

ROSSMOOR COMMUNITY SERVICES DISTRICT

**ROSSMOOR PARK PICKLEBALL COURT
CONVERSION AND
BASKETBALL/TENNIS/RESURFACING
PROJECT**

BID PACKAGE

ROSSMOOR COMMUNITY SERVICES DISTRICT NOTICE INVITING BIDS

NOTICE IS HEREBY GIVEN that the Rossmoor Community Services District (“RCSD”) invites sealed bids for the Rossmoor Park Pickleball Court Conversion and Basketball/Tennis/Pickleball Resurfacing Project (“Project”). The Project site is located at 3232 Hedwig Road, Rossmoor, CA 90720.

1. **BID SUBMISSION AND OPENING.** RCSD will receive such bids via delivery to the RCSD offices, located at 3001 Blume Drive, Rossmoor, CA 90720, up to the hour of 11:30 a.m., on the 23rd of August 2023, at which time they will be opened publicly and read aloud outside the offices of RCSD at 11:45 a.m. Any bid received after the scheduled closing time for the receipt of bids shall be returned to the bidder unopened. It shall be the sole responsibility of the bidder to see that his/her/its bid is received by the deadline.
2. **BID CONTENTS.** Sealed bid proposals shall bear the title of the Project and name of the bidder but no other distinguishing marks.

Bid prices shall include everything necessary for the completion of construction and fulfillment of the contract including, but not limited to, furnishing all materials, equipment, tools, plant facilities and all management, permits, labor and services. In the event of a price difference quoted in words and a price quoted in numbers for the same quotation, the words shall prevail.

In preparing bid prices, the bidder represents that he/she/it has carefully examined the contract documents, and the physical conditions and investigations pertaining to the job site where the work is to be performed and that he/she/it has familiarized himself/herself/itself with all local conditions and federal, state and local laws, ordinances, rules, and regulations that may affect performance of the work.

3. **BID PACKAGE.** The Bid Package is available on RCSD’s website at www.rossmoor-csd.org. All prospective bidders that wish to obtain a hard copy of the Bid Package must make an appointment to pick up the Bid Package at the RCSD office by contacting Joe Mendoza at JMendoza@Rossmoor-CSD.org. Alternatively, prospective bidders may request that a hard copy be mailed to them by contacting JMendoza@Rossmoor-CSD.org or Jessica Verduzco at JVerduzco@Rossmoor-CSD.org. Please be advised that it is the bidder’s responsibility to obtain the Bid Package in sufficient time to deliver a sealed bid on or before the deadline.

4. MANDATORY PRE-BID CONFERENCE AND SITE INSPECTION. A mandatory pre-bid conference and site inspection will be held on Monday, August 14, 2023, at 10:00 am.
5. ADDITIONAL INSPECTIONS OF PROJECT SITE. Bidders for this Project may conduct additional site inspections of the existing surfaces before submitting bids. To conduct an additional site inspection, bidders should contact the RCSD office at (562) 430-3707 or Joe Mendoza at JMendoza@Roosmoor-CSD.org to make an appointment.
6. LICENSES, PERMITS AND INSPECTIONS. A valid Class A General Engineering Contractor License or a C-32 Parking and Highway Improvement License, issued by the California Contractors State License Board, is required at the time the contract is awarded, pursuant to Public Contract Code section 3300. Each bidder must also be qualified as required by law at the time of the bid opening.
7. REGISTRATION WITH THE DEPARTMENT OF INDUSTRIAL RELATIONS. Pursuant to Labor Code sections 1725.5 and 1771.1, no contractor or subcontractor shall 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 unless registered and qualified pursuant to Labor Code section 1725.5.
8. PREVAILING WAGES. This Project is a “public work” subject to the prevailing wage requirements. Pursuant to provisions of Sections 1770 et seq. of the Labor Code, all works employed on the Project shall be paid not less than the general prevailing rate of per diem wages, as determined by the Director of the Department of Industrial Relations (DIR) for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. Copies of the prevailing rate of per diem wages are on file with RCSD and are available to any interested party upon request. The applicable State prevailing wages are also set forth on the Department of Industrial Relations’ website: <http://www.dir.ca.gov>; these rates are subject to predetermined increases. The prime contractor shall post a copy of the DIR’s determination of the prevailing rate of per diem wages at each job site. This Project is subject to compliance monitoring and enforcement by the DIR.
9. BID SECURITY. Each bid must be submitted with a certified check, cashier's check, or a bid bond, made payable to or in favor of the Rossmoor Community Services District, in an amount equal to at least five percent (5%) of the total amount of the bid. No bid will be considered unless accompanied by such certified check, cashier's check, or bid bond.

10. PAYMENT, PERFORMANCE AND WARRANTY BONDS. Prior to commencement of work, the successful bidder will be required to provide a payment bond and a performance bond, each in an amount to no less than one hundred percent (100%) of the total amount payable pursuant to the contract. The successful bidder will also be required to provide a materials and workmanship warranty bond for no less than a one (1) year period from the date of the recorded Notice of Completion. At the discretion of the RCSD, this warranty bond will be used to repair and/or replace any defective or deficient materials and/or workmanship used, supplied or provided. The bonds shall be executed by an admitted surety insurer. The bonds shall be in a form approved by RCSD.
11. RETENTION. As authorized by Public Contract Code section 7201(b)(1), RCSD withholds five percent (5%) of each progress payment as retention. Pursuant to Public Contract Code section 22300, the successful bidder may substitute certain securities for money withheld by the RCSD to ensure performance of the contract. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the contractor. Securities will be returned to the contractor upon satisfactory completion of the contract.
12. NON-DISCRIMINATION. The bidding process and contract are subject to State and Federal non-discrimination requirements, including but not limited to the requirement that no person or business shall discriminate on the basis of race, color, national origin, ancestry, religious creed, physical disability, mental disability, medical condition, marital status, sex, gender, gender expression, gender identity, sexual orientation, age, or military or veteran status in its solicitation, selection, hiring, or treatment of individuals or businesses in connection with the bidding process or work performed for RCSD in connection with the Project.
13. ADDITIONAL REQUIREMENTS. This Project is subject to all applicable local, state, and federal regulations and requirements.
14. RCSD'S RIGHT TO REJECT BIDS. RCSD reserves the right, in its sole discretion, to reject any or all bids, or to waive any minor irregularities or informalities in any bid.

For further information regarding this Project, please contact Joe Mendoza at JMendoza@Rossmoor-CSD.org.

Published: July 26, 2023

INFORMATION FOR BIDDERS

The Bid Package includes one "option" with one Scope of Work. Per the attached Exhibit A, Annotated Aerial Photo of the Courts, the Scope of Work areas are identified to facilitate the required personal inspection of the work site, access to the site and other matters on and in the vicinity of the work site.

Exhibit A and the specifications for the one Scope of Work acknowledge the subsurface conditions or otherwise hidden conditions, as the RCSD supposes or believes them to exist, but is not intended or to be inferred that the conditions as shown thereon constitute a representation that such conditions are actually existent. No claim for additional compensation will be allowed, which is based on a lack of knowledge of these items.

The terms of the Community Services District Contracting and Bidding Requirements are in the attached Exhibit B. They include, but are not limited to, the required licensing, insurances, bonds, and prevailing wages. A sample Public Works Agreement is included as Attachment 1 to Exhibit B.

Within ten (10) calendar days after the bids are opened, RCSD will release the proposal guarantees accompanying the proposals which are not to be considered in making the award. Proposal guarantees for the two lowest bidders will be held until the contract has been fully executed, after which they will be returned to the respective bidders.

The contract shall be executed in duplicate by the successful bidder and returned, together with the bonds and evidence of insurance, within ten (10) calendar days after the notification of the contract award by RCSD via e-mail. In case of failure of the successful bidder to execute the contract agreement within ten (10) calendar days or any subsequent extension approved by RCSD, RCSD at its option may consider the bidder in default, in which case the bid bond will be retained by RCSD.

The work shall be completed within 25 calendar days from commencement of work.

The contract will be awarded to the lowest responsible and responsive bidder, whose bid proposal is not rejected for cause by RCSD. In no event will an award be made until all necessary investigations are made as to the qualifications of the awarded bidder.

Each bidder is herein notified RCSD reserves the right to delay the award of the project for 45 calendar days, for any reason. After 45 calendar days, the low bidder may at any time request release from its bid without penalty.

The acceptance of a proposal will be evidenced by a Notice of Award of Contract in writing, delivered by e-mail to the bidder whose proposal is accepted. The award of contract shall obligate the bidder whose proposal is accepted to furnish a performance bond, payment bond, warranty bond, and evidence of insurance and to execute the contract set forth herein.

SCOPE OF WORK

Pickleball Court Conversion and Basketball/Tennis/Pickleball Resurfacing

- **Preparation:** Pressure wash all court surfaces and rinse with clean water. Patch cracks and spalls. Prime any exposed areas of concrete.
- **Acrylic Resurfacer:** Apply by squeegee, one coat of acrylic resurfacer with 60 silica sand as base coat and as filler.
- **Color Texture Coats:** Apply by squeegee, one coat of Plexipave Acrylic Texture System with 60 silica sand.
- **Color Coat:** Apply one coat by squeegee of Plexipave Color System with no sand. This coat seals in the sand coats and improves the color of the court. The color of the court shall be determined from **STANDARD COLORS** on Plexipave color chart.
- **Play Lines:** The play lines shall be sharp and accurate for tennis and basketball and pickleball. White textured line paint shall be applied between strips of masking tape. **When surfacing is complete, 2 days must pass before playing on court to ensure proper cure.**
- **Caulking:** Clean out approximately 355' of expansion joints on tennis courts under net lines and at 30' openings between courts. Clean out 55' of expansion joint across basketball court and install, in all joints, a two-part urethane caulk by Sika to seal the joints.
- **Net Posts/Nets:** Douglas Pickleball Premier SQ Surface Mount Net Posts: 3" square net posts with 11 gauge steel wall thickness; Complete with welded lacing rods, Cast aluminum ally caps and gear housings; Baked on polyester powder coat; Removable chrome plated handle for superior protection; Internally wound featuring a self-locking gear; Plated steel gears; Case hardened small gear function is 30-to-1 to ensure easy operation; Thick bottom base plate to secure to old or new construction.

EXHIBIT A

EXHIBIT A - ANNOTATED AERIAL PHOTO, ILLUSTRATING AREAS OF WORK



Tennis Courts

PickleBall Court Conversion

Basketball Courts

Google

EXHIBIT B

RCSD CONTRACTING & BIDDING REQUIREMENTS

Under Public Contract Code § 1101, this is a “public works contract.” Specifically, regarding the bidding requirements for Community Services Districts, Public Contract Code § 20682.5 provides:

- All contracts for the construction or completion of any building, structure, or improvement, when the cost exceeds twenty-five thousand dollars (\$25,000), shall be contracted for and let to the lowest responsible bidder after notice.
- The district shall publish a notice inviting bids for any contract for which competitive bidding is required at least one time in a newspaper of general circulation in the district at least 10 days before the time specified for receiving bids. The notice inviting bids shall set a date for opening the bids and distinctly state the work to be done.
- If plans and specifications are prepared describing the work, all bidders shall be afforded an opportunity to examine the plans or/and specifications, and the plans and specifications shall be attached to and become part of the contract, if one is awarded.
- At its discretion, the board of directors may reject any bids presented and re-advertise.

Prevailing Wages

The California Labor Code governs the requirement of payment of “Prevailing Wages” for this public work project. Labor Code § 1771 provides: for projects over \$1,000, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

In addition, the Labor Code requires language in public works contracts related to the provisions of Workers’ Compensation Insurance. Labor Code § 1861 provides: contractors to whom a public works contract is awarded shall sign and file with the awarding body the following certification prior to performing the work of the contract: “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 under-take 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.”

Indemnity and Insurance

The successful bidder will be required to indemnify and defend RCSD for claims, damages, liabilities, etc. arising in connection with the performance of the work. The successful bidder will also be required to carry liability insurance with a policy limit of at least \$1,000,000, naming the Rossmoor Community Service District as an additional insured. The indemnification and insurance requirements are further detailed in the Sample Public Works Agreement included as Attachment 1.

Licensing

Public Contract Code § 3300 provides: proof of a current and applicable CA Contractor's License shall be possessed at the time of the contract is awarded. In no case shall the awarding authority award a prime contract to a specialty contractor whose classification constitutes less than the majority of the project.

Bonds

Pursuant to California Civil Code § 9550 et seq., a payment bond in an amount not less than 100 percent of the total amount payable pursuant to the public works contract is required for all projects estimated in excess of \$25,000.00. The successful bidder must also purchase a performance bond in an amount not less than 100 percent of the total amount payable pursuant to the public works contract, once awarded the contract. The terms of the required warranty bond are itemized in Section 10 of the Notice Inviting Bids. The bonds shall be executed by an admitted surety insurer.

Guarantee of the Work

The successful bidder shall guarantee the work for a minimum of one (1) year.

Subcontractors

Pursuant to Public Contract Code § 4104, each bidder shall list in his/her/its bid all subcontractors who will perform work in excess of one-half (1/2) of one (1) percent of the total bid. The California contractor's license number shall also be provided for each listed subcontractor.

Best Management Practices and CA Green Building Standards Code

The CA & EPA-mandated Best Management Practices (BMP's), the National Pollutant Discharge Elimination System (NPDES) and the CA Green Building Standards Code (CalGreen) shall be adhered to in this project. A Construction Waste Management Plan of "65% Waste Recycling" may be required by Orange County as part of the permits process.

Required Forms

Bidders are required to submit specified forms with their bids, including, but not limited to, a non-collusion affidavit and workers' compensation certification. Required forms are included as Attachment 2.

Sample Agreement

A sample agreement is included as Attachment 1. The sample agreement may be revised in RCSD's discretion. By submitting a bid, a bidder agrees to be bound by all requirements of the sample agreement.

A contractor who is not awarded a public contract because of the failure to comply with all above-noted requirements, shall not receive damages for the loss of the contract.

ATTACHMENT 1
SAMPLE PUBLIC WORKS AGREEMENT

SAMPLE

**SAMPLE
ROSSMOOR COMMUNITY SERVICES DISTRICT
PUBLIC WORKS AGREEMENT**

THIS PUBLIC WORKS AGREEMENT (“Agreement”), dated _____ (“Effective Date”), is made by the ROSSMOOR COMMUNITY SERVICES DISTRICT, a public agency (“DISTRICT”), and a [entity information] (“CONTRACTOR”).

DISTRICT desires to construct the public work and improvements described below under Scope of Work, Paragraph 1 (“Work”).

ACCORDINGLY, the parties hereto agree as follows:

1. SCOPE OF WORK.

The Work consists of _____.

The Work is further described in the “Contract Documents” referred to below.

The Project is known as _____ (“Project”).

2. CONTRACT DOCUMENTS.

The complete Agreement consists of the following documents relating to the Project:

- a. This Agreement.
- b. CONTRACTOR’s bid.
- c. Notice inviting bids.
- d. Complete plans, profiles, detailed drawings and specifications, including general provisions and special provisions.
- e. Certificates of Insurance.
- f. Faithful Performance Bond and Labor and Material Bond, including agent’s Power of Attorney for each bond.
- g. Summary of Public Contract Code section 9204.
- h. Supplements, attachments, and exhibits attached to the above items.
- i. Provisions of the most current edition of The Greenbook: Standard Specifications for Public Works Construction (“The Greenbook”); and

- j. All addenda setting forth any modifications or interpretations of the above documents.

The documents attached hereto are incorporated herein by this reference. The Greenbook is incorporated by reference as if fully set forth herein. The documents comprising the complete Agreement will be referred to as the "Contract Documents."

All of the Contract Documents are intended to complement one another, so that any Work called for in one and not mentioned in another is to be performed as if mentioned in all documents.

In the event of an inconsistency in the Contract Documents, the terms of this Agreement shall prevail over all other Contract Documents. The order of precedence between the remaining Contract Documents shall be as set forth in The Greenbook.

The Contract Documents constitute the entire agreement between the parties and supersede any and all other writings and oral negotiations.

3. DISTRICT'S REPRESENTATIVE

4. The DISTRICT's Representative is _____, referred to herein as the Project Manager ("Project Manager").

5. CONTRACTOR'S PROJECT MANAGER; PERSONNEL.

(a) Project Manager. CONTRACTOR's Project Manager must be approved by DISTRICT. Such approval shall be at DISTRICT's sole discretion.

(b) Personnel. DISTRICT has the right to review and approve any personnel who are assigned to perform work under this Agreement. CONTRACTOR shall remove personnel from performing work under this Agreement if requested to do so by DISTRICT.

This Paragraph 4 is a material provision of the Agreement.

6. SCHEDULE.

All Work shall be performed in accordance with the schedule approved on behalf of DISTRICT by the Project Manager, and in accordance with the time of performance set forth in Paragraph 8 (Time of Performance).

7. EQUIPMENT - PERFORMANCE OF WORK.

CONTRACTOR shall furnish all tools, equipment, apparatus, facilities, labor and materials necessary to perform and complete the Work of construction in a good and workmanlike manner in strict conformity with the Contract Documents.

The equipment, apparatus, facilities, labor and material shall be furnished and such Work performed and completed as required in the plans and specifications to the satisfaction of the Project Manager or his or her designee, and subject to his or her approval.

8. CONTRACT PRICE.

_____ (\$_____.00).

9. TIME OF PERFORMANCE.

CONTRACTOR shall commence Work by the date specified in DISTRICT's Notice to Proceed, unless a later date is agreed upon in writing by the parties. The Work shall be completed within _____ [working/calendar] days from the first day of commencement of the Work.

10. TERMINATION.

(a) Termination for Convenience.

DISTRICT may terminate this Agreement at any time, with or without cause, by providing thirty (30) days' written notice to CONTRACTOR.

(b) Termination for Breach of Contract.

(i) If CONTRACTOR refuses or fails to prosecute the Work or any severable part of it with such diligence as will ensure its timely completion, or if CONTRACTOR fails to complete the Work on time, or if CONTRACTOR, or any subcontractor, violates any of the provisions of the Contract Documents, the Project Manager may give written notice to CONTRACTOR and CONTRACTOR's sureties of the DISTRICT's intention to terminate this Agreement; and, unless within five (5) days after the serving of that notice, such conduct shall cease and arrangements for the correction thereof be made to the satisfaction of the DISTRICT, this Agreement may be terminated at the option of DISTRICT effective upon CONTRACTOR's

receipt of a second notice sent by the DISTRICT indicating that the DISTRICT has exercised its option to terminate.

(ii) If CONTRACTOR is adjudged bankrupt or files for any relief under the Federal Bankruptcy Code or State insolvency laws, this Agreement shall automatically terminate without any further action or notice by DISTRICT.

(iii) If CONTRACTOR is in breach of any material provision of this Agreement, DISTRICT may immediately terminate this Agreement by providing written notice to CONTRACTOR of same.

11. LIQUIDATED DAMAGES.

In the event the Work is not completed, for any reason, within the time required including any approved extensions of time, and to the satisfaction of the Project Manager, DISTRICT may, in addition to any other remedies, equitable and legal, including remedies authorized by Paragraph 9 (Termination) of this Agreement, charge to CONTRACTOR or its sureties, or deduct from payments or credits due CONTRACTOR, a sum equal to _____ as liquidated damages for each day beyond the date provided for the completion of such Work.

The parties hereto agree that the amount set forth above, as liquidated damages constitutes a fair and reasonable estimate of the costs the DISTRICT would suffer for each day that the CONTRACTOR fails to meet the performance schedule. The parties hereby agree and acknowledge that the delays in the performance schedule will cause DISTRICT to incur costs and expenses not contemplated by this Agreement.

12. PERFORMANCE BY SURETIES.

In the event CONTRACTOR fails or refuses to perform the Work, DISTRICT may provide CONTRACTOR with a notice of intent to terminate as provided in Paragraph 9 (Termination), of this Agreement. The DISTRICT shall immediately give written notice of such intent to terminate to CONTRACTOR and CONTRACTOR's surety or sureties, and the sureties shall have the right to take over and perform this Agreement; provided, however, that the sureties must, within five (5) days after DISTRICT's giving notice of termination, (a) give the DISTRICT written notice of

their intention to take over the performance of this Agreement; (b) provide adequate assurances, to the satisfaction of the DISTRICT that the Work shall be performed diligently and in a timely manner; and (c) must commence performance thereof within five (5) days after providing notice to the DISTRICT of their intention to take over the Work. Upon the failure of the sureties to comply with the provisions set forth above, DISTRICT may take over the Work and complete it, at the expense of CONTRACTOR, and the CONTRACTOR and the sureties shall be liable to DISTRICT for any excess costs or damages including those referred to in Paragraph 10 (Liquidated Damages), incurred by DISTRICT. In such event, DISTRICT may, without liability for so doing, take possession of such materials, equipment, tools, appliances, Contract Documents and other property belonging to CONTRACTOR as may be on the site of the Work and reasonably necessary therefor and may use them to complete the Work.

13. DISPUTES PERTAINING TO PAYMENT FOR WORK.

Should any dispute arise respecting whether any delay is excusable, or its duration, or the value of the Work done, or of any Work omitted, or of any extra Work which CONTRACTOR may be required to do, or respecting any payment to CONTRACTOR during the performance of this Agreement, such dispute shall be decided by the Project Manager, and his or her decisions shall be final and binding upon CONTRACTOR and its sureties.

14. SUPERINTENDENCE BY CONTRACTOR.

At all times during performance of the Work, CONTRACTOR shall give personal superintendence or have a competent foreman or superintendent on the worksite, with authority to act for CONTRACTOR.

15. INSPECTION BY DISTRICT.

CONTRACTOR shall at all times maintain proper facilities and provide safe access for inspection by DISTRICT to all parts of the Work and to all shops on or off-site where the Work or portions of the Work, are in preparation. DISTRICT shall have the right of access to the premises for inspection at all times. However, DISTRICT shall, at all times, comply with CONTRACTOR's safety requirements on the job site.

16. CARE OF THE WORK AND OFF-SITE AUTHORIZATION.

CONTRACTOR warrants that it has examined the site of the Work and is familiar with its topography and condition, location of property lines, easements, building lines and other physical factors and limitations affecting the performance of this Agreement. CONTRACTOR, at CONTRACTOR's sole cost and expense, shall obtain any permission, and all approvals, licenses, or easements necessary for any operations conducted off the premises owned or controlled by DISTRICT. CONTRACTOR shall be responsible for the proper care and protection of all materials delivered to the site or stored off-site and for the Work performed until completion and final inspection and acceptance by DISTRICT. The risk, damage or destruction of materials delivered to the site or to Work performed shall be borne by CONTRACTOR.

17. PAYMENTS TO CONTRACTOR.

On or before the last Monday of each and every week during the performance of the Work, CONTRACTOR shall meet with the Project Manager or his or her designee to determine the quantity of pay items incorporated into the improvement during that week. A "Progress Payment Order" will then be jointly prepared, approved, and signed by the Project Manager and the CONTRACTOR setting forth the amount to be paid and providing for a five percent (5%) retention. Upon approval of the progress payment order by the Project Manager, or his or her designee, it shall be submitted to DISTRICT's Finance Department and processed for payment by obtaining approval from the DISTRICT Council to issue a warrant.

Within three (3) days following DISTRICT Council's approval to issue a warrant, DISTRICT shall mail to CONTRACTOR a warrant for the amount specified in the progress payment order as the amount to be paid. The retained five percent (5%) shall be paid to CONTRACTOR thirty-five (35) days after the recording of the Notice of Completion of the Work by the COUNTY and after CONTRACTOR shall have furnished releases of all claims against DISTRICT by persons who furnished labor or materials for the Work, if required by DISTRICT.

Upon the request of CONTRACTOR and at its expense, securities equivalent to the amount withheld pursuant to the foregoing provisions may be presented to DISTRICT for

substitution for the retained funds. If DISTRICT approves the form and amount of the offered securities it will release the retained funds and will hold the securities in lieu thereof. CONTRACTOR shall be entitled to any interest earned on the securities.

In the event that claims for property damage or bodily injury are presented to DISTRICT arising out of CONTRACTOR's or any subcontractor's Work under this Agreement; DISTRICT shall give notice thereof to CONTRACTOR, and CONTRACTOR shall have thirty-five (35) days from the mailing of any such notice to evaluate the claim and to settle it by whole or partial payment, or to reject it, and to give notice of settlement or rejection to DISTRICT. If DISTRICT does not receive notice within the above-mentioned 35-day period that the claim has been settled, and if the Project Manager, after consultation with the DISTRICT General Counsel, determines that the claim is meritorious, DISTRICT may pay the claim or a portion of it in exchange for an appropriate release from the claimant, and may deduct the amount of the payment from the retained funds that would otherwise be paid to CONTRACTOR upon completion of the Work; provided, however, that the maximum amount paid for any one claim pursuant to this provision shall be One Thousand Dollars (\$1,000.00), and the maximum amount for all such claims in the aggregate paid pursuant to this provision shall be Five Thousand Dollars (\$5,000.00).

18. PROMPT PAYMENT OF SUBCONTRACTORS.

The CONTRACTOR agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the CONTRACTOR receives from DISTRICT.

The CONTRACTOR agrees further to release retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed.

Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the DISTRICT.

19. CONTRACT SECURITY AND GUARANTEE.

Unless previously provided by CONTRACTOR to DISTRICT, CONTRACTOR shall furnish, concurrently with the execution of this Agreement, the following: (1) a surety bond in an

amount equal to one hundred percent (100%) of the contract price as security for the faithful performance of this Agreement, and (2) a separate surety bond in an amount equal to at least one hundred percent (100%) of the contract price as security for the payment of all persons furnishing labor or materials in connection with the Work under this Agreement. Sureties for each of the bonds and the forms thereof shall be satisfactory to DISTRICT. In addition, such sureties must be authorized to issue bonds in California; sureties must be listed on the latest revision to the U.S. Department of the Treasury Circular 570; and must be shown to have sufficient bonding capacity to provide the bonds required by the Contract Documents.

CONTRACTOR shall provide a certified copy of the certificate of authority of the surety issued by the Insurance Commissioner; a certificate from the clerk of the county in which the court or officer is located that the certificate of authority of the surety has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted; and copies of the surety's most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

CONTRACTOR guarantees that all materials used in the Work and all labor performed shall be in conformity with the Contract Documents including, but not limited to, the standards and specifications set forth in the most current edition of The Greenbook. CONTRACTOR shall, at its own expense, make any and all repairs and replacements that shall become necessary as the result of any failure of the Work to conform to the aforementioned Contract Documents, and standard specifications; provided, however, that CONTRACTOR shall be obligated under this provision only to the extent of those failures or defects of which he is given notice within a period of twelve (12) months from the date that the Notice of Completion is recorded.

The Materials and Workmanship Warranty period shall be one (1) year on the maintenance treatments, such as crack sealing and seal coat, and the Pavement Performance Warranty period shall be one (1) year at the four (4) removal and replacement hot mix asphalt areas. These warranties begin on the recorded date of completion. In the event that DISTRICT

discovers or becomes aware of any defects, in the sole and absolute discretion of DISTRICT, CONTRACTOR shall promptly make any and all necessary repairs at CONTRACTOR'S sole cost and expense.

The rights and remedies available to DISTRICT pursuant to this provision shall be cumulative with all rights and remedies available to DISTRICT pursuant to statutory and common law, which rights and remedies are hereby expressly reserved, and neither the foregoing guarantee by CONTRACTOR nor its furnishing of the Bonds, nor acceptance thereof by DISTRICT, shall constitute a waiver of any rights or remedies available to DISTRICT against CONTRACTOR.

20. INDEMNIFICATION.

CONTRACTOR agrees to protect, defend, indemnify and hold harmless DISTRICT and its elected and appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorney fees, for injury to or death of any person, and for injury or damage to any property, including consequential damages of any nature resulting therefrom, arising out of or in any way connected with the performance of this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the CONTRACTOR, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the CONTRACTOR, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the DISTRICT, its elected officials, officers, agents and employees based upon the work performed by the CONTRACTOR, its employees, and/or authorized subcontractors under this Agreement, whether or not the CONTRACTOR, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the CONTRACTOR shall not be liable for the defense or indemnification of the DISTRICT for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the DISTRICT. This provision shall supersede and replace all other indemnity

provisions contained either in the DISTRICT's specifications or CONTRACTOR's proposal, which shall be of no force and effect.

CONTRACTOR shall comply with all of the provisions of the Workers' Compensation insurance laws and Safety in Employment laws of the State of California, including the applicable provisions of Divisions 4 and 5 of the California Labor Code and all amendments thereto and regulations promulgated pursuant thereto, and all similar State, Federal or local laws applicable; and CONTRACTOR shall indemnify and hold harmless DISTRICT from and against all claims, liabilities, expenses, damages, suits, actions, proceedings and judgments, of every nature and description, including attorney fees, that may be presented, brought or recovered against DISTRICT for or on account of any liability under or failure to comply with any of said laws which may be incurred by reason of any Work performed under this Agreement by CONTRACTOR or any subcontractor or others performing on behalf of CONTRACTOR.

DISTRICT does not, and shall not, waive any rights against CONTRACTOR which it may have by reason of the above hold harmless agreements, because of the acceptance by DISTRICT or the deposit with DISTRICT by CONTRACTOR of any or all of the insurance policies described in Paragraph 20 (Insurance) of this Agreement.

The hold harmless agreements by CONTRACTOR shall apply to all liabilities, expenses, claims, and damages of every kind (including but not limited to attorney fees) incurred or alleged to have been incurred, by reason of the operations of CONTRACTOR or any subcontractor or others performing on behalf of CONTRACTOR, whether or not such insurance policies are applicable. CONTRACTOR shall require any and all tiers of subcontractors to afford the same degree of indemnification to the DISTRICT and its elected and appointed boards, officers, agents, and employees that is required of CONTRACTOR and shall incorporate identical indemnity provisions in all contracts between CONTRACTOR and all tiers of its subcontractors.

In the event that CONTRACTOR and DISTRICT are sued by a third party for damages caused or allegedly caused by negligent or other wrongful conduct of CONTRACTOR, or by a dangerous condition of DISTRICT's property created by CONTRACTOR or existing while the

property was under the control of CONTRACTOR, CONTRACTOR shall not be relieved of its indemnity obligation to DISTRICT by any settlement with any such third party unless that settlement includes a full release and dismissal of all claims by the third party against the DISTRICT.

21. INSURANCE.

CONTRACTOR shall not commence Work under this Agreement until it has obtained all insurance required under this section and DISTRICT has approved the insurance as to form, amount, and carrier, nor shall CONTRACTOR allow any subcontractor to commence any Work until all similar insurance required of the subcontractor has been obtained and approved.

Neither the failure of CONTRACTOR to supply specified insurance policies and coverage, nor the failure of DISTRICT to approve same shall alter or invalidate the provisions of Paragraph 19 (Indemnification) of this Agreement.

(a) Workers' Compensation Insurance

CONTRACTOR shall obtain and maintain during the life of this Agreement workers' compensation insurance and, if any Work is sublet, CONTRACTOR shall require all tiers of subcontractors to obtain workers' compensation insurance.

All workers' compensation insurance policies shall provide that the insurance may not be canceled without thirty (30) days' advance written notice of such cancellation to DISTRICT.

CONTRACTOR agrees to waive, and obtain endorsements from its workers' compensation insurer waiving, subrogation rights under its workers' compensation insurance policy against the DISTRICT and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

(b) Liability Insurance Coverage.

CONTRACTOR shall obtain and maintain during the life of this Agreement the following insurance coverage:

(i) Commercial General Liability, including coverage for premises-operations, products/completed operations hazard, blanket contractual, broad form property

damage, and independent contractors. In addition, CONTRACTOR shall obtain and maintain during the life of this Agreement each of the following insurance coverage which are not stricken out and initialed by the Project Manager: Explosion and collapse hazard, underground hazard, personal injury, and automobile liability, including owned, hired, and non-owned vehicles. All insurance coverage shall have limits of not less than \$1,000,000.00 combined single limits, per occurrence and aggregate.

(ii) Below are approved endorsements which satisfy the basic insurance requirements contained in contracts entered into by DISTRICT. These have been approved by the DISTRICT's General Counsel. The terms of any specific contract with the DISTRICT are controlling. Prior to the commencement of any work, the DISTRICT requires that the Engineer receive Certificates of Insurance in DUPLICATE for liability coverage of at least \$1,000,000.00 combined single limits, per occurrence and in the aggregate. Endorsements to the policies providing the above insurance shall be obtained by CONTRACTOR, adding the following three provisions:

(1) Additional Insured:

"The Rossmoor Community Services District and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to the subject project and agreement."

(2) Notice:

"Said policy shall not terminate, nor shall it be canceled nor the coverage reduced, until thirty (30) days after written notice is given to DISTRICT."

(3) Other Insurance:

"Any other insurance maintained by the Rossmoor Community Services District shall be excess and not contributing with the insurance provided by this policy."

If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by DISTRICT. No policy of insurance issued as to which the DISTRICT is an additional insured

shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

22. PROOF OF INSURANCE.

Prior to commencement of the Work, CONTRACTOR shall furnish DISTRICT, through the Project Manager, proof of compliance with the above insurance requirements in a form satisfactory to DISTRICT's Risk Management.

23. LEGAL WORK DAY - PENALTIES FOR VIOLATION.

Eight (8) hours of labor shall constitute a legal day's work during any one (1) calendar day. CONTRACTOR shall forfeit to DISTRICT the sum of Twenty-Five Dollars (\$25.00) for each workman employed in the execution of this Agreement by CONTRACTOR or by any subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one calendar day and 40 hours in any one calendar week in violation of California Labor Code Sections 1810 through 1815, inclusive.

24. PREVAILING WAGE SCALE.

CONTRACTOR shall comply in all respects with California Labor Code sections 1770 et seq., including the keeping of all records required by the provisions of Labor Code section 1776.

CONTRACTOR shall furnish each week to DISTRICT's Project Administration Division a statement with respect to the wages of each of its employees during the preceding weekly payroll period.

25. COMPLIANCE WITH ALL LAWS.

CONTRACTOR shall, at its own cost and expense, comply with all applicable local, state, and federal laws, regulations, and requirements in the performance of this Agreement, including but not limited to laws regarding health and safety, labor and employment, and wage and hours.

26. NON-DISCRIMINATION.

In performing this Agreement, CONTRACTOR will not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status or sex, or sexual orientation,

except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Section 1735 of the California Labor Code.

27. CONTRACT ASSURANCE.

The CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONTRACTOR shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as recipient deems appropriate.

The CONTRACTOR will require that the above provision is included in all subcontracts.

28. PROVISIONS CUMULATIVE.

The provisions of this Agreement are cumulative and in addition to, and not in limitation of, any other rights or remedies available to DISTRICT.

29. NOTICES.

It shall be the duty and responsibility of CONTRACTOR to notify all tiers of subcontractors and material men of the following special notice provision; namely, all preliminary 20-day notices or stop notices shall be directed only to the DISTRICT Clerk and to no other department, and shall be either personally delivered or sent by certified mail, postage prepaid.

All other notices shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices required to be given to DISTRICT pursuant to this Agreement shall be addressed as follows:

Rossmoor Community Services District
3001 Blume Drive
Rossmoor, CA 90720
Attn: _____

Notices required to be given to CONTRACTOR shall be addressed as follows:

Attn: _____

Notices required to be given to CONTRACTOR's sureties shall be addressed as follows:

Attn: _____

30. INDEPENDENT CONTRACTOR.

The parties hereto acknowledge and agree that the relationship between DISTRICT and CONTRACTOR is one of principal and independent contractor and no other. All personnel to be utilized by CONTRACTOR in the performance of this Agreement shall be employees of CONTRACTOR and not employees of the DISTRICT. CONTRACTOR shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes. Nothing contained in this

Agreement shall create or be construed as creating a partnership, joint venture, employment relations, or any other relationship except as set forth between the parties. The parties specifically acknowledge and agree that CONTRACTOR is not a partner with DISTRICT, whether general or limited, and no activities of DISTRICT or CONTRACTOR or statements made by DISTRICT or CONTRACTOR shall be interpreted by any of the parties hereto as establishing any type of business relationship other than an independent contractor relationship.

31. PERS ELIGIBILITY INDEMNIFICATION.

In the event that CONTRACTOR or any employee, agent, or subcontractor of CONTRACTOR providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees' Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the DISTRICT, CONTRACTOR shall indemnify, defend, and hold harmless DISTRICT for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONTRACTOR or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of DISTRICT.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONTRACTOR and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by DISTRICT, including but not limited to eligibility to enroll in PERS as an employee of DISTRICT and entitlement to any contribution to be paid by DISTRICT for employer contribution and/or employee contributions for PERS benefits.

32. VALIDITY.

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any of the other provisions of this Agreement.

33. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal action relating to or arising out of this Agreement shall be subject to the jurisdiction of the County of Orange, California.

34. RESOLUTION OF CONTRACTOR CLAIMS

CONTRACTOR claims, as defined in Public Contract Code section 9204, shall be resolved in accordance with the provisions of Section 9204 and applicable law. A summary of Section 9204 is attached hereto and incorporated herein by reference.

35. NO THIRD PARTY BENEFICIARY RIGHTS.

This Agreement is entered into for the sole benefit of the DISTRICT and CONTRACTOR and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

36. ASSIGNABILITY.

This Agreement may not be sold, transferred or assigned by either party, or by operation of law, to any other person or persons or business entity, without the other party's written permission. Any such sale, transfer or assignment, or attempted sale, transfer or assignment

without written permission, may be deemed by the other party to constitute a voluntary termination of this Agreement and this Agreement shall thereafter be deemed terminated and void.

37. WAIVER.

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought referring expressly to this Paragraph. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

38. HEADINGS.

Section and subsection headings are not to be considered part of this Agreement, are included solely for convenience, and are not intended to modify or explain or to be a full or accurate description of the content thereof.

39. COUNTERPARTS.

This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one Agreement.

40. CORPORATE AUTHORITY.

The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by doing so, the Parties hereto are formally bound to the provisions of this Agreement.

41. ADDITIONAL SERVICES.

CONTRACTOR shall not receive compensation for any services provided outside the scope of the Contract Documents unless such additional services, including change orders, are approved in writing by DISTRICT prior to CONTRACTOR performing the additional services.

It is specifically understood that oral requests or approvals of such additional services, change orders or additional compensation and any approvals from DISTRICT shall be barred and are unenforceable.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

ROSSMOOR COMMUNITY SERVICES DISTRICT

By: Tony DeMarco
Board President

Date:

CONTRACTOR

By: _____ Date: _____
[Name]
[Title]

APPROVED AS TO FORM FOR DISTRICT

By: _____ Date: _____
Tarquin Preziosi
General Counsel

SAMPLE

SUMMARY OF PUBLIC CONTRACT CODE § 9204

The following procedure will apply to any claims by the Contractor on the District:

A “claim” is a separate demand on the District by a contractor on a public works project and sent by registered mail or certified mail with return receipt requested, for one or more of the following:

- A time extension, including relief from penalties for delay
- Payment by the District of money damages under the terms of the contract
- Payment of an amount that is disputed by the District

Initial Review

The claim must be supported by appropriate documentation. The District has 45 days within which to review the claim and provide the contractor with a written statement identifying the disputed and undisputed portions of the claim. If the District does not issue a written statement, the claim is deemed rejected in its entirety. The District will pay any undisputed portion of the claim within 60 days of issuing the statement.

Meet & Confer

If the contractor disputes the District’s written response, or if the District does not issue one, the contractor may request in writing an informal conference to meet and confer for possible settlement of the claim. The District will schedule the meet and confer conference within 30 days of this request and provide a written statement identifying the remaining disputed and undisputed portions of the claim within 10 business days of the meet and confer. The District will pay the undisputed portion within 60 days of issuing this statement.

Mediation

With respect to any disputed portion remaining after the meet and confer, the District and contractor will submit the matter to nonbinding mediation, agree to a mediator within 10 business days after issuing the written statement, and share mediation costs equally. If mediation is unsuccessful, then the terms of the public works agreement and applicable law will govern resolution of the dispute.

Miscellaneous Provisions

Amounts not paid by the District in a timely manner bear interest at 7% per annum. Subcontractors may submit claims via this procedure through the general contractor. The District and contractor may waive the requirement to mediate, but cannot otherwise waive these claim procedures.

ATTACHMENT 2
REQUIRED FORMS

**NONCOLLUSION DECLARATION TO BE EXECUTED BY
BIDDER AND SUBMITTED WITH BID**

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____[date], at _____[city], _____[state].”

By: _____

Title: _____

CA State Contractor’s License No. _____

WORKERS' COMPENSATION CERTIFICATION

Pursuant to Sections 1860 and 1861 of the Labor Code, the Contractor shall submit the following certification:

"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 contract."

Contractor: _____

By: _____

Title: _____