

## SECTION 00500 – AGREEMENT FOR THE CONSTRUCTION OF SHASTA PARK AREA PAVEMENT IMPROVEMENT PROJECT

This AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ by and between City of Manteca, hereinafter called the "City," and  
\_\_\_\_\_ Tom Mayo Construction, Inc. \_\_\_\_\_, hereinafter  
called the "Contractor."

### W I T N E S S E T H:

#### Article 1. WORK

WHEREAS, the City has caused the contract documents to be prepared comprised of bidding and contract requirements and technical specifications and plans for the construction of the SHASTA PARK AREA PAVEMENT IMPROVEMENT PROJECT (PROJECT) as described therein, and

WHEREAS, the Contractor has offered to perform the proposed work in accordance with the terms of this AGREEMENT and the contract documents in the sum of \$ 1,083,421.70.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the Contractor hereby agrees to complete the work at the total bid and on the terms and conditions herein contained, and the City agrees to pay the Contractor as provided herein for the fulfillment of the work and the performance of the covenants set forth herein.

The further terms, conditions, and covenants of the Contract are set forth in the contract documents, each of which is by this reference made a part hereof.

#### Article 2. ENGINEER

The Project has been designed by Engineering Department, the City Engineer will assume all duties and responsibilities, and have the rights and authority assigned to the Engineer of Record in connection with completion of this PROJECT and in accordance with the contract documents.

#### Article 3. CONTRACT TIMES

##### 3.1. TIME ALLOWED FOR COMPLETION

The Work shall be completed within **60 calendar days** of Notice to Proceed for Substantial Completion and **75 calendar days** after Substantial Completion for Final Completion as provided in Paragraph 2.03 of the General Conditions, and ready for final payment in accordance with Paragraph 14.07B of the General Conditions

##### 3.2. LIQUIDATED DAMAGES

Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in

Paragraph 3.1. above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time.

Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$1,500 for each calendar day that expires after the time specified in Paragraph 3.1 for Substantial Completion until the Work is substantially complete.

After Substantial Completion, if Contractor shall neglect, refuse or fail to complete the remaining Work within the time specified in Paragraph 3.1. for completion and readiness for final payment or any proper extension thereof granted by Owner, Contractor shall pay Owner \$1,500 for each calendar day that expires after the time specified in Paragraph 3.1. for completion and readiness for final payment.

#### **Article 4. PAYMENT PROCEDURES**

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Construction Manager as provided in the General Conditions.

#### **Article 5. INTEREST**

Payment of interest shall be as provided in the General Conditions.

#### **Article 6. CONTRACTOR'S REPRESENTATIONS**

In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- 6.1. Contractor has thoroughly examined and carefully studied the contract documents (including the Addenda listed in Paragraph 8.) and the other related data identified in the Bidding Documents including "technical data."
- 6.2. Contractor has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 6.3. Contractor is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work.
- 6.4. Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site which have been identified in the Supplementary Conditions as provided in Paragraph 4.02A. of the General Conditions.

Contractor accepts the determination set forth in Paragraph 4.02. of the Supplementary

Conditions of the extent of the "technical data" contained in such reports and drawings upon which Contractor is entitled to rely as provided in Paragraph 4.02. of the General Conditions.

Contractor acknowledges that such reports and drawings are not contract documents and may not be complete for Contractor's purposes.

Contractor acknowledges that Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the contract documents with respect to Underground Facilities at or contiguous to the site.

Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.

Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the contract times and in accordance with the other terms and conditions of the contract documents.

- 6.5. Contractor is aware of the general nature of work to be performed by Owner and others at the site that relates to the Work as indicated in the contract documents.
- 6.6. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the contract documents and all additional examinations, investigations, explorations, tests, studies and data with the contract documents.
- 6.7. Contractor has given Owner written notice of all conflicts, errors, ambiguities or discrepancies in the contract documents and the written resolution thereof by Engineer through issued addendum or addenda is acceptable to Contractor, and the contract documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work. When said conflicts, etc., have not been resolved through interpretation or clarification by Owner, because of insufficient time or otherwise, Contractor has included in the Bid the greater quantity or better quality of Work, or compliance with the more stringent requirement resulting in a greater cost; and said greater cost is included in the Contract Price.

## **Article 7. CONTRACT DOCUMENTS**

The contract documents which comprise the entire agreement between Owner and Contractor concerning the Work consist of the following:

- 7.1. This Agreement.

- 7.2. Exhibits to this Agreement.
- 7.3. Performance, Payment, and other Bonds.
- 7.4. Notice to Proceed.
- 7.5. General Conditions.
- 7.6. Supplementary Conditions.
- 7.7. Drawings consisting of a cover sheet and sheets numbered 1 through \_\_\_\_.
- 7.8. Addenda number \_\_\_\_ to \_\_\_\_, inclusive.
- 7.9. Bid Period Questions and Answers (Enclosure A).
- 7.10. Contractor's Bid (pages \_\_\_\_ to , \_\_\_\_ inclusive) marked Exhibit \_\_\_\_.
- 7.11. Documentation submitted by Contractor prior to Notice of Award (pages \_\_\_\_ to \_\_\_\_ inclusive).
- 7.12. City of Manteca Standard Plans and Specifications.
- 7.13. State of California Department of Transportation (Caltrans) 2024 Standard Plans and Specifications.
- 7.14. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached thereto:
- 7.15. All written amendments and other documents amending, modifying or supplementing the contract documents pursuant to Paragraph 3.04 of the General Conditions.

There are no contract documents other than those listed above in this Article 7. The contract documents may only be amended, modified or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **Article 8. MISCELLANEOUS**

- 8.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 8.2. No assignment by a party hereto of any rights under or interests in the contract documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any

written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the contract documents.

8.3. Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the contract documents.

8.4. Any provision or part of the contract documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the contract documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, this agreement has been executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Name of Contractor

**CITY OF MANTECA**

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Toni Lundgren, City Manager

**ATTEST**

\_\_\_\_\_  
Title of Signator

\_\_\_\_\_  
Cassandra Candini-Tilton, City Clerk

\_\_\_\_\_  
Address

**APPROVED AS TO FORM**

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
David Nefouse, City Attorney  
By: Daniella Green, Assistant City Attorney

\_\_\_\_\_  
Contractor's License No.

**\*\*END OF SECTION\*\***