

CONTRACT
CITY OF FRESNO
PUBLIC WORK OF IMPROVEMENT

THIS CONTRACT is made and entered into by and between CITY OF FRESNO, a California municipal corporation (City), and **American Paving Co.**, a California corporation (Contractor) as follows:

1. Contract Documents. The "Notice Inviting Bids," "Instructions to Bidders," "Bid Proposal," and the "Specifications" including "General Conditions," "Special Conditions," and "Technical Specifications" for the following: **PW00846 Mariposa Plaza Renovation (Bid File No. 12302138- 12468)** copies of which are annexed hereto, together with all the drawings, plans, and documents specifically referred to in said annexed documents, including Performance and Payment Bonds, if required, and are hereby incorporated into and made a part of this Contract, and shall be known as the Contract Documents.

2. Price and Work. For the monetary consideration of **Two Million Six Hundred Ninety One Thousand Ninety-Four Dollars and Zero Cents(\$2,691,094.00)**, as set forth in the Bid Proposal, Contractor promises and agrees to perform or cause to be performed, in a good and workmanlike manner, under the direction and to the satisfaction of the City's "Engineer," and in strict accordance with the Specifications, all of the work as set forth in the Contract Documents.

3. Payment. City accepts Contractor's Bid Proposal as stated and agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents.

4. Indemnification. To the furthest extent allowed by law including California Civil Code Section 2782, Contractor shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) incurred by City, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs, or damages caused by the active or sole negligence, or willful misconduct, of City or any of its officers, officials, employees, agents, or volunteers.

If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

5. Trench Shoring Detailed Plan. Contractor acknowledges the provisions of Section 6705 of the California Labor Code and, if said provisions are applicable to this Contract, agrees to comply therewith.

6. Worker's Compensation Certification. In compliance with the provisions of Section 1861 of the California Labor Code, Contractor hereby certifies as follows:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for worker's 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 work of this Contract and will make my subcontractors aware of this provision.

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by City shall be subsequent to that of Contractor's, and this Contract shall be binding and effective upon execution by both parties.

AMERICAN PAVING
CO.,
a California corporation

By: 

Name: Stephen J. Poindexter
(Type or print written signature)

Title: President
(If corporation or LLC, Board Chair,
Pres. or Vice Pres.)

Dated: August 21, 2023

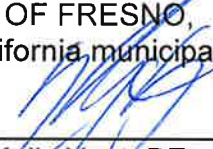
By: 

Name: Ross A. Jenkins
(Type or print written signature)

Title: Secretary
(If corporation or LLC, CFO, Treasurer,
Secretary or Assistant Secretary)

Dated: August 21, 2023

CITY OF FRESNO,
a California municipal corporation

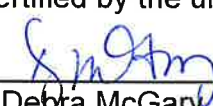
By: 
Kelly Yost, PE
Construction Manager
Capital Projects Department

Dated: 8/31/2023

ATTEST:
TODD STERMER, CMC
City Clerk

By:  8/31/23
Deputy

No signature of City Attorney required.
Standard Document DPW-S Formal Bid
Contract – Public Work Improvement (11-
2022) has been used without modification
as certified by the undersigned.

By: 
Debra McGary
Construction Compliance Specialist
Department of Public Works

City address:

City of Fresno
Attention: Debra McGary
Construction Compliance Specialist
1721 Van Ness
Fresno, CA 93721

AMERICAN PAVING CO.

CERTIFICATION

This is to certify that I, Ross A. Jenkins, am the Secretary of American Paving Co., that American Paving Co. is a California Corporation, incorporated November 7, 1958, and that the attached Sections 7, 8, and 9 from Article V of the Bylaws are true and accurate copies, and that said Bylaws were duly adopted by the Board of Directors of the Corporation at its meeting on December 16, 2020, and Sections 7, 8, and 9 of Article V have not been amended to this date.

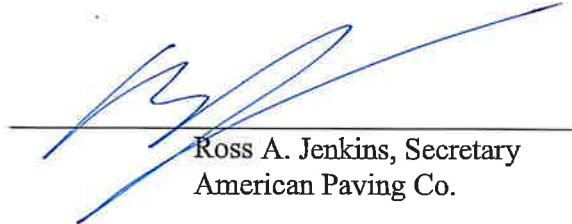
I certify that at the Annual meeting duly called by the Board of Directors of American Paving Co. held on May 16, 2022, the following officers were elected:

Stephen J. Poindexter – President/CEO/Treasurer (CFO)

Ross A. Jenkins – Vice President/Secretary

I also certify that no changes have occurred as of the date of this certification.

DATED: August 21, 2023



Ross A. Jenkins, Secretary
American Paving Co.

ARTICLE V

OFFICERS

Section 1. OFFICERS. The officers of the Corporation will be a President, a Secretary, and a Chief Financial Officer. The Corporation may also have, at the discretion of the Board, a Chair of the Board, one or more Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be appointed in accordance with Section 3 of this Article V. Any number of offices may be held by the same person.

Section 2. APPOINTMENT OF OFFICERS; INABILITY TO ACT. The officers of the Corporation, except for subordinate officers appointed in accordance with Section 3 of this Article V, will be appointed annually by the Board, and will serve at the pleasure of the Board, subject to the rights, if any, of an officer under a contract of employment. In the case of absence or inability to act of any officer of the Corporation or of any person authorized by these bylaws to act in such officer's place, the Board may from time to time delegate the powers or duties of such officer to any other officer, or any director or other person whom it may select, for such period of time as the Board deems necessary.

Section 3. SUBORDINATE OFFICERS. The Board may appoint, and may empower the President to appoint, other officers as required by the business of the Corporation, whose titles and duties will be as provided in the bylaws, or as determined from time to time by the Board or the President (if the President is empowered by the Board to appoint such subordinate officers).

Section 4. REMOVAL AND RESIGNATION OF OFFICERS. Any officer chosen by the Board may be removed at any time, with or without cause or notice, by the Board or by any committee to whom such power of removal has been duly delegated. Subordinate officers appointed by persons other than the Board under Section 3 of this Article V may be removed at any time, with or without cause or notice, by the Board, the President or any other officer upon whom such power of removal may be conferred by the Board. Officers may be employed for a specified term under a contract of employment if authorized by the Board; such officers may be removed from office at any time under this section, and will have no claim against the Corporation or individual officers or Board members because of the removal except any right to monetary compensation to which the officer may be entitled under the contract of employment. Any officer may resign at any time by giving written notice to the Corporation. Resignations will take effect on the date of receipt of the notice by Chair of the Board, the President, the Secretary or the Board, unless a later time is specified in the notice for the effectiveness of such resignation. Unless otherwise specified in the notice, acceptance of the resignation is not necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation to monetary damages under any contract of employment to which the officer is a party.

Section 5. VACANCIES IN OFFICES. A vacancy in any office resulting from an officer's death, resignation, removal, or disqualification, or from any other cause, will be filled in the manner prescribed in these bylaws for regular election or appointment to that office.

Section 6. CHAIR OF THE BOARD. The Board may elect a chairperson, who will preside, if present, at Board meetings and will exercise and perform such other powers and duties as may be assigned from time to time by the Board. If there is no President, the Chair of the Board

will in addition be the chief executive officer of the Corporation, and will have the powers and duties as set forth in Section 7 of this Article V.

Section 7. PRESIDENT. Except to the extent that the bylaws or the Board assign specific powers and duties to the Chair of the Board (if any), the President will be the Corporation's general manager and chief executive officer and, subject to the control of the Board, will have general supervision, direction, and control over the Corporation's business and its officers. The President may execute, in the name of the Corporation, any instrument authorized by the Board, except when the execution thereof shall have been expressly delegated by the Board or by these bylaws to some other officer or agent of the Corporation. The managerial powers and duties of the President will include, but are not limited to, all the general powers and duties of management usually vested in the office of president of a corporation, and the President will have other powers and duties as prescribed from time to time by the Board or these bylaws. The President will have discretion to prescribe the duties of other officers and employees of the Corporation in a manner consistent with the provisions of these bylaws and the directions of the Board. The President will preside at all meetings of the shareholders and, in the absence of the Chair of the Board or if there is no Chair of the Board, will also preside at meetings of the Board.

Section 8. VICE PRESIDENTS. If desired, one or more Vice Presidents may be chosen by the Board in accordance with the provisions for electing officers set forth in Section 2 of this Article V. In the absence or disability of the President, the President's duties and responsibilities will be carried out by the highest ranking available Vice President if Vice Presidents are ranked or, if not, by a Vice President designated by the Board. When so acting, a Vice President will have all the powers of and be subject to all the restrictions on the President. Vice Presidents of the Corporation will have such other powers and perform such other duties as prescribed from time to time by the Board, these bylaws, or the President (or Chair of the Board if there is no President).

Section 9. SECRETARY

(a) Minutes. The Secretary will keep, or cause to be kept, minutes of all of the shareholders' meetings and of all other Board meetings. If the Secretary is not present at such meeting, the presiding officer of the meeting will designate another person to take the minutes of the meeting. The Secretary will keep, or cause to be kept, at the principal executive office or such other place as designated by the Board, a book of minutes of all meetings and actions of the shareholders, of the Board, and of committees of the Board. The minutes of each meeting will state the time and place the meeting was held; whether it was regular or special; if special, how it was called or authorized; the names of directors present at Board or committee meetings; the number of shares present or represented at shareholders' meetings; an accurate account of the proceedings; and when it was adjourned. The Secretary shall keep, or cause to be kept, a copy of the bylaws of the Corporation at the principal executive office or business office in accordance with California Corporations Code § 213.

(b) Record of Shareholders. The Secretary will keep, or cause to be kept, at the principal executive office or at the office of the transfer agent or registrar, a record or duplicate record of shareholders. This record will show the names of all shareholders and their addresses, the number and classes of shares held by each, the number and date of share certificates issued to each

shareholder, and the number and date of cancellation of any certificates surrendered for cancellation.

(c) Notice of Meetings. The Secretary will give notice, or cause notice to be given, of all shareholders' meetings, Board meetings, and meetings of committees of the Board for which notice is required by statute or by the bylaws. If the Secretary or other person authorized by the Secretary to give notice fails to act, notice of any meeting may be given by any other officer of the Corporation.

(d) Other Duties. The Secretary will keep the seal of the Corporation, if any, in safe custody. The Secretary will have such other powers and perform other duties as prescribed by the Board or by these bylaws.

(e) Assistant Secretary. If any assistant secretaries are appointed, the assistant secretary, or one of the assistant secretaries in the order of their rank as fixed by the Board, if they are not so ranked, the assistant secretary designated by the Board, in the absence or disability of the Secretary or in the event of such officer's refusal to act or if a vacancy exists in the office of Secretary, shall perform the duties and exercise the powers of the Secretary and discharge such duties as may be assigned from time to time pursuant to these bylaws or by the Board.

Section 10. CHIEF FINANCIAL OFFICER.

(a) Chief Financial Officer. The Chief Financial Officer will keep, or cause to be kept, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and shares. The books of account will at all reasonable times be open to inspection by any director. The Chief Financial Officer will (1) be responsible for receipt of all monies due and payable to the Corporation and have charge and custody of, and be responsible for, all monies and other valuables of the Corporation and deposit corporate funds and other valuables in the Corporation's name and to its credit with depositaries designated by the Board or a committee thereof; (2) make disbursements of corporate funds as authorized by the Board or a committee thereof; (3) render a statement of the Corporation's financial condition and an account of all transactions conducted as Chief Financial Officer whenever requested by the President or the Board; and (4) have other powers and perform other duties as prescribed by the Board or these bylaws. Unless the Board has elected a separate Treasurer, the Chief Financial Officer will be deemed to be the Treasurer for purposes of giving any reports or executing any certificates or other documents.

(b) Assistant Financial Officer. If any assistant financial officer is appointed, the assistant financial officer, or one of the assistant financial officers, if there are more than one, in the order of their rank as fixed by the Board or, if they are not so ranked, the assistant financial officer designated by the Board, shall, in the absence or disability of the Chief Financial Officer or in the event of such officer's refusal to act, perform the duties and exercise the powers of the Chief Financial Officer, and shall have such powers and discharge such duties as may be assigned from time to time pursuant to these bylaws or by the Board.

Section 11. COMPENSATION OF OFFICERS. The compensation of the officers shall be fixed from time to time by the Board, and no officer shall be prevented from receiving such compensation by reason of the fact that such officer is also a director of the Corporation.

ARTICLE VI

INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 1. AUTHORIZATION & INTENT. Pursuant to the Articles of Incorporation, the Corporation is authorized to provide indemnification to its agents to the fullest extent permissible under the California Corporations Code. This Article VI provides certain rights of "Covered Persons" (as hereinafter defined) to indemnification and advancement of "Expenses" (as hereinafter defined) under the terms and conditions of this Article VI; provided, however, that the Corporation may limit the extent of such indemnification by individual contracts with such Covered Persons. The provisions of this Article VI for indemnification and advancement of Expenses shall in no way: (i) be exclusive of any other right which a Covered Person may have or hereafter acquire under any statute, provision of the Articles of Incorporation, these bylaws, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding office; or (ii) limit the power or obligation of the Corporation to otherwise provide indemnification or advancement of Expenses to any Covered Person or any other person to the fullest extent permitted by the California Corporations Code and the Articles of Incorporation.

Section 2. DEFINITIONS. For purposes of this Article VI, the following definitions shall apply:

- (a) "Claim" means (i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, or (ii) any demand, inquiry, or investigation, whether instituted by the Corporation or any other party, that could reasonably lead to the institution of such action, suit, or proceeding.
- (b) "Covered Person" shall mean any person who is or was: (i) a director of the Corporation; (ii) an officer of the Corporation appointed in such capacity by the Board; or (iii) designated, through action duly taken by the Board, as a "Covered Person" for purposes of this Article VI in advance of the subject Indemnifiable Event.
- (c) "Expenses" shall, in addition to its ordinary definition, include all expenses and costs of any type or nature whatsoever, including without limitation, attorneys' fees, court costs, witness and expert witness fees, actually and reasonably incurred by, or on behalf of, a Covered Person in connection with a Claim relating to an Indemnifiable Event, including expenses of establishing a right to indemnification under this bylaw or any applicable law.

Section 3. RIGHT TO INDEMNIFICATION. In the event that a Covered Person was, is, or becomes a party to or witness or participant in, or is threatened to be made a party to or witness or other participant in, a Claim by reason of the fact that the Covered Person is or was an