

CONSTRUCTION CONTRACT

THIS CONTRACT made on _____ by, and between, **SUNNYSLOPE COUNTY WATER DISTRICT** (District), and _____, herein (Contractor). Any and all obligations of the District and Contractor, collectively “Parties” are fully set forth and described herein.

In consideration of the mutual covenants and conditions set forth in this Contract, the Parties agree as follows:

1. **WORK TO BE PROVIDED**

Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete the Work in a good and workmanlike manner, as called for, and in the manner designated in, and in strict conformity with, the specifications in the District Notice Inviting Bids and Bid Form.

The Work is generally described as follows:

- a. The District will backfill the trench with sand and class 2 base rock materials compacted to 95% relative compaction, with 1-inch thick cold mix asphalt cover, and saw cut existing asphalt at least 12 inches from the trench wall. Contractor must provide traffic control, remove the top 5 inches of material (cold mix asphalt, class 2 base rock, and saw cut asphalt sections), re-compact the sub grade to 95% relative compaction, apply liquid asphaltic binder to the edges of the saw cut edge, and repave the trench with 5 inches of hot mix asphalt compacted to 95% relative compaction. Hot mix asphalt shall be appropriately rolled to match with the existing paved area. Contractor shall be responsible for the disposal of all excess material. All Work shall be done in conformance with the City of Hollister Standard Drawing E-4 “Trench Resurfacing”.
- b. Trench restoration shall be completed within three month of Contractor notification by the District. However, the District may at its discretion require Contractor to complete restoration within two weeks of notification if there is a public safety concern.
- c. All Work shall be completed under the sole direction and control of Contractor, and subject to inspection and approval of the District, or its representatives.
- d. Contractor shall warranty the work product for a period of one year from the final completion of the repair. Contractor shall be responsible to promptly and adequately repair any deformation, settlement, cracks, bulges, or other issues with the asphalt patch repair within that one year period at no cost to the District.

2. **ADDITIONAL PROVISIONS**

The following exhibits and documents are incorporated herein by reference and constitute part of this Contract: Bid Form; Notice Inviting Bids and City of Hollister Standard Drawing E-4 “Trench Resurfacing”

3. **PERFORMANCE STANDARDS**

a. Contractor warrants that Contractor and its agents, employees, and subcontractors performing the Work under this Contract are specially trained, experienced, competent, and appropriately licensed to perform the Work and deliver the services required under this Contract and are not employees of the District, or immediate family of a District employee.

b. Contractor, its agents, employees, and subcontractors shall perform all Work in a safe and skillful manner and in compliance with all applicable laws and regulations. All Work performed under this Contract that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

c. All Work under the terms of this Contract shall be performed at the sole direction and control of Contractor, and subject to inspection and approval of the District, or its representatives.

4. **PAYMENT**

The District agrees to pay, and Contractor agrees to accept full payment for the Work above agreed to be completed, the amount of _____ per square foot of trench restoration. Included within this price are all labor, materials, tools, equipment, traffic control, and other miscellaneous costs. At the Contractor’s written request the square foot bid price shall be adjusted annually by the ENR Construction Cost Index for the San Francisco Bay area. Any additional work required beyond that described herein is subject to authorization by the District Field Representative and shall be paid for on a time and materials basis.

Contractor shall submit monthly invoices to the District for Work provided in the previous one month period. The invoice shall include the date, location, and square footage of individual trench restorations along with the price per square foot and any other pertinent information as determined by the District.

5. **PREVAILING WAGE RATES**

The Work under this Contract qualifies as Public Works subject to California Labor Code Section 1720 et seq. Contractor shall comply with and be bound by all pertinent sections of the Labor Code beginning with Section 1720 regarding payment of prevailing wage rates, holiday and overtime pay, hiring of apprentices, workers compensation insurance, etc., all as set forth by the California Department of Industrial Relations (DIR). Contractor shall be registered with DIR as a Public Works Contractor and abide by all relevant reporting requirements. Contractor is responsible for

maintaining all applicable payroll records and reports, which shall be made available to District for review upon written request.

6. **TERM OF CONTRACT**

The term of this Contract shall commence upon execution hereof by Contractor and the District and shall extend for four (4) years unless terminated sooner pursuant to the terms of this Contract, after which the existing contact may be extended for one four (4) year period with the approval of Contractor and District Board of Directors (Board).

7. **INSURANCE**

Without limiting Contractor's duty to indemnify, Contractor shall maintain, at no cost to the District, throughout the term of this Contract a policy or policies of insurance covering all of Contractor's Work hereunder with the following minimum limits of liability:

- a. General liability insurance, including but not limited to premises, personal injury, products, and completed operations, with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- b. Comprehensive automobile liability insurance covering all motor vehicles, including owned and non-owned vehicles used in providing services related to the Work previously described, with a combined single limit of \$2,000,000 per occurrence.
- c. Worker's compensation insurance or self-insurance of not less than \$1,000,000 indicating compliance with any applicable Labor Codes, acts, laws, or statutes, whether federal or state.

Contractor shall file a certificate of insurance with the District as evidence that Contractor has the insurance coverages required under this Contract. The District shall be notified in writing thirty (30) days prior to any cancellation or material change in the insurance.

8. **TERMINATION**

The District may terminate this Contract for any reason by giving written notice of termination at least fourteen (14) days prior to the effective termination date, which shall be specified in such notice. The District may immediately terminate this Contract for good cause. "Good cause" includes but is not limited to a breach of or failure to perform any section of this Contract, poor workmanship, and excessive and undue delay between District notice of a trench requiring restoration and Contractor's execution of said restoration. In the event of such termination, the amount payable under this Contract shall be limited to payment for the Work performed prior to the date of termination.

9. **INDEMNIFICATION**

Contractor shall, to the fullest extent allowable by law, indemnify, defend, and hold the District and its directors, officers, employees, and agents harmless against any and all claims, demands, expenses, and liability occurring or resulting to any and all persons, firms, or corporations for

damage, injury, or death which arise out of or are related to Contractor's performance of the Work, unless such claim, demand, expense, or liability is caused by the District's sole negligence or willful misconduct. "Contractor's performance" includes Contractor's action or inaction or the action or inaction of Contractor's officers, employees, or agents.

10. **AMENDMENTS & MODIFICATIONS**

No modification or amendment of this Contract shall be valid unless it is set forth in writing and executed by the Parties hereto.

11. **LICENSING REQUIREMENTS**

Contractor is required, by law, to be licensed and regulated by Contractor's state license board and must abide by all licensing and reporting regulations.

12. **APPRENTICES**

Contractor agrees to comply with all provisions of the law regarding the employment of apprentices. (Labor Code §§ 1773.3, 1777.5, 1777.6 and 3077 et seq.) These Labor Code sections require Contractor employ apprentices in apprenticeship occupations in a ratio of not less than one (1) apprentice for each five (5) journeyman hours, unless an exemption is granted. Contractor shall not discriminate among otherwise qualified employees as indentured apprentices on any Public Works project solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age. Only apprentices who are in training under written apprenticeship agreements shall be employed on Public Works contracts in apprenticeship occupations. The responsibility for compliance with these provisions for all apprenticeship occupations rests with Contractor.

13. **PAYROLL RECORDS.**

Pursuant to Labor Code §1776, Contractor shall keep accurate 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 it in connection with the Work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: 1) The information contained in the payroll record is true and correct; 2) The employer has complied with the requirements of Labor Code §§1771, 1811, and 1815 for any Work performed. Payroll records enumerated shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor.

14. **INDEPENDENT CONTRACTOR.**

In the performance of the Work, duties, and obligations under this Contract, Contractor is at all times acting and performing as an independent contractor and not as an employee of the District. No offer or obligation of permanent employment with the District is intended in any manner, and Contractor shall not become entitled by virtue of this Contract to receive from District any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation

coverage, insurance or disability benefits. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of this Contract. In connection therewith, Contractor shall defend, indemnify, and hold District harmless from any and all liability which District may incur because of Contractor's failure to pay such taxes.

15. NON-DISCRIMINATION

Throughout the performance of this Contract, Contractor, and its subcontractors, shall not unlawfully discriminate against any person because of race, color, religion, gender, national origin, ancestry, physical disability, medical condition, marital status, age older than 40, or sexual preference, either in Contractor's employment practices or in the furnishing of services to recipients. Contractor shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination and shall comply fully with all federal, State and local laws and regulations which prohibit discrimination.

16. NOTICES.

Notices required under this Contract shall be delivered personally or by first-class, postage pre-paid mail to the District's and Contractor's contract administrators at the addresses listed below:

FOR DISTRICT:	FOR CONTRACTOR:
Drew Lander General Manager 3570 Airline Highway Hollister, CA 95023 (831) 637-4670 drew@sscwd.org	Email

17. GOVERNING LAWS

This Contract shall be construed and enforced according to the laws of the State of California, and the Parties hereby agree that the County of San Benito shall be the proper venue for any dispute arising hereunder.

18. DISPUTES

- a. Contractor shall continue to perform under this Contract during any dispute. The Parties agree to make good faith efforts to resolve disputes as quickly as possible.
- b. Claims

(1) Upon receipt of a claim by Contractor, the District shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide Contractor a written statement identifying the portions of the claim that are disputed and undisputed. The Parties may, by mutual agreement, extend the time period.

(a) Contractor shall furnish reasonable documentation to support the claim.

(b) If the District needs approval from its Board to provide Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the Board 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 District shall have up to three days following the next duly publicly noticed Board meeting after the 45-day period, or extension, expires to provide Contractor a written statement identifying the disputed portion and the undisputed portion.

(c) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the District issues its written statement. If the District fails to issue a written statement, paragraph (2) shall apply.

(2) If Contractor disputes the District's written response, or if the District fails to respond to a claim issued pursuant to this section within the time prescribed, 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 District shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(a) 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 District shall provide 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 District issues its written statement. Any disputed portion of the claim, as identified by Contractor in writing, shall be submitted to nonbinding mediation, with the Parties sharing the associated costs equally. The Parties 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.

(b) For purposes of this section, 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.

(c) Unless otherwise agreed to by the Parties in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(d) The District is not precluded from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the Parties' dispute.

(3) Failure by the District to respond to a claim from Contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim denied by reason of the District'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 Contractor.

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

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against the District because privity of contract does not exist, Contractor may present to the District a claim on behalf of a subcontractor or 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 Contractor present a claim for work 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 District shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, Contractor shall notify the subcontractor in writing as to whether Contractor presented the claim to the District and, if Contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

c. In the event any dispute arising from or relating to this Contract results in litigation or arbitration, the prevailing party shall be entitled to recover all reasonable costs incurred, including court costs, attorneys' fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers (whether or not called to testify), and other related expenses. Recovery

of these expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

19. UNFAIR BUSINESS PRACTICES CLAIM

In accord with California Public Contracts Code § 7103.5, Contractor agrees to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time the District tenders final payment to Contractor, without further acknowledgment by the Parties.

20. CONSTRUCTION OF CONTRACT

The Parties agree that each party has fully participated in the review and revision of this Contract and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Contract or any exhibit or amendment. To that end, it is understood and agreed that this Contract has been arrived at through negotiation, and that neither party is to be deemed the party which prepared this Contract within the meaning of Civil Code section 1654.

21. CONFLICT OF INTEREST

Contractor represents it presently has no interest and agrees not to acquire any interest during the term of this Contract which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the Work required to be rendered under this Contract.

22. NON-EXCLUSIVE CONTRACT

This Contract is non-exclusive and both Parties expressly reserve the right to contract with other entities for the same or similar services.

23. WAIVER

Any waiver of any term or condition hereof must be in writing and signed by the District. No such waiver shall be construed as a waiver of any other term or condition herein.

24. SUCCESSORS AND ASSIGNS

This Contract and all rights, privileges, duties and obligations hereunder, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the Parties and their respective successors, permitted assigns and heirs. Contractor shall not assign, sell, mortgage or otherwise transfer its interest or obligations in this Contract without the prior written consent of the District.

25. COUNTERPARTS

This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Contract.

26. AUTHORITY

Any individual executing this Contract on behalf of the District or Contractor represents and warrants hereby that he or she has the requisite authority to enter into this Contract on behalf of such party and bind the party to the terms and conditions of this Contract.

27. SEVERABILITY

If any of the provisions contained in the Contract are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of the Contract for any cause. If a part of this Contract is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Contract is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

28. ENTIRE CONTRACT

As of the effective date, this Contract, including the exhibits and any documents incorporated by reference, represents the entire Contract between the District and Contractor with respect to the subject matter of this Contract, and supersedes any and all prior written or oral negotiations and representations between the Parties concerning all matters relating to the subject of this Contract.

29. ACCIDENT PROTECTION

Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building codes, and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Occupational Safety and Health Standards Board of the State of California.

IN WITNESS WHEREOF, two identical counterparts of this Contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties named, on the day and year first herein written.

SUNNYSLOPE COUNTY WATER DISTRICT

CONTRACTOR

Signature: _____

Signature: _____

Name: Drew Lander

Name: _____

Title: General Manager

Title: _____

Date: _____

Date: _____