

**Contract Number**

---

**SAP Number**

---

## Board Governed County Service Area

<b>Department Contract Representative</b>	<u>Chuck Hernandez, Project Manager</u>
<b>Telephone Number</b>	<u>(909) 386-8832</u>
<b>Contractor</b>	<u>Pavement Coatings Co.</u>
<b>Contractor Representative</b>	<u>James Wu</u>
<b>Telephone Number</b>	<u>(714) 826-3011</u>
<b>Contract Term</b>	<u>NTP + 30 Days</u>
<b>Original Contract Amount</b>	<u>\$976,286.76</u>
<b>Amendment Amount</b>	<u></u>
<b>Total Contract Amount</b>	<u>\$976,286.76</u>
<b>Cost Center</b>	<u>2400001570</u>

### IT IS HEREBY AGREED AS FOLLOWS:

#### CONSTRUCTION AGREEMENT

This Construction Agreement (“Agreement” or “Contract”) is made effective this August 22, 2023 (“Agreement Date”) by and between the County Service Area 70, R-5 Sugarloaf (“District”) and Pavement Coatings Co. (“Contractor”) for the construction of the County Service Area 70, R-5 (Sugarloaf) Road Chip Seal Project (“Project”).

#### ARTICLE I

#### CONTRACT DOCUMENTS AND INTERPRETATION

##### 1.1 DEFINITIONS

The meanings of all capitalized terms used in the Contract Documents and not otherwise defined herein are contained in the General Conditions. If not defined in the General Conditions, they shall have the meaning assigned to them elsewhere in the Contract Documents. If not defined in the General Conditions or elsewhere, they shall have the meanings reasonably understood to apply to them by the context of the portion of the Contract Documents where such terms are used.

## **1.2 CONTRACT DOCUMENTS**

The "Contract Documents" except for modifications issued after execution of this Agreement, consist of the following documents, all of which are either attached hereto as exhibits or are incorporated herein by this reference:

- 1.2.1** Advertisement For Bids (Project No. 1570.0000), dated June 28, 2023.
- 1.2.2** Bidder's Proposal, dated July 18, 2023.
- 1.2.3** General Conditions
- 1.2.4** Performance Bond
- 1.2.5** Labor and Material Bond
- 1.2.6** Special Conditions
- 1.2.7** Bid documents entitled "CSA 70 R-5 Sugarloaf Road Chip Seal Project".
- 1.2.8** Specifications, entitled "CSA 70 R-5 Sugarloaf Road Chip Seal Project".
- 1.2.9** Project Plans, entitled "CSA 70 R-5 Sugarloaf Road Chip Seal Project".
- 1.2.10** Addendum No. 1, dated 06/30/2023.
- 1.2.11** Certified copy of the record of action of the Board of Supervisors, on behalf of the Governing Board for Board Governed County Service Areas.

## **1.3 ENTIRE AGREEMENT**

The Contract Documents represent the entire and integrated agreement between District and Contractor, all other representations or statements, whether verbal or written, are merged herein. The Agreement may be amended only by written modification. The Governing Board of the District, or its authorized designee, must approve any amendment to this Agreement.

## **ARTICLE II THE WORK**

### **2.1 SCOPE OF WORK**

**2.1.1** Contractor will furnish all materials, labor, tools, equipment, apparatus, facilities, transportation, construction, landscaping, clean-up, and all other construction services of any type necessary to complete all Work in strict conformity with the Contract Documents. Except with regard to any material to be provided and/or installed by District, Contractor shall fully commission and turn over a complete operational and fully functional Project to District. Without limiting the generality of this Section, Contractor shall provide the following Work and services:

a. Contractor shall provide, install and complete as specified and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction, start-up and testing, utilities, transportation, and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the complete, operational, and fully functional Project, including the permanent interconnection for electricity, natural gas, water supply, and any other utilities and demonstration of fully satisfactory operation of all systems and equipment. The District will pay connection fees directly to the utilities for all permanent water and electrical connections.

b. Contractor shall supervise and direct the Work, and shall furnish the services of all supervisors, forepersons, skilled and unskilled labor, and all other personnel necessary to construct the

complete, operational, and fully functional Project. Contractor shall provide, manage and organize such personnel as necessary to complete the Work in accordance with all requirements of the Contract Documents.

c. Contractor shall obtain, at Contractor's expense, all governmental and private approvals, permits and licenses, required to complete the Work; provided, however, District will be responsible for paying the cost of all County imposed fees necessary for the Project. Contractor shall construct a complete, operational, and fully functional Project in full compliance with all Applicable Laws, codes and standards (both public and private), including but not limited to, the standards included and warranties expressed in the Contract Documents and manufacturer's recommendations pertaining to individual items of equipment or systems.

## **2.2 STANDARD OF PERFORMANCE**

In addition to and without limiting Contractor's other obligations under the Contract Documents, Contractor shall at all times in its performance of its obligations under the Contract Documents conform to the following general standards of performance:

**2.2.1** Comply with the requirements of the Contract Documents;

**2.2.2** Comply with Applicable Laws;

**2.2.3** Conform to the standard of care applicable to those who provide construction of the type called for by this Agreement for projects of a scope and complexity that is comparable to the Project;

**2.2.4** Furnish efficient business administration of the Work, utilizing senior level management and other qualified personnel to manage the Work; and

**2.2.5** Apply its best and highest skill and attention to completing the Work in an expeditious and economical manner, consistent with the express best interests of the District and within the limitations of the Contract Sum and Contract Time.

## **ARTICLE III**

### **TIME FOR PERFORMANCE**

#### **3.1 CONTRACT TIME**

The Date of Commencement of the Work shall be fixed in a Notice to Proceed issued by the District. If District's issuance of a Notice to Proceed is delayed due to Contractor's failure to provide insurance documents or bonds within ten (10) calendar days after the date of award of the Contract by the Board of Supervisors or Chief Executive Officer, one (1) calendar day will be deducted from the number of days to achieve Final Completion of the Work for every day of delay in District's receipt of such documents. This right is in addition to and does not affect District's right to demand forfeiture of Contractor's Bid Security, or any other rights or remedies available to District if Contractor persistently delays in providing the required documentation. Contractor agrees to promptly commence the Work after the Notice to Proceed is issued by the District and to achieve Final Completion of the entire Work within **30 calendar days** after the Date of Commencement ("Contract Time"). The Contract Time may be extended only by the written authorization of the District.

#### **3.2 LIQUIDATED DAMAGES**

**3.2.1** District and Contractor recognize that time is of the essence in this Agreement and that the District may suffer financial loss, including but not limited to, the loss of grant funds, additional contract administration expenses, and loss of public use if the Work is not completed within the Contract Time, including any extensions thereof allowed in accordance with the Contract Documents.

**3.2.2** Contractor and District agree to liquidate damages with respect to Contractor's failure to achieve Final Completion of the Work within the Contract Time. The Parties intend for the liquidated damages set forth herein to apply to this Contract as set forth in Government Code Section 53069.85. Contractor acknowledges and agrees that the liquidated damages are intended to compensate District solely for Contractor's failure to meet the deadline for Final Completion and shall not excuse Contractor from liability from any other breach,

including any failure of the Work to conform to the requirements of the Contract Documents.

**3.2.3** In the event that Contractor fails to achieve Final Completion of the Work within the Contract Time, Contractor agrees to pay District **\$1,000 per day** for each calendar day that Final Completion is delayed.

**3.2.4** Contractor acknowledges and agrees that the foregoing liquidated damages have been set based on an evaluation by District of damages that it will incur in the event of the late completion of the Work. Contractor and District agree that because of the nature of the Project it would be impractical or extremely difficult to fix the amount of actual damages incurred by the District due to a delay in completion of the Work. Accordingly, the District and Contractor have agreed to such liquidated damages to fix Contractor's costs and to avoid later disputes. It is understood and agreed by Contractor that any liquidated damages payable pursuant to this Agreement are not a penalty and that such amounts are not manifestly unreasonable under the circumstances existing as of the effective date of this Agreement.

**3.2.5** It is further mutually agreed that District shall have the right to deduct liquidated damages against progress payments or retainage and that the District will issue a unilateral Construction Change Directive and reduce the Contract Sum accordingly. In the event the remaining unpaid Contract Sum is insufficient to cover the full amount of liquidated damages, Contractor shall pay the difference to District.

## ARTICLE IV CONTRACT SUM

### 4.1 CONTRACT SUM

**4.1.1** Total Compensation. District shall pay the Contractor, and Contractor agrees to accept, in current funds for the Contractor's complete performance of the Work in accordance with the Contract Documents the Contract Sum of:

**BASE ITEMIZED BID (Items 1-8).....\$ 976,286.76.**

**4.1.2** All Inclusive Price. The Contract Sum, subject to additions and deductions, is the total amount payable by District to Contractor for performance of the Work under the Contract Documents and is deemed to cover all costs arising out of or related to the performance of the Work, including, without limitation, the effects of natural elements upon the Work, unforeseen difficulties or obstructions affecting the performance of the Work (including, without limitation, unforeseen conditions at the Site that do not constitute Differing Site Conditions) and fluctuations in market conditions and price escalations (whether occurring locally, nationally or internationally) from any cause, including, without limitation, causes beyond the control or foreseeability of the Contractor.

### 4.2 RETENTION

Payment shall not be made more often than once each thirty (30) days, nor shall amount paid be in excess of ninety-five percent (95%) of the Contract Sum at time of Final Completion. Applications for Payment shall not be deemed properly completed unless certified payrolls and any other mandatory submittals have been properly completed and submitted for each week worked during the time period covered by said payment request. Final payment is to be made sixty (60) days subsequent to filing of Notice of Completion. Contractor may, upon Contractor's written request, and approved by the Board of Supervisors, at Contractor's expense, deposit substitute securities, as stated in Government Code Section 16430, and as authorized by Public Contract Code 22300, in lieu of retention monies withheld to insure performance.

### 4.3 PAYMENT BY ELECTRONIC FUND TRANSFER

Contractor shall accept all payments from District via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by District required to process EFT payments.

## ARTICLE V

## **BONDS, INDEMNITY AND INSURANCE**

### **5.1 BONDS**

Contractor will furnish a Labor and Material Payment Bond in an amount equal to one hundred percent (100%) of the Contract Sum, and a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Sum. The Bonds must comply with all requirements in the Contract Documents, be on District approved bond forms, and be secured from a surety company satisfactory to the District within ten (10) calendar days of the award of the Contract. The Bonds shall remain in full force and effect for a period of one (1) year following the date of filing of the Notice of Completion. The Performance Bond shall name the District as beneficiary under the bond.

### **5.2 INDEMNIFICATION**

To the fullest extent possible permitted by law, Contractor assumes liability for and agrees, at the Contractor's sole cost and expense, to promptly and fully indemnify, defend (with counsel reasonably approved by the District) (even if the allegations are false, fraudulent, or groundless), and hold harmless the County, the District and their authorized officers, employees, agents and volunteers (Indemnitees) from and against any and all claims (including claims against the County or the District seeking compensation for labor performed or materials used or furnished to be used in the work or alleged to have been furnished on the project, including all incidental or consequential damages resulting to the County or the District from such claims), allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceedings, demands, losses, costs, damages, judgments, liens, stop notices, penalties, anticipated losses of revenue and/or liability, and expenses (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, or investigation expenses) arising out of, resulting from, or in any way (either directly or indirectly) related to the contract, the work, the project or any breach of the Contract by Contractor (or any of its officers, agents, employees, subcontractors, or any person performing any of the work, or from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Indemnitees on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor's indemnification obligation applies to the Indemnitee's "passive" negligence but does not apply to the Indemnitee's "sole" or "active" negligence or "willful misconduct" within the meaning of Civil Code section 2782 provided such "active" negligence or "willful misconduct" is determined by agreement of the parties or by findings of a court. In instances where an Indemnitee's "active" negligence accounts for only a percentage of the liability for the claim involved, the obligation of the Contractor will be for that entire percentage of liability for the claim not attributable to the "active" negligence or "willful misconduct" of the Indemnitees. The County and the District shall be consulted with regard to any proposed settlement.

The duty of the Contractor to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by Contractor of the tender of any claim from the County or the District. The Contractor's obligation to defend the County and the District shall be at Contractor's sole expense, and not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines that the Contractor is not liable. The duty to defend shall apply whether or not a claim has merit or is meritless, or which involves claims or allegations that any or all of the Indemnitees were actively, passively, or concurrently negligent, or which otherwise asserts that the Indemnitees are responsible, in whole or in part, for any claim. The Contractor shall respond within thirty (30) calendar days to the tender of any claim for defense and/or indemnity by the County or the District, unless the County and the District agree in writing to an extension of this time. The defense provided to the Indemnitees by Contractor shall be by well qualified, adequately insured, and experienced legal counsel acceptable to the County Counsel.

It is the intent of the parties to the Contract that the Contractor and its subcontractors of all tiers shall provide the Indemnitees with the broadest defense and indemnity permitted by law. In the event that any of the defense, indemnity, or hold harmless provisions are found to be ambiguous, or in conflict with one another, it is the parties' intent that the broadest and most expansive interpretation in favor of providing defense and/or indemnity to the Indemnitees be given effect.

Contractor shall ensure, by written subcontract agreement, that each of Contractor's subcontractors of every tier shall protect, defend, indemnify and hold harmless the Indemnitees with respect to all claims arising out, in

connection with, or in any way related to each such subcontractor's work in the same manner in which Contractor is required to protect, defend, indemnify, and hold the Indemnitees harmless. In the event Contractor fails to obtain such defense and indemnity obligations from its subcontractors as required herein, Contractor agrees to be fully responsible to the Indemnitees according to the terms of this Section.

Contractor's indemnification and defense obligations set for in this Section are separate and independent from the insurance requirements and do not limit, in any way, the applicability, scope, or obligations set forth in such insurance requirements. The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations.

Contractor's obligations under this Section are binding on Contractor's and its subcontractors' successors, heirs and assigns and shall survive the completion of the work or termination of the Contractor's performance of the work.

The reference to District in this Section refers to County Service Area 70, R-5 Sugarloaf, a special district in the San Bernardino County.

### **5.3 INSURANCE**

The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

The reference to District in this Section refers to County Service Area 70, R-5 Sugarloaf, a special district in the San Bernardino County.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

#### **5.3.1 Basic Insurance Requirements**

##### **a. Additional Insured**

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the County, the District, and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the District and/or County to vicarious liability but shall allow coverage for the District and County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

##### **b. Waiver of Subrogation Rights**

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, the District, and their officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County and District.

##### **c. Policies Primary and Non-Contributory**

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County and/or District.

##### **d. Severability of Interests**

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County and/or the District or between the County and/or District and any other insured or additional

insured under the policy.

e. Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the District evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

f. Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

g. Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

h. Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the District has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the District will be promptly reimbursed by the Contractor or District payments to the Contractor will be reduced to pay for District purchased insurance.

i. Insurance Review

Insurance requirements are subject to periodic review by the District and County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the District and/or County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the District and/or County, inflation, or any other item reasonably related to the District's and/or County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the District to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the District or County.

**5.3.2 Insurance Specifications**

a. Workers' Compensation/Employers Liability

A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this Contract.

If Contractor has no employees, it may certify or warrant to the District that it does not currently have any

employees or individuals who are defined as “employees” under the Labor Code and the requirement for Workers’ Compensation coverage will be waived by the County’s Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers’ Compensation insurance.

b. Commercial/General Liability Insurance

The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse and underground hazards.
- (e) Personal injury
- (f) Contractual liability.
- (g) \$2,000,000 general aggregate limit

c. Automobile Liability Insurance

Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

d. Continuing Products/Completed Operations Liability Insurance

The Contractor will provide continuing products/completed operations liability Insurance with a limit of not less than five million (\$5,000,000) for each occurrence for at least three years following substantial completion of the work on projects over one million (\$1,000,000).

e. Builder’s Risk

Course of Construction/Installation (Builder’s Risk) property insurance providing all risk, including theft coverage for all property and materials to be used on the project. The insurance policy shall not have any coinsurance penalty.

f. Umbrella Liability Insurance

An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

g. Subcontractor Insurance Requirements

The Contractor agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this contract to provide insurance covering the contracted operations with the basic requirements for all contracts in Sections 5.3.1 and the insurance specifications for all contracts in 5.3.2, (including waiver of subrogation rights) and naming the County and/or District as additional insureds. The

Contractor agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

## **ARTICLE VI CONTRACTOR'S DUTIES AND RESPONSIBILITIES**

### **6.1 GENERAL SCOPE OF WORK**

**6.1.1** Contractor shall provide all materials, labor, equipment, and undertake all efforts necessary or appropriate to construct the Project in accordance with the requirements of the Contract Documents, all governmental approvals, all Applicable Law, and all other applicable safety, environmental and other requirements taking into account the constraints affecting the Project Site. Except as otherwise specifically provided in this Contract, all materials, services and efforts necessary to achieve Final Completion of the Project and elements thereof on or before the deadlines provided in the Contract Documents shall be Contractor's sole responsibility. The costs of all such materials, services and efforts are included in the Contract Sum.

**6.1.2** The Contractor and all Subcontractors shall obtain any required licenses from the local jurisdiction where the Project is located (i.e. local City or County), prior to commencement of Work.

### **6.2 BEFORE STARTING WORK**

Contractor shall submit the following to District for review and acceptance within fourteen (14) calendar days after the Date of Commencement fixed in District's Notice to Proceed, and as a condition to payment: (i) detailed Project Schedule including each deadline specified in the Contract Documents; (ii) Schedule of Submittals; (iii) material Procurement Schedule; and (iv) a Schedule of Values in accordance with the requirements of the General Conditions and other Contract Documents.

### **6.3 INITIAL CONFERENCE**

Within ten (10) calendar days after the Date of Commencement fixed in District's Notice to Proceed, a conference attended by District and Contractor and others as appropriate will be held to establish a working understanding among the Parties as to the Work and to discuss the schedules, progress meetings, procedures for handling submittals, processing Applications for Payment, maintaining required records, coordination with Contractor Team Members, and other Project administration matters.

### **6.4 EVALUATION OF PRELIMINARY SUBMITTALS**

At least ten (10) calendar days before submission of the first Application for Payment, a conference attended by Contractor, District and others as appropriate, will be held to review for acceptability the submittals required by the Contract Documents. No progress payment shall be made to Contractor until the required submittals are acceptable to District. The detailed Project Schedule will be acceptable to District as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Time, but such acceptance will neither impose on District responsibility for the sequencing, scheduling or progress of the Work nor interfere with nor relieve Contractor from Contractor's full responsibility therefore. The format and structure of the Project Schedule will be set forth in the Contract Documents and approved by District. District's acceptance shall not be deemed to confirm that the schedule is a reasonable plan for performing the Work. Contractor's schedule of submittal will be acceptable to District as providing a workable arrangement for reviewing and processing the required submittals.

### **6.5 CONSTRUCTION**

Contractor shall perform Construction in accordance with the requirements of the Contract Documents.

**6.5.1** Construction shall be performed by Contractor and Subcontractors and suppliers who are selected, paid and acting in accordance with the procedures outlined in the Contract Documents.

**6.5.2** The Contractor shall keep the District informed of the progress and quality of the Work in the form

of periodic written reports and meetings, as determined by the District, but no less than monthly.

**6.5.3** As a condition of final payment to Contractor, Contractor shall provide written certification that the Work has been constructed in accordance with the Contract Documents.

## **ARTICLE VII**

### **CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

In order to induce District to enter into this Agreement, Contractor makes the following representations and warranties:

**7.1** Contractor has visited the Site and has reasonably examined the nature and extent of the Work, Site, locality, actual conditions, as-built conditions, and all federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.

**7.2** Contractor has reasonably examined all reports of exploration and tests of subsurface conditions, as-built drawings, drawings or reports available for construction purposes, of physical conditions, or conditions which may be apparent at the Site and accepts the criteria set forth in these documents and the Contract Documents to the extent of the information contained in these documents upon which the Contractor is entitled to rely. Contractor agrees that except for the information so identified, Contractor does not and shall not rely on any other information contained in these documents.

**7.3** After Contract award, Contractor will conduct or obtain any additional examinations, investigations, explorations, tests, reports and studies, including but not limited to geotechnical investigations that pertain to the surface and subsurface conditions, as-built conditions, underground facilities and all other physical conditions at or contiguous to the Site as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

**7.4** Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, test, reports and studies with the terms and conditions of the Contract Documents.

**7.5** Contractor has given District prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered before Contract award in or among the Contract Documents and actual conditions and the written resolution thereof through Addenda issued by District is acceptable to Contractor.

**7.6** Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.

**7.7** Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Contractor.

**7.8** Contractor certifies that neither it nor its principals, or other key decision makers, or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. See the System for Award Management ([www.sam.gov](http://www.sam.gov)). Contractor agrees that signing this Contract shall constitute signature of this Certification.

**7.9** During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**7.10** Contractor agrees to comply with the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and standards issued pursuant to the Americans with Disabilities Act. Contractor will also comply with the current edition of the California Building Code (California Code of Regulations, Title 24, Part 2).

**7.11** Contractor agrees to comply and certify compliance with the Drug Free Workplace Act of 1990 per Government Code Section 8350 et seq.

**7.12** Contractor acknowledges it will comply with the provisions of Public Contract Code section 4100-4114 regarding subcontractors. The Contractor hereby agrees to reimburse the District for costs incurred by the awarding authority in the substitution of subcontractors. Where a hearing is held pursuant to the provisions of Chapter 4 of the Public Contract Code (commencing with Section 4100) by the awarding authority or a duly appointed hearing officer, the District shall prepare and certify a statement of all costs incurred by the District for investigation and conduct of the hearing, including the costs of any hearing officer and shorthand reporter appointed. The statement shall then be sent to the Contractor who shall reimburse the County and/or District for such costs. If not paid separately, such reimbursement may be deducted from any money due and owing to the Contractor prior to acceptance of the Work. For the purposes of a hearing for the substitution of subcontractors (pursuant to the Public Contract Code commencing with Section 4100) the awarding authority shall be the Director of the San Bernardino County Department of Public Works - Special Districts, or his/her designee.

**7.13** The Contractor hereby agrees to comply with the State Labor Code and certifies through signature of this Contract that, in accordance with Section 3700 of the State Labor Code, Contractor is 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 will comply with such provisions before commencing the performance of the Work of this Contract.

**7.14** The Contractor acknowledges that he will be held responsible for compliance with the provisions of Sections 1777.5 and 1776 of the State Labor Code.

**7.15** Contractor shall comply with Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) including, but not limited to, the following requirements: (1) no contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5; (2) no contractor or subcontractor may be awarded a contract for public work or perform work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5; (3) this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations; (4) Contractor shall post job site notices regarding compliance monitoring and enforcement by the Department of Industrial Relations; and (5) Contractor must submit certified payroll at least monthly to the Labor Commissioner in a format prescribed by the Labor Commissioner.

**7.16** As required by Labor Code section 1771.1(a) "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

**7.17** Contractor shall adhere to the County's Travel Management Policy (08-02 and 08-02SP) when travel is pursuant to this Contract and for which reimbursement is sought from the County and/or District. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

## **ARTICLE VIII**

### **PROJECT ACCESS, RECORD RETENTION AND AUDITS**

**8.1** At all times during construction of the Project, Contractor shall coordinate with the District to provide employees, subcontractors, and consultants of District reasonable unrestricted access to observe, monitor and inspect the Project. The District's access to observe, monitor and inspect shall include the right to review all documents and files relating to the Project, as well as construction on the Site, including all tests and inspections relating to construction of the Project.

**8.2** Contractor expressly acknowledges it is aware of and will comply with all record retention and audit requirements contained in the Contract Documents. These requirements include, but are not limited to, the maintenance of an Official Project File that must be preserved a minimum of five (5) years, the protection of records from fire or other damage, the maintenance of all records in accordance with generally accepted accounting principles, and the agreement that the District or its designated representative shall have the right to Review, to audit, and to copy any records and supporting documentation pertaining to the performance of this Agreement.

## **ARTICLE IX MISCELLANEOUS PROVISIONS**

### **9.1 INDEPENDENT CONTRACTOR**

Contractor is, and shall be, acting at all times in the performance of this Agreement as an independent Contractor. Contractor shall secure at its expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for Contractor and its officers, agents and employees and all business licenses, if any, in connection with the services to be performed hereunder.

### **9.2 DISTRICT EMPLOYEES AND OFFICIALS**

Contractor shall employ no District official nor any regular District employee in the Work performed pursuant to this Agreement. No officer or employee of District shall have any financial interest in this Agreement in violation of applicable provisions of law.

Contractor agrees to provide or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County Administrative Official" is defined as a member of the Board of Supervisors or such officer staff, Chief Executive Officer or member of such officer staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

### **9.3 INACCURACIES OR MISREPRESENTATIONS**

If during the course of the administration of this agreement, the District determines that the Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the District, this contract may be immediately terminated. If this contract is terminated according to this provision, the District is entitled to pursue any available legal remedies.

### **9.4 IRAN CONTRACTING ACT OF 2010**

(Public Contract Code sections 2200 et seq.)

(Applicable for all Contracts of one million dollars (\$1,000,000) or more)

In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 (<http://www.dgs.ca.gov/pd/Resources/PDLegislation.aspx>) as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

**9.5 EXECUTIVE ORDER N-6-22 – RUSSIA SANCTIONS**

(Applicable to state funded contracts.)

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). By submitting a bid or proposal, Contractor represents that it is not a target of Economic Sanctions. Should it be determined Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Contractor’s bid/proposal any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by the County and/or District.

**9.6 NOTICES**

Any notices or special instructions required to be given in writing under this Agreement shall be given either by personal delivery to Contractor's agent (as designated by Contractor) or to District's Engineer and County Counsel as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed as follows:

<b>DISTRICT</b>	<b>CONTRACTOR</b>
<u>Department of Public Works – Special Districts</u> <u>C/O: CSA 70 R-5 (Sugarloaf)</u>	<u>Pavement Coatings Co.</u>
<u>222 West Hospitality Lane, 2nd Floor</u>	<u>10240 San Sevaine Way</u>
<u>San Bernardino, CA 92415-0450</u>	<u>Jurupa Valley, CA 91752</u>
<u>(909) 386-8800</u>	<u>(714) 826-3011</u>

**ARTICLE X**

The contract is delivered by Pavement Coatings Co., Contractor, to District for acceptance by its Governing Board at San Bernardino, California, and is deemed to have been entered into at San Bernardino, California

**ARTICLE XI**

This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

IN WITNESS WHEREOF, the Board of Supervisors, acting as the Governing Body of CSA 70, R-5 Sugarloaf has caused this Contract to be subscribed by its duly authorized officers, in its behalf, and the said party of the second part has signed this Contract.

**COUNTY SERVICE AREA 70, R-5 SUGARLOAF**

**PAVEMENT COATINGS CO.**

*(Print or type name of corporation, company, contractor, etc.)*

►  
\_\_\_\_\_  
Dawn Rowe, Chair, Board of Supervisors

By \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*

Dated: \_\_\_\_\_  
SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

Name \_\_\_\_\_  
*(Print or type name of person signing contract)*

Lynna Monell  
Clerk of the Board of Supervisors  
of the San Bernardino County

Title \_\_\_\_\_  
*(Print or Type)*

By \_\_\_\_\_  
Deputy

Dated: \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Approved as to Legal Form ►	Reviewed by Contract Compliance ►	Presented to Board for Signature ►
Aaron Gest – Deputy County Counsel	Byanka Velasco – Division Manager	David Doublet – Assistant Director
Date _____	Date _____	Date _____