispute.

Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the Owner shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the Owner issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the Owner and the Contractor sharing the associated costs equally. The Owner and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

Under this Contract, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

Unless otherwise agreed to by the Owner and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

If mediation as set forth above does not resolve the parties' dispute, the parties will proceed to arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program.

7) Filing a Government Code Written Claim Notice:

Following the meet and confer conference, if the claim or any portion remains in dispute, the Contractor may file a claim under the Torts Claims Act as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code Section 900.

8) Owner's Failure to Respond to Claim:

Failure by the Owner to respond to a claim from Contractor within the time periods described above or to otherwise meet the time requirements set forth above shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the Owner's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the Contractor.

9) Interest:

Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

10) Subcontractor Claims:

If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against Owner because privity of contract does not exist, the Contractor may present to the Owner a claim on behalf of a subcontractor or lower tier

subcontractor. For purposes of this paragraph, the term “subcontractor” means any type of subcontractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with the Contractor or is a lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the Owner shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the Owner and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

11) Filing of Action on Unresolved Claims:

The parties shall follow the procedures set forth in Public Contracts Code Section 20104.4 if an action is filed to resolve claims under the foregoing provisions. Any action shall be filed in Madera County.

9. No Discrimination in Employment. Attention is directed to Section 1735 of the Labor Code, which reads as follows:

“No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical conditions, marital status, or sex of such persons except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for by violation of this chapter”.

10. Workers Compensation. In accordance with the provisions of Article 5, Chapter I, Part 7, Division 2 (commencing with Section 1860) and Chapter 4, Part I, Division 4 (commencing with Section 3700) of the Labor Code of the State of California, the **CONTRACTOR** is required to secure the payment of compensation to his employees and shall for that purpose obtain and keep in effect adequate Worker’s Compensation Insurance.

The undersigned **CONTRACTOR** is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against Liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the **WORK** of this Agreement.

11. Prevailing Wages. This Agreement is subject to California Labor Code Sections 1720, et seq., and Contractor and subcontractor shall pay not less than the specified prevailing rates of wage to all workers employed in performance of the Work. Pursuant to the provisions of

Section 1770 of the California Labor Code, OWNER has obtained the general prevailing rate of wages and employer payments for health and welfare, vacation, pension, and similar purposes, as determined by the Director of the Department of Industrial Relations, a copy of which is on file in the office of OWNER, and shall be made available for viewing to any interested party upon request. The Contractor and each subcontractor shall forfeit as a penalty to OWNER not more than Two Hundred Dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate in violation of the Labor Code. In addition, the difference between the prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

12. Public Works Contractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relation. No bid will be accepted, nor any contract entered into without proof of the Contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Contractor and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project. In addition, Contractor shall provide the registration number for each listed subcontractor in the space provided in the Designation of Subcontractors Form.

This Project is subject to compliance monitoring and enforcement by the Department of Relations. In executing this contract, Contractor acknowledges that it has reviewed all applicable labor compliance requirements and included the cost of complying with such requirements in its bid.

13. Payroll Records. The **CONTRACTOR** shall comply Section 1776 of the California Labor Code. The **CONTRACTOR** shall keep and require that all **SUBCONTRACTORS** keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice worker or other employee employed by him in connection with public work. Such payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the **CONTRACTOR** by the **OWNER**, its officers, and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations. In the event of non-compliance with the requirements of Section 1776, the **CONTRACTOR** shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the **CONTRACTOR** must comply. If **CONTRACTOR** or subcontractor does not comply after such ten (10) day period, the **CONTRACTOR** shall, as a penalty, forfeit one hundred dollars (\$100) for each day or portion thereof for each worker until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

In accordance with California Labor Code Section 1771.4 Section 1771.4, **CONTRACTOR**

and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations (DIR) on a weekly basis and in the format prescribed by the DIR which may include electronic submission. **CONTRACTOR** shall comply with all applicable requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.

14. Apprentices. Attention is directed to the provisions in Sections 1777.5 and 1777.6 of the California Labor Code concerning the employment of apprentices by the **CONTRACTOR** or any **SUBCONTRACTOR**. It is the **CONTRACTOR'S** responsibility to ensure compliance by both it and all **SUBCONTRACTORS**.

Section 1777.5 provides, in part, as follows:

The **CONTRACTOR** or **SUBCONTRACTOR**, if he is covered by this section, upon the issuance of the approval certificate, or if he has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeyman stipulated in the apprenticeship standards. Upon proper showing by the **CONTRACTOR** that he employs apprentices in the craft or trade in the State on all of his/her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by a journeyman, or in the land surveyor classification, one apprentice for each five journeyman, the Division of Apprenticeship Standards may grant a certification exempting the **CONTRACTOR** from the one (1) to five (5) hourly ratio as set forth in this section. This section shall not apply to contracts of general **CONTRACTORS** or to contracts of specialty contractors not bidding for work through a general or prime **CONTRACTOR**, when the contracts of general **CONTRACTORS**, or those specialty **CONTRACTORS** involve less than thirty thousand dollars (\$30,000). Any work performed by a journeyman in excess of eight hours per day or forty (40) hours per week shall not be used to calculate the hourly ratio required by this section.

Apprenticeable craft or trade, as used in this section, shall mean a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a **CONTRACTOR** from the 1 to 5 ratio set forth in this section when it finds that any one of the following conditions is met:

- (a) In the event unemployment for the previous three-month period in such area exceeds an average of 15 percent, or
- (b) In the event the number of apprentices in training in such area exceeds a ratio of 1 to 5, or
- (c) If there is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either (1) on a statewide basis, or (2) on a local basis, or

- (d) If assignment of an apprentice to any work performed under a public works contract would create a condition which should jeopardize his life or the life, safety, or property of fellow employees, or the public at large or if the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

When such exemptions are granted to an organization which represents contractors in a specific trade from the 1 to 5 ratio on a local or statewide basis the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, provided they are already covered by the local apprenticeship standards.

The **CONTRACTOR** is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in apprenticeable trade on such contracts and if other contractors on the public work site are making such contributions. The **CONTRACTOR**, and any **SUBCONTRACTOR** under him, shall comply with the requirements of Sections 1777.5 and 1777.6 of the Labor Code in the employment of apprentices. Information relative to number of apprentices, identifications, wages, hours of employment and standards of working conditions shall be obtained from the Division of Apprenticeship Standards. Consult the white pages of your telephone directory under California, State of, Industrial Relations, Apprenticeship Standards, for the telephone number and address of the nearest office. Willful failure by the **CONTRACTOR** to comply with the provisions of Sections 1777.5 will subject the **CONTRACTOR** to the penalties set forth in Section 1777.7 of the Labor Code.

15. Hours of Work. Pursuant to California Labor Code Section 1813, eight hours in any one calendar day and forty (40) hours in any calendar week shall be the maximum hours any worker is required or permitted to work, except in cases of extraordinary emergency caused by fires, flood, or danger to life and property or except as authorized under the overtime provisions in California Labor Code 1815.

Overtime and shift work may be established as a regular procedure by the **CONTRACTOR** with reasonable notice and written permission of the **OWNER**. No work other than overtime and shift work established as a regular procedure shall be performed between the hours of 6:00 P.M. and 7:00 A.M. nor on Saturdays, Sundays or holidays except such work as is necessary for the proper care and protection of the work already performed or in case of an emergency.

CONTRACTOR agrees to pay the costs of overtime inspection except those occurring as a result of overtime and shift work established as a regular procedure. Overtime inspection shall include inspection required during holidays, Saturdays, Sundays, and weekdays. Costs of overtime inspection will cover engineering, inspection, general supervision, and overhead expenses which are directly chargeable to the overtime work. **CONTRACTOR** agrees that **OWNER** shall deduct such charges from payments due the **CONTRACTOR**.

16. Subcontracting. The **CONTRACTOR** shall comply with Division 2, Chapter 4, Part 1

of the Public Contract Code relating to subletting and subcontracting, specifically included but not limited to Sections 4104, 4106, and 4110, which by this reference are incorporated into this Agreement as though fully set forth herein.

17. Change Orders. The **CONTRACTOR** and the **OWNER** agree that changes in this Agreement or in the work to be done under this Agreement shall become effective only when written in the form of a change order and approved and signed by the **OWNER** and the **CONTRACTOR**. It is specifically agreed that the **OWNER** shall have the right to request any alterations, deviations, reductions or additions to the contract or the plans and specifications or any of them, and the amount of the cost thereof shall be added to or deducted from the amount of the contract price aforesaid by fair and reasonable valuations thereof.

This Agreement shall be held to be completed when the work is finished in accordance with the original plans and specifications as amended by such changes. No such change or modification shall release or exonerate any surety upon any guaranty or bond given in connection with this contract.

18. Indemnification. **Contractor** shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees, and volunteers from and against all liability, loss, damage, expense, and cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with **Contractor's** negligence, recklessness, or willful misconduct in the performance of work hereunder, or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage caused by the sole active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and **Contractor**, or should City otherwise find **Contractor's** legal counsel unacceptable, then **Contractor** shall reimburse the City its costs of defense, including without limitation, reasonable legal counsel fees, expert fees, and all other costs and fees of litigation. The **Contractor** shall promptly pay any final judgment rendered against the City (and its officers, officials, employees, and volunteers) with respect to claims determined by a trier of fact to have been the result of the **Contractor's** negligent, reckless, or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Contractor obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, **Contractor** shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of **Contractor** will be for that entire portion or percentage of

liability not attributable to the active negligence of City.

Contractor agrees to obtain or cause to be obtained executed defense and indemnity agreements with provisions identical to those set forth in this Section from each and every Subcontractor and Subconsultant, of every Tier. In the event the **Contractor** fails to do so, **Contractor** agrees to be fully responsible to provide such defense and indemnification according to the terms of this Section.

19. Contractor must comply with the insurance requirements as described in the section "INSURANCE REQUIREMENTS" of the Contract Documents.

20. Amendments. Any changes to this Agreement requested by either City or **CONTRACTOR** 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 writing.

21. Termination.

A. Termination of the Contract for Default.

1. General: If, prior to the acceptance of the Work, the **CONTRACTOR**:

- (a) Becomes insolvent, assigns its assets for the benefit of its creditors, or is otherwise financially unable to complete the Work;
- (b) Abandons the Work by failing to report to the Work site and diligently prosecute the Work to completion;
- (c) Disregards written instructions from the City Engineer or materially violates provisions of the Contract Documents;
- (d) Fails to prosecute the Work according to the schedule approved by the City;
- (e) Disregards laws or regulations of any public body having jurisdiction; or
- (f) Commits continuous or repeated violations of regulatory or statutory safety requirements, then the OWNER will consider the Contractor in default of the Contract.

2. Notices: Notices and other written communications regarding default between the **CONTRACTOR**, the **OWNER**, and the **SURETY** shall be transmitted as follows:

- (a) Personal delivery with proof of delivery which may be made by declaration under penalty of perjury by any person over the age of 18 years. The proof of delivery shall show that delivery was performed in accordance with these provisions. Service shall be effective on the date of delivery. Notices given to the Contractor by personal delivery may be made to the Contractor's authorized representative at the Work site; or
- (b) Certified mail addressed to the mailing address of the recipient postage prepaid; return receipt requested. Service shall be effective on the date of the receipt of the mailing.

Simultaneously, the OWNER may send the same notice by regular mail. If a notice that is sent by certified mail is returned unsigned, then delivery shall be effective pursuant to regular mail, provided that the notice that was sent by regular mail is not returned.

- 3. Notice to Cure: The OWNER will issue a written notice to cure the default to the Contractor and its Surety. The Contractor shall commence satisfactory corrective actions within 5 Working Days after receipt.
- 4. Notice of Termination for Default: If the Contractor fails to commence satisfactory corrective action within 5 Working Days after receipt of the notice to cure, or to diligently continue satisfactory and timely correction of the default thereafter, then the Owner will recommend to the City Council that the Contractor be found in default of the Contract and upon such finding by the City Council will terminate the Contractor's right to perform under the Contract by issuing a written notice of termination for default to the Contractor and its Surety;

The provisions of this subsection shall be in addition to all other legal rights and remedies available to the Owner.

- 5. Responsibilities of the Surety: Upon receipt of the written notice of termination for default, the Surety shall immediately assume all rights, obligations, and liabilities of the Contractor under the Contract. If the Surety fails to protect and maintain the Work site, the Owner may do so, and may recover all costs incurred. The Surety shall notify the Owner that it is assuming all rights, obligations, and liabilities of the Contractor under the Contract and all money that is due, or would become due, to the Contractor shall be payable to the Surety as the Work progresses, subject to the terms of the Contract.

Within 15 Working Days of receipt of the written notice of termination for default, the Surety shall submit to the Owner a written plan detailing the course of action it intends to take to remedy the default. The Owner will review the plan detailing and notify the Surety if the plan is satisfactory. If the Surety fails to submit a satisfactory plan, or if the Surety fails to maintain progress according to the plan accepted by the Owner, the Owner may, upon 48 hours written notice, exclude the Surety from the premises, take possession of all material and equipment, and complete the Work in any way the Owner deems to be expedient. The cost of completing the Work by the Owner shall be charged against the Surety and may be deducted from any monies due, or which would become due, the Surety. If the amounts due under the Contract are insufficient for completion, the Surety shall pay the Owner, within 30 Days after the Owner submits an invoice, all costs in excess of the remaining Contract Price.

6. Payment: The Surety will be paid for completion of the Work in accordance less the value of damages caused to the Owner by the acts of the Contractor.
- B. Termination of the Contract for Convenience.

The OWNER may terminate the Contract if it becomes impossible or impracticable to proceed, or because of conditions or events beyond the control of the OWNER.

1. Notice: The Owner will issue a written notice of termination for convenience as follows:
Personal delivery, with proof of delivery which may be made by declaration under penalty of perjury by any person over the age of 18 years. The proof of delivery shall show that delivery was performed in accordance with these provisions. Service shall be effective on the date of delivery. Notices given to the Contractor by personal delivery may be made to the Contractor's authorized representative at the Work site; or
Certified mail addressed to the mailing address of the recipient postage prepaid; return receipt requested. Service shall be effective on the date of the receipt of the mailing.

Simultaneously, the Owner may send the same notice by regular mail. If a notice that is sent by certified mail is returned unsigned, then delivery shall be effective pursuant to regular mail, provided that the notice that was sent by regular mail is not returned.

2. Cessation of Work: Upon receipt, the Contractor shall immediately

cease work, except work the Contractor is directed to complete by the Engineer or required to complete for public safety and convenience. The Contractor shall immediately notify Subcontractors and suppliers to immediately cease their work.

3. Payment: The Contractor will be paid without duplication for:
- (a) Work completed in accordance with Contract Documents prior to the effective date of termination for convenience;
 - (b) Reasonable costs incurred in settlement of terminated contracts with Subcontractors, suppliers, and others; and
 - (c) Reasonable expenses directly attributable to termination.

Notice of termination shall be mailed to the City:

Arnoldo Rodriguez
City of Madera
205 West 4th Street
Madera, CA 93637

Notice of Termination shall be mailed to the Contractor:

Brooke Ashjian
Witbro, Inc, dba Seal Rite Paving & Grading
4237 W. Swift Avenue
Fresno, CA 93722

All notices and communications from shall be to City's designated Project Manager or Principal-In-Charge. Verbal communications shall be confirmed in writing. All written notices shall be provided and addressed as soon as possible, but not later than thirty (30) days after termination.

22. Warranty. Contractor warrants to OWNER that all materials and equipment furnished shall be new, free from faults and defects and of good quality and conform to the requirements of the Contract Documents. Contractor hereby warrants its work against all deficiencies and defects for the period required by the Contract Documents or the longest period permitted by California Law, whichever is greater. Unless otherwise stated in the Contract Documents, warranty periods shall begin upon the filing of the Notice of Completion and shall be for one year.

This section shall not limit OWNER's rights under this Agreement or with respect to latent defects, gross mistakes, or fraud. OWNER specifically reserves all rights related to defective work,

including but not limited to defect claims pursuant to California Code of Civil Procedure section 337.15.

23. Compliance with Laws. City shall at all times observe and comply, and shall cause all of its agents, subcontractors, and employees to observe and comply with all with all Federal, State, and local laws, ordinances, regulations, and provisions applicable in the performance of City's services. Wherever reference is made in this Agreement to standards or codes in accordance with which work is to be performed or tested, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply unless otherwise expressly stated.

24. Attorneys' 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 attorneys' 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 or as appropriate in the U.S. District Court for the Eastern District of California, located in the City of Madera.

25. Governing Law. The laws of the State of California shall govern the rights and obligations of the parties under the 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.

26. City's Authority. Each individual executing or attesting to this Agreement on behalf of the City hereby covenants and represents: (i) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of such corporation in accordance with a duly adopted resolution of the corporation's articles of incorporation or charter and bylaws; (ii) that this Agreement is binding upon such corporation; and (iii) that Contractor is a duly organized and legally existing municipal corporation in good standing in the State of California.

27. Contractor's Legal Authority. Each individual executing or attesting this Agreement on behalf of **CONTRACTOR** hereby covenants and represents: (i) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of such corporation in accordance with such corporation's articles of incorporation or charter and by-laws; (ii) that this Agreement is binding upon such corporation; and (iii) that **CONTRACTOR** is a duly organized and legally existing corporation in good standing in the State of California.

28. Remedies for Default. Failure by a party to perform any term, condition or covenant required of the party under this Agreement shall constitute a "default" of the offending party under this Agreement. In the event that a default remains uncured for more than ten (10) days following receipt of written notice of default from the other party, a "breach" shall be deemed to have occurred. Any failure or delay by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

29. Independent Contractor. In performance of the work, duties, and obligations assumed by the Contractor under this Agreement, it is mutually understood and agreed that the City, including any and all of City's officers, agents and employees will, at all times, be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of **City**. Furthermore, **City** shall have no right to control or supervise or direct the manner or method by which City shall perform its work and functions. The City shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over the subject matter hereof.

Because of its status as an independent contractor, **CONTRACTOR** shall have absolutely no right to employment rights and benefits available to **City** employees. City shall be solely liable and responsible for providing to, or on behalf of, its employees, all legally required employee benefits. In addition, City shall be solely responsible and hold **City** harmless from all matters relating to payment of City's employees, including compliance with Social Security, withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, City may be providing services to others unrelated to **City** or to this Agreement.

30. Sole Agreement. This instrument constitutes the sole and only Agreement between City and **CONTRACTOR** in connection to the Project and correctly sets forth the obligations of the City and **CONTRACTOR** to each other as of its date. Any Agreements or representations in connection with the Project, not expressly set forth in this instrument are null and void.

31. Assignment. Neither the **CONTRACTOR** nor City will assign its interest in this Agreement without the written consent of the other.

32. Caltrans Authority. Caltrans is required by 23 Code of Federal Regulations (CFR), part 200, Section 200.9 (b)(7) to conduct reviews of sub-recipients (Local Agencies) of federal-aid to ensure compliance with Title VI of the Civil Rights Act of 1964 and the related statutes (Title VI) through the requirements under the Federal Highway Administration (FHWA), the U.S. Department of Transportation (USDOT), and the U.S. Department of Justice (USDOJ) regulations and guidance materials related to the implementation of Title VI.

The scope of the process reviews conducted by Caltrans focuses on the Local Agency's adherence to the FHWA's Title VI Program (Race, Color and National Origin) and the related statutes protecting additional classes as required under

- Federal-Aid Highway Act of 1973 (Sex)
- The Age Discrimination Act of 1975 (Age), and
- The Americans with Disabilities Act of 1990 (ADA)(Disability) and Section 504 of the Rehabilitation Act of 1973 (Disability).

33. Binding Agreement. This Agreement shall be binding upon all parties hereto and

their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in THREE copies, each of which shall be deemed an original on the date first above written.

CITY OF MADERA (OWNER)

WITBRO, INC. DBA SEAL RITE PAVING & GRADING

By: _____
Santos Garcia, Mayor

By: _____
Contractor (signature)

APPROVE AS TO FORM:

Brooke Ashjian, Chief Executive Officer

Shannon Chaffin, City Attorney

Federal Tax I.D. No.

ATTEST:

Contractor License Number

Alicia Gonzales, City Clerk

DIR Registration Number

Exhibit A:

- (A) CONTRACTOR Bid Schedule, Unit Prices
- (B) Signed Non-Collusion Affidavit
- (C) Signed Conflict of Interest Disclosure
- (D) Insurance Requirements for Contractors
- (E) Payment Bond
- (F) Performance Bond
- (G) Scope of Work

NOTE: This Notary Acknowledgment on the following page is required for verification of Contractor's signature.

Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

State of California)

County of _____)

On _____, 2023 before me, _____
(insert name and title of officer)

Personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

BID SCHEDULE

The following Bid Schedule lists the items necessary to complete the work. Each item is all inclusive and must include the total cost of labor and materials necessary to complete the work. Bidder will fully complete the schedule including the amount in words of EACH ITEM. If the unit price of any item is inconsistent with the amount in words, the amount in words shall prevail. Payment of each item will be based on the actual quantity, except for those items bid lump sum and those items that are noted as fixed quantities.

ITEM NO.	ITEM DESCRIPTION	UNIT OF MEASURE	APPROX QTY	UNIT PRICE	AMOUNT IN WORDS
1.	Concrete Patching plus CQS-1H Fog Seal	SF	000-499 sq/ft	\$18.58	Eighteen dollars and fifty-eight cents
2.	Concrete Patching plus CQS-1H Fog Seal	SF	500-699 sq/ft	\$18.58	Eighteen dollars and fifty-eight cents
3.	Concrete Patching plus CQS-1H Fog Seal	SF	700+ sq/ft	\$17.87	Seventeen dollars and eighty-seven cents
4.	Saw Cutting	LF	All	\$5.00	Five dollars zero cents

In case of discrepancy between words and figures, the words shall prevail and, shall be utilized as the basis for determining the lowest responsive, responsible bidder.

NONCOLLUSION AFFIDAVIT

(Title 23 United States Code Section 112 and Public Contract Code Section 7106)

To the CITY of MADERA

In conformance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Name of Bidder _____

Signature _____

Name _____

Title _____

Dated _____

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

DISCLOSURE OF CONFLICT OF INTEREST

		YES*	NO
1	Are you currently in litigation with the City of Madera or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Madera?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Madera?	<input type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Madera, or in a business which is in litigation with the City of Madera?	<input type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Madera employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

Signature _____

(name) _____

(address) _____

(city state zip) _____

☐ Additional page(s) attached.

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.

Indemnification

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.

PAYMENT 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, and also by the provisions of Part 2, Title 14, Chapter 2 of the California Code of Civil Procedure (Section 995.010, et seq.) and of Section 3247, et seq. of the California Civil Code.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the _____ day of _____, 2023, a copy of which is hereto attached and made a part hereof for the construction of:

"Fiscal Year 2023/2024 Asphalt/Concrete Patching On-Call Services Contract, IFB 202324-02"

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 _____ counterparts, each one of which shall be deemed an original, this the _____ day of _____, 2023.

ATTEST: _____

Principal

(Principal) Secretary BY: _____(s)

(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.

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 _____, 2023, a copy of which is hereto attached and made a part hereof for the construction of:

“Fiscal Year 2023/2024 Asphalt/Concrete Patching On-Call Services Contract, IFB 202324-02”

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 _____, 2023.

ATTEST: _____

Principal

(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.

SCOPE OF WORK

- A. The City is in need of small, permanent Asphalt-Concrete (A/C) patching services for the repair of sewer, water, and other similar small to medium-service trenches as well as failed asphalt areas in streets and alleyways throughout the City.
- B. All work to be done to City Standards. Standard Specifications and Standard Drawings are available online at <https://www.madera.gov/home/departments/engineering/standard-drawings/>.
- C. All permanent repairs require saw cutting when applicable, removing materials to a minimum six-inch depth, compacting/stabilizing and full depth A/C repairs. Any situation necessitating a variation from these requirements would be at the direction of authorized personnel within the City's Public Works Department.
- D. The successful bidder shall request an Underground Service Alert (USA) on all repair sites, assigned by the Public Works Department, at least two days prior to beginning work.
- E. All expenses for materials, including either SS-1H or CQS-1H Fog Seal 50/50 mix, removal and disposal of existing pavement, clean-up, traffic control, advanced warning and construction barricades and signing, shall be included in your bid.
- F. The contractor must comply with all safety requirements as set forth in the latest editions of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), as well as the MUTCD California Supplement.
- G. All work must be completed within 30 days of receipt of assignment from the Public Works Department. No mandated schedule is set. Lists of areas to be patched will be given to the contractor as needed, and they will set their own schedule according to the amount of work on the list. They will be expected to inform the Streets Division of their schedule to allow for inspection by the Division and must complete all assigned work within 30 days of receipt of assignment.
- H. When permanent asphalt patching is required for an area that has had a utility repair such as a water or sewer line repair, the repair will already have been completed by the City or other utility. The trench or patch area that requires the permanent A/C will have been filled in with either base rock or cold patch material temporarily which would have to be removed to the correct depth to complete the final repair. In this case traffic control would need to be provided for final repair only. Extra saw cutting may be required if there was damage to repair area prior to final phase of work. Note this does not apply when completing the repair for a failed area not covered under a utility repair.