



**COUNTY OF EL DORADO
COMMUNITY DEVELOPMENT SERVICES
DEPARTMENT OF TRANSPORTATION**

AGREEMENT No. 471-C1799 FOR CONSTRUCTION SERVICES

THIS AGREEMENT made and entered into by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California, acting through the governing body or board thereof (hereinafter referred to as "County"), and Pavement Coatings Co., a duly qualified contractor to conduct business in the State of California (hereinafter referred to as "Contractor");

RECITALS

That for and in consideration of the mutual promises, covenants, agreements, and conditions herein contained, the parties hereto agree with each other as follows:

1. Contract Documents

The complete Agreement between the parties consists of and is set forth in the Contract Documents. The Contract Documents consist of: (a) this Agreement including any Exhibits hereto, and any amendments thereto in accordance with the provisions herein; (b) an executed Subcontractors Listing Form, if applicable; (c) executed Certificate of Insurance forms; (d) an executed California Form 590; (e) an executed Department of the Treasury Internal Revenue Service Form W-9 or County Payee Data Record Form, whichever is applicable; and (f) all executed Change Orders. All obligations of the parties are contained in the Contract Documents, and by acceptance of this Agreement the parties hereto agree to be bound by the provisions of all of said documents. All of said documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa, is to be executed the same as if mentioned in all of them.

2. The Work

Contractor agrees to furnish all tools, equipment, vehicles, apparatus, facilities, labor, materials, supplies, and services to provide application of Type II / Emulsified Asphalt Slurry Seal over road sections in the South Lake Tahoe/Tahoma area.

Services shall include, but not be limited to, notifying the residents of the work to be performed; cleaning the road surfaces as necessary with a pick-up type sweeper prior to the application of surfacing materials; protection of the existing manhole covers, water valve boxes, and any other utility covers; application of Type II / Emulsified Asphalt Slurry Seal; and traffic control measures adequate for the application of surfacing materials until the surfacing materials have sufficiently cured to allow traffic access to the resurfaced areas.

Contractor shall furnish test reports for aggregate and emulsion used in conjunction with the work to County's Contract Administrator at the time the work is completed. Spoils shall be properly disposed of off-site at no additional cost to County. All materials and application methods shall be in conformance with the 2015 Caltrans Standard Specifications, including any amendments thereto as shown in Exhibit A, marked "Project Specifications."

Contractor may use the water source located at the Tahoma County Maintenance Yard (7101 Wilson Avenue, Tahoma, CA 96142) for areas of work shown on sheet L-1 of the Contract Documents. Contractor must secure their own water source for locations shown on sheets L-2 and L-3.

The Work shall be performed in accordance with all of the terms and conditions of the Contract Documents.

3. **Location of Work**

Said work is to be performed as described in Exhibit B, marked "Micro-Surfacing Locations" and Exhibit C, marked "Micro-Surfacing Location Map."

4. **Contract Price**

As compensation agreed upon for said Work, County shall pay or cause to be paid to Contractor, in full, and for the full contract price and compensation for said completion of the Work, including without limitation, all bonds and insurance, **THE NOT TO EXCEED LUMP SUM OF THREE HUNDRED EIGHTY THREE THOUSAND NINE HUNDRED DOLLARS (\$383,900)** which sum constitutes the Contract Price for the complete Project (the "Contract Price").

5. **Time of Completion**

Time is of the essence. The Work under the Agreement shall be completed **within (30) Calendar Days** from the date specified in the official Notice to Proceed with the Work, unless an extension of time or suspension of Work is authorized in writing in accordance with a Contract Change Order.

It is agreed by the parties to this Agreement that if all the Work called for under the Contract Documents in all parts and requirements is not finished or completed within the number of calendar days as set forth above, damage will be sustained by County, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which County will sustain in the event of and by reason of the delay; and it is therefore agreed that Contractor will pay to County the sum of ONE THOUSAND NINE HUNDRED DOLLARS (**\$1,900**) per calendar day, as liquidated damages and not as a penalty, for each and every calendar day's delay in finishing the work in excess of the number of calendar days prescribed herein; and Contractor agrees to pay the liquidated damages herein provided for, and further agrees that County may deduct the amount thereof from any moneys due or that may become due Contractor under the Agreement.

6. **Payment**

Payment shall be made to Contractor as follows:

ONE LUMP SUM UPON COMPLETION AND ACCEPTANCE OF PROJECT

Retention of 5% of the total Contract Price will be held at the option of County. Payment by County as herein provided shall not be construed as an absolute acceptance of defects in the Work or improper materials. County shall promptly pay Contractor in accordance with Public Contract Code Section 20104.50.

7. **Performance Bond**

As a part of the execution of this Agreement, Contractor shall furnish a bond of a surety company authorized to do business in the State of California, conditioned upon the faithful performance of all covenants and stipulations under this Agreement. The amount of this bond shall be one hundred percent (100%) of the total Contract Price and shall be executed upon the form provided by County.

8. **Payment Bond**

As a part of the execution of this Agreement, Contractor shall furnish a bond of a surety company authorized to do business in the State of California, conditioned upon the payment in full of all claims for labor and materials in accordance with the provisions of the law of the State of California. The amount of this bond shall be one hundred percent (100%) of the total Contract Price and shall be executed upon the form provided by County.

9. Notification of Surety Company

The surety company shall familiarize itself with all of the conditions and provisions of this Agreement, and shall waive the right of special notification of any change or modifications of this Agreement or extension of time, or of decreased or increased work, or of the cancellation of the Agreement, or of any other act or acts by County or its authorized agents, under the terms of this Agreement; and failure to so notify the aforesaid surety company of changes shall in no way relieve the surety company of its obligation under this Agreement.

10. Payment of Prevailing Wages

Contractor shall pay and require payment of wages according to a scale of prevailing wage rates determined by California law, which scale is on file at County's Transportation Division's principal office and shall comply with all applicable wage requirements, as set forth in Labor Code Sections 1770 et seq., 1773.2, 1775, 1776, 1810 and 1813. In accordance with the provisions of Labor Code Section 1810, eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and Contractor and any subcontractor employed under this Agreement shall also conform to and be bound by the provisions of Labor Code Sections 1810 through 1815.

11. Apprentices

Attention is directed to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code and Title 8, California Code of Regulations Section 200 et seq. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, each Contractor or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, CA 94102, or one of its branch offices prior to commencement of work on the public works contract. Responsibility for compliance with this section lies with Contractor.

It is County policy to encourage the employment and training of apprentices on public works contracts as may be permitted under local apprenticeship standards.

12. Certified Payroll

As required under the provisions of Labor Code Section 1776, Contractor and any subcontractors shall keep accurate payroll records as follows:

1. The payroll records shall show 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 Contractor or subcontractors in connection with this Project.
2. A certified copy of all payroll records enumerated above shall be available for inspection at all reasonable hours at the principal office of Contractor as follows:
 - a. Make available or furnish to the employee or his or her authorized representative on request.
 - b. Make available for inspection or furnished upon request to a representative of County, the State Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State Department of Industrial Relations.
 - c. Make available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either County, the State Division of Labor Standards Enforcement, or the State Division of Apprenticeship Standards. The requesting party shall, prior to being provided the records, reimburse the costs of preparation by Contractor, subcontractor, and the entity through which the

request was made. The public shall not be given access to the records at the principal office of Contractor.

- d. All contractors and subcontractors must furnish electronic certified payroll records directly to the Department of Industrial Relations.

13. Registration of Contractors

No contractor or subcontractor may bid on any public works project, be listed in a bid proposal for any public works project, or engage in the performance of any contract for public work unless registered with the Department of Industrial Relations pursuant to Labor Code sections 1725.5 and 1771.1.

Contractor shall post job site notices as prescribed by Title 8 of California Code of Regulations Section 16451.

14. Records Examination and Audit Requirements

Contractor and its subcontractors, if any are authorized hereunder, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the various aspects of the Agreement. In accordance with Government Code Section 8546.7, all of the above-referenced parties shall make such materials available at their respective offices at all reasonable times during the contract period and for four (4) years from the date that final payment by County and all other pending matters are closed. Representatives of County, the State Auditor, and any duly authorized representative of other government agencies shall have access to any books, documents, papers and records that are pertinent to the Agreement for audit, examination, excerpts, and transactions and copies thereof shall be furnished upon request.

15. Payment of all Federal, State, or City Taxes

Any federal, state, or city tax payable on the articles furnished by Contractor under the Agreement shall be included in the Contract Price and paid by Contractor.

16. Compliance with all Applicable Laws

Contractor shall conform to and abide by all Federal, State and local building, labor and safety laws, ordinances, rules and regulations. All Work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshal, safety orders of the Division of Industrial Safety, California Electrical Code, California Building Code, California Plumbing Code, and any and all other applicable laws and regulations. Nothing in the Contract Documents, including but not limited to the plans and specifications, is to be construed to permit work not conforming to these codes, laws, and regulations.

17. Nondiscrimination

- A. County may require Contractor's services on projects involving funding from various state and/or federal agencies, and as a consequence, Contractor shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Contractor and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, genetic information, gender, gender identity, gender expression, sexual orientation, or military or veteran status; Contractor shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended.

Contractor and its employees and representatives shall give written notice of their obligations under this clause as required by law.

- B. Where applicable, Contractor shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Contractor's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

18. Reporting Accidents


Contractor shall prepare and submit (within 24 hours of such incidents) reports of accidents at the site and anywhere else the work is in progress in which bodily injury is sustained or property loss in excess of Five Hundred Dollars (\$500.00) occurs.

19. Workers' Compensation

Contractor shall comply with Labor Code Sections 3700 et seq., requiring it to obtain Workers' Compensation Insurance, and sign a certificate of knowledge thereof.

CERTIFICATE OF KNOWLEDGE - LABOR CODE SECTION 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

Signed: 
Doug Ford, President

Dated: 6-8-17

20. Deviation from Plans and Specifications

No deviation shall be made from the plans and/or the specifications, if any, without the prior written approval of Contract Administrator.

21. Unity of Plans and Specifications

The plans and specifications, if any, are one document, and any work shown or mentioned, in one and not in the other, or vice versa, shall be furnished or performed as though mentioned or shown in both.

22. Relocation of Utilities

As required by Section 4215 of the California Government Code, County will assume responsibility for the removal, relocation, and protection of main or trunk-line utility facilities existing on the construction site, if such facilities are not shown in the plans and specifications, and County shall compensate Contractor for the costs of locating and repairing damage to such facilities not due to the failure of Contractor to exercise reasonable care.

Nothing herein shall be deemed to require County to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction.

If Contractor, while performing the Work under the Agreement, discovers utility facilities not identified in the Contract Documents, including the plans or specifications, Contractor shall immediately notify the Contract Administrator or Project Manager. County shall not be liable for Contractor's performance of unauthorized work.

23. Notice of Discovery of Hazardous Waste or Unusual Conditions

- A. Contractor shall promptly, and before the following conditions are disturbed, notify County in writing, in the event Contractor encounters, after excavating to a depth of greater than four (4) feet, any of the following:
1. Material that Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
 2. Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or
 3. Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Agreement.
- B. County shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, involve hazardous waste, or cause a decrease or increase in Contractor's cost of or time required for performance of any part of the Work, an adjustment, excluding loss of anticipated profits, will be made and the Contract Documents will be modified by a Change Order. County will notify Contractor of County's determination as to whether or not an adjustment of the Contract Documents is warranted.
- C. In the event a dispute arises between County and Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of or time required for performance of any part of the Work, Contractor shall not be excused from any scheduled completion date provided for by the Agreement, but shall proceed with all Work to be performed under the Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between Contractor and County.

24. Subcontracting

The provisions of Sections 4100-4114, inclusive, of the Public Contract Code regarding subcontracting shall apply to this Agreement, and Contractor represents that it will comply with all provisions therein. For the purposes of this Agreement, no subcontractors are authorized to perform any portion of the Work.

25. Additional Work

County reserves the right to make such alterations, deviations, or additions to or deletions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of work or to delete any items or portion of work, as may be deemed by the Contract Administrator or Project Manager to be necessary or advisable, and to require such additional work to be required for the proper completion of the whole Work contemplated.

Any such changes will be set forth in a Contract Change Order (Change Order) which will specify the additional work, adjustment of performance time, if any, and basis for additional or reduced compensation, if any. Any Change Order shall not become effective until approved by the Director of Transportation, or where required, by the Board of Supervisors.

26. Termination by County for Convenience

County reserves the right to terminate the Agreement at any time upon determination by County's representative that termination of the Agreement is in the best interest of County. County shall issue Contractor a written notice specifying that the Agreement is to be terminated.

Upon receipt of said written notice, Contractor shall stop all work under the Agreement except: (1) work specifically directed to be completed prior to termination, (2) work the Inspector deems necessary to secure the Project for termination, (3) removal of equipment and plant from the site of the Work, (4) action that is necessary to protect materials from damage, (5) disposal of materials not yet used in the Work as directed by County, and (6) clean up of the site.

If the Agreement is terminated for County's convenience as provided herein, all finished or unfinished work and materials previously paid for shall, at the option of County, become its property. Contractor shall be paid an amount which reflects costs incurred for work provided to the date of notification of termination. In addition, Contractor shall be paid the reasonable cost, as solely judged by County, and without profit, for all work performed to secure the Project for termination.

27. Termination by County for Cause

If Contractor is adjudged as bankrupt or insolvent or makes a general assignment for the benefit of its creditors, if a trustee or receiver is appointed for Contractor or for any of its property, or if Contractor files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or applicable laws, or on more than one occasion fails to supply sufficient skilled workmen or suitable material or equipment, or on more than one occasion fails to make prompt payments to subcontractors for labor, materials, or equipment, or disregards the authority of County's representative, or the Engineer, if one is appointed, or otherwise violates any provision of the Contract Documents, then County may, without prejudice to any other right or remedy and after giving Contractor a minimum of ten (10) days from delivery of a written termination notice, terminate the services of Contractor and take equipment and machinery thereon owned by Contractor and finish the Work by whatever method County may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished.

Without prejudice to other rights or remedies County may have, if Contractor fails to begin delivery of materials and equipment, to commence Work within the time specified, to maintain the rate of delivery of material, to execute the Work in the manner and at such locations as specified, or fails to maintain a work program which will ensure County's interest, or, if Contractor is not carrying out the intent of the Agreement, an Inspector's written notice may be served upon Contractor demanding satisfactory compliance with the Agreement. If Contractor does not comply with such notice within five (5) days after receiving it, or after starting to comply, fails to continue, County may exclude it from the premises and take possession of all material and equipment, and complete the Work by County's own forces, by letting the unfinished Work to another Contractor, or by a combination of such methods.

Where Contractor's services have been so terminated by County, said termination shall not affect any right of County against Contractor then existing or which may thereafter accrue. Any retention or payment of monies by County due Contractor will not release Contractor from compliance with the Contract Documents.

If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, such excess shall be paid to Contractor. If the sums under the Agreement are insufficient for completion, Contractor shall pay to County within five (5) days after the completion, all costs in excess of the Contract Price. In any event, the cost of completing the Work shall be charged against Contractor and may be deducted from any money due or becoming due from County.

The provisions of this Article shall be in addition to all other rights and remedies available to County under law.

If after notice of termination, it is determined for any reason that Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued. The Agreement shall be equitably adjusted to compensate for such termination.

28. Successors and Assigns

This Agreement shall bind and inure to the heirs, devisees, assignees, and successors in interest of Contractor and to the successors in interest of County in the same manner as if such parties had been expressly named herein.

29. Assignment of Agreement

Neither the Agreement nor any part thereof, or any monies due or to become due hereunder, may be assigned by Contractor without the written approval of County. County may assign this Agreement to a lender, or any third party that assumes the obligations of County hereunder.

30. Amendments

This Agreement may be amended by mutual consent of the parties hereto. Said amendment shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

31. Separate Contracts

County reserves the right to let other contracts in connection with the Work. Contractor shall afford all other such contractors reasonable opportunity for storage of their materials, shall provide that the execution of its work properly connects and coordinates with theirs, and shall cooperate with them to the end of facilitating the Work.

32. Indemnity

To the fullest extent allowed by law, Contractor shall defend, indemnify, and hold County and its officers, directors, and employees harmless against and from any and all claims, suits, losses, damages, and liability for damages, including attorney's fees and other costs of defense brought for or on account of injuries to or death of any person, including but not limited to, workers and the public, or on account of injuries to or death of County employees, or damage to property, or any economic, consequential, or special damages which are claimed or which shall in any way arise out of or be connected with Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Contractor, subcontractors or employees of any of these, except for the active or sole negligence of County, its officers, directors, and employees, or where expressly prescribed by statute.

The duty to indemnify and hold harmless County specifically includes the duties to defend set forth in Section 2778 of the Civil Code. The insurance obligations of Contractor are separate, independent obligations under the Contract Documents, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Contract Documents. This indemnity requirement applies to any claims, suits, losses, damages and liability for damages, including attorney's fees and other costs, arising from alleged defects in the content or the manner of submission of the Contractor's bid for the Contract.

33. Insurance

GENERAL INSURANCE REQUIREMENTS: Contractor shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Contractor maintains insurance that meets the following requirements:

1. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.

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2. Commercial General Liability Insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: premises, personal injury, operations, products and completed operations, blanket contractual, and independent contractors' liability and a \$2,000,000 aggregate limit.
 3. Automobile Liability Insurance of not less than One Million Dollars (\$1,000,000) is required in the event motor vehicles are used by Contractor in performance of the Contract.
 4. In the event Contractor is a licensed professional and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than One Million Dollars (\$1,000,000).
 5. Explosion, Collapse and Underground coverage is required when the scope of work includes XCU exposures.

PROOF OF INSURANCE REQUIREMENTS:

1. Contractor shall furnish proof of coverage satisfactory to County's Risk Management Division as evidence that the insurance required herein is being maintained. The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
2. The County of El Dorado, its officers, officials, employees, and volunteers shall be included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all general and excess liability insurance policies. Proof that County is named additional insured shall be made by providing the Risk Management Division with a certified copy, or other acceptable evidence, of an endorsement to Contractor's insurance policy naming County as additional insured.
3. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
4. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
5. Contractor shall require each of its subcontractors to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Workers' Compensation Insurance of the types and in the amounts specified above, or shall insure the activities of its subcontractors in its own policy in like amounts. Contractor shall also require each of its subcontractors to name Contractor and the County of El Dorado as additional insureds on each subcontractor's general and excess liability insurance policies. Upon request by County Contractor shall furnish proof of coverage satisfactory to County as evidence that the subcontractor insurance required herein is being maintained.

INSURANCE NOTIFICATION REQUIREMENTS:

1. Contractor agrees that no cancellation or material change in any policy shall become effective except upon prior written notice to Community Development Services, Contract and Procurement Unit, 2850 Fairlane Court, Placerville, California 95667.
2. Contractor agrees that the insurance required herein shall be in effect at all times during the term of this Agreement, inclusive of the guarantee/warranty period specified herein below. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the

event Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division.

ADDITIONAL STANDARDS: Certificates shall meet such additional standards as may be determined by County's Department of Transportation either independently or in consultation with County's Risk Management Division, as essential for protection of County.

COMMENCEMENT OF PERFORMANCE: Contractor shall not commence performance of this Agreement unless and until compliance with each and every requirement of the insurance provisions is achieved.

MATERIAL BREACH: Failure of Contractor to maintain the insurance required herein, or to comply with any of the requirements of the insurance provisions, shall constitute a material breach of the entire Agreement.

REPORTING PROVISIONS: Any failure to comply with the reporting provisions of the policies shall not affect the coverage provided to County, its officers, officials, employees or volunteers.

PRIMARY COVERAGE: Contractor's insurance coverage shall be primary insurance as respects County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

PREMIUM PAYMENTS: The insurance companies shall have no recourse against County, its officers, agents, employees, volunteers, or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

CONTRACTOR'S OBLIGATIONS: Contractor's indemnity and other obligations shall not be limited by the insurance required herein and shall survive the expiration of this Agreement.

34. Independent Contractor/Liability

Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

35. Interest of Public Official

No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

36. Interest of Contractor

Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

37. Conflict of Interest

The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Contractor attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Contractor relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in Article 27, Termination by County for Cause, hereto.

38. Licenses

Contractor warrants and represents that it holds a valid California license pursuant to the Contractors' State License Law (Business and Professions Code Sections 7000, et seq.), that its license is in good standing and that it possesses a Class License as required by the categories and type of the Work. Copies of Contractor's State Contractors' license must be provided with this Agreement.

39. Business License

County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services or transact any kind of business in the unincorporated territory of County of El Dorado without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Contractor warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

40. Cleaning Up

Contractor shall not allow the site of the Work to become littered with trash, rubbish, or waste material, and shall maintain the site of Work in a neat and orderly condition throughout the performance of the Work. At the end of each work day, Contractor shall clean up all debris and waste materials generated by the Work and shall properly dispose of all trash, rubbish, and waste materials off site at no additional cost to County.

41. Access to the Work

County, and any state or local authorities having jurisdiction over the Project, shall at all times have access to the Work.

42. Acceptance of Work

The Work will be accepted by County in writing in the form of a recorded Notice of Acceptance signed by the Director of Transportation when the whole shall have been completed satisfactorily, as determined by County or its duly authorized representative. Acceptance of the Work shall not constitute an acceptance of latent defects nor relieve Contractor of responsibility for any act or omission which is a violation of the Agreement. County will release retention withheld, if any, thirty-five (35) days after the Notice of Acceptance is recorded.

43. Resolution of Claims

Contractor's attention is invited to Public Contract Code Sections 20104, et seq., for resolution of construction claims, and specifically Section 20104.2. Claims pertaining to this Agreement shall be governed by the provisions of those sections.

44. **Environmental and Toxic Warranty**

Contractor warrants that its operations concerning the Project are not and will not be in violation of any applicable federal, state, or local environmental statute, law, or regulation dealing with hazardous materials substances or toxic substances.

45. **Guarantee**

Final Guarantee: Contractor shall guarantee all materials and equipment furnished and work performed for a period of one (1) year. Contractor warrants and guarantees for a period of one (1) year from the date of Acceptance of the Work that the Work is free from all defects due to faulty materials or workmanship and Contractor shall promptly make such corrections as may be necessary, including repairs of any damage to other parts of the Work resulting from such defects. County will give notice of observed defects with reasonable promptness. In the event that Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, County may do so and charge Contractor the cost thereby incurred.

Extended Guarantees: If a guaranty exceeding one (1) year is provided by the supplier or manufacturer of any equipment or materials used in this Project, then the guarantee for such equipment or materials shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials, and Contractor shall supply County with all warranty and guaranty documents relative to equipment and materials incorporated in the job and guaranteed by its suppliers or manufacturers.

Warranty: Contractor warrants to County that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract, that the Work will be free from defects or flaws and is of the highest quality of workmanship and that the Work will conform with the requirements of the Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

If within one (1) year from the date of the Acceptance of the Work or such longer period of time as may be prescribed by law or regulations or by the terms of any applicable special guarantee required by the contract documents, any work is found to be defective, Contractor shall promptly, without cost to County and in accordance with County's written instruction, correct such defective work. If work is rejected by County, defective material or work will be removed from site and replaced with non-defective materials or work. If Contractor is unable to promptly and properly correct any defective work, County may at its option have the work corrected by such other means as County deems appropriate and hold Contractor liable for all direct, indirect and consequential costs caused by such defective work. Said warranty shall apply to all work found to be "defective" which is attributable to the quality or quantity of the materials used, the quality of the workmanship or for performance of the Contract.

46. Notice

Any notice or other correspondence required to be given under this Agreement by either party to the other may be affected by personal delivery in writing or by mail, postage prepaid. Notices personally delivered during normal business hours shall be deemed received on the actual date of delivery; mailed notices shall be deemed received one (1) day after affixed postmark. Notices and correspondence to County shall be in duplicate and shall be delivered to it as follows:

To County:

County of El Dorado
Community Development Services
Department of Transportation
2441 Headington Road
Placerville, California 95667

Attn.: Don Spear, Deputy Director
Maintenance and Operations Unit

With a Copy To:

County of El Dorado
Community Development Services
Administration and Finance Division
2850 Fairlane Court
Placerville, California 95667

Attn.: Michele Weimer
Administrative Services Officer
Contracts and Procurement Unit

Notices and correspondence to Contractor shall be delivered when personally delivered to, or if mailed, addressed to Contractor at:

Pavement Coatings Co.
2290 East Main Street
Woodland, CA 95776
Attn.: Tim Schmid
Vice President

Either party may change its address for notices or for its principal place of business by giving written notice pursuant to this Article.

47. Change of Address

In the event of a change in address for Contractor's principal place of business, Contractor's Agent for Service of Process, or Notices to Contractor, Contractor shall notify County in writing as provided in Article 46, Notice. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

48. Drug-Free Workplace

Contractor shall comply with Government Code section 8355.

49. California Residency (Form 590)

All independent Contractors providing services to County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to Contractor during the term of this Agreement. This requirement applies to any Agreement/Contract exceeding \$1,500.00.

50. Nonresident Withholding

If Consultant is not a California resident, Consultant shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7%) percent of each payment made to the Consultant during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. Consultant shall indemnify and hold County harmless for any action taken by the California Franchise Tax Board.

51. County Payee Data Record Form

All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

52. Taxes

Contractor certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County. Contractor agrees that it shall not default on any obligations to County during the term of this Agreement.

53. Venue

The Contract Documents and all provisions thereto shall be governed by the laws of the State of California. Any litigation arising herein shall be brought in the County of El Dorado.

54. Contract Administrator

The County Officer or employee with responsibility for administering this Agreement is , Community Development Services, Department of Transportation, or successor.

55. Authorized Signatures

The parties to this Agreement warrant and represent that the undersigned individuals executing this Agreement on their respective behalves are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

56. Partial Invalidity

If any provision, part of a provision, sentence, or word of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions, parts of provisions, sentences, and words will continue in full force and effect without being impaired or invalidated in any way.

57. No Third Party Beneficiaries

Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

58. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

59. Entire Agreement

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral agreements or understandings.

Contract Administrator Concurrence:

By: B BRIAN MULLENS
Don Spear, Deputy Director of Maintenance
Community Development Services
Department of Transportation
Maintenance and Operations Unit

Dated: JULY 7 2017

Requesting Division Concurrence

By: Bard R. Lower
Bard R. Lower, Interim Director
Community Development Services
Department of Transportation

Dated: 7/7/17

Requesting Department Concurrence:

By: Don Ashton
Don Ashton, Chief Administrative Officer
County of El Dorado

Dated: 7/7/2017


IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

-- COUNTY OF EL DORADO --

By: 
Shiva Frentzen, Chair
County of El Dorado Board of Supervisors
"County"


Dated: 6/6/2017

Attest:
James S. Mitrison
Clerk of the Board of Supervisors

By: 
Deputy Clerk

Dated: 6/6/2017

-- PAVEMENT COATINGS CO. --

By: 
Doug Ford, President
Pavement Coatings Co.
"Contractor"

Dated: 6-8-17

By: 
Tom Mucenski
Corporate Secretary

Dated: 6/8/2017