

**RESOLUTION NO. 4118**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD  
AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH  
PAVEX CONSTRUCTION INC. FOR THE CONSTRUCTION OF 2007 RESURFACING  
AND STRIPING FOR A TOTAL OF \$392,938.18 (BASE BID OF \$242,938.18 WITH  
ADDITIONAL AMOUNT  
OF \$150,000 FOR ADDITIVE BID) AND APPROPRIATING \$150,000  
OF REGIONAL SURFACE TRANSPORTATION FUND**

**WHEREAS**, the City resurfaces and applies seal coat to streets, and repairs failed pavement as part of the Pavement Management System; and

**WHEREAS**, the City received an AB 2766 grant from the Monterey Bay Air Pollution Control District to construct new bike lanes; and

**WHEREAS**, plans and specifications were completed for the construction of 2007 street resurfacing and striping and advertised on September 20 and 26, 2007 for bidding; and

**WHEREAS**, the City received and opened five sealed bids for the Construction of 2007 Resurfacing and Striping Project at 2:00 pm on October 16, 2007; and

**WHEREAS**, the project specification specifies that the contract will be awarded on the base bid; and

**WHEREAS**, the lowest bidder, based on the base bid, Bond Blacktop Inc., did not meet the requirements of Section 8-1.01 of the Standard Specifications in that Bond Blacktop Inc. performs less than 50% of the total contract price for this project and the lowest bid is therefore considered non responsive; and

**WHEREAS**, Staff reviewed the bids and has determined that the second lowest bidder, based on the base bid, Pavex Construction Inc., was responsive and is qualified to perform the desired work; and

**WHEREAS**, since Monterey Street between Eighth Street and Oak Street and Palm Avenue are in poor condition, Staff recommends that the City Council approve an additional expenditure of \$150,000 to repair and apply seal coat to these streets, all of which said work was contained in an additive bid submitted in response to the bid specifications; and

**WHEREAS**, based on the bid price and work history, Staff recommends the bid be awarded to Pavex Construction Inc., in the amount of \$392,938.18 for the base bid of \$242,938.18 with an additional amount of \$150,000 for the additive bid for the construction of 2007 Resurfacing and Striping; and

**WHEREAS**, the proposed project has been determined to be a Class 1 Categorical Exemption from analysis under the California Environmental Quality Act, pursuant to California Code of Regulations Section 15301.

**NOW THEREFORE, BE IT HEREBY RESOLVED** by the City Council of the City of Soledad that:

1. The Council hereby awards the base bid for the construction of 2007 Resurfacing and Striping to the lowest responsive bidder, Pavex Construction Inc., in an amount not to exceed \$242,938.18, with an additional amount of \$150,000 for the additive bid, for a total contract price of \$392,938.18, and authorizes the City Manager to enter into a Contract with Pavex Construction Inc. in the form attached hereto as Exhibit "A" and by this reference incorporated herein. The City Manager or her designee is directed to reject all other bids in writing.
2. The Council hereby approves the appropriation and expenditure of \$150,000 from the City's Regional Surface Transportation Funds for the identified additional work.

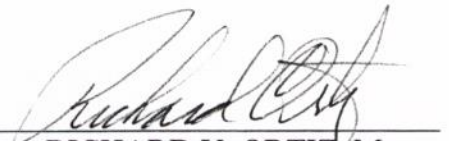
**PASSED AND ADOPTED** by the City Council of the City of Soledad at a special meeting duly held on the 28th day of November 2007, by the following vote:

AYES, and in favor thereof, Councilmembers: Martha Camacho, Juan Saavedra, Patricia Stephens, Mayor Pro Tem Christopher Bourke, Mayor Richard Ortiz

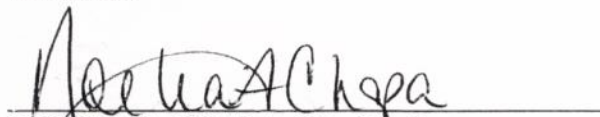
NOES, Councilmembers: None

ABSTAIN, Councilmembers: None

ABSENT, Councilmember: None

  
RICHARD V. ORTIZ, Mayor

ATTEST:

  
NOELIA F. CHAPA, City Clerk

## AGREEMENT

THIS AGREEMENT, made and entered into this 29<sup>th</sup> day of November, 2007, by and between City of Soledad, a municipal corporation of the State of California, hereinafter called "City", and Pavex Construction Inc., hereinafter called "Contractor",

### WITNESSETH

**FIRST:** Contractor hereby covenants and agrees to furnish and provide all labor, materials, tools, appliances, equipment, plant and transportation, and all other things required or necessary to be furnished, provide or done, and build, erect, construct and complete the work at the time and in the manner provided, and in strict accordance with, the Plans and Specifications therefore, for

### 2007 RESURFACING AND STRIPING

**SECOND:** It is expressly understood and agreed that this contract consists of the following documents, all of which are incorporated into this agreement and made a part hereof as fully and completely as if set forth herein verbatim, to wit:

- a. **Instructions to Bidders and General Conditions**
- b. **Advertisement for Bids (Notice to Contractors)**
- c. **Signed and executed Proposal (BID) of Contractor**
- d. **Bid Bond**
- e. **This Agreement.**
- f. **Performance Bond**
- g. **Payment Bond**
- h. **Notice of Award**
- i. **Notice to Proceed**
- j. **Any Mutually Executed Change Orders**
- k. **The aforesaid Specifications**
- l. **ADDENDA**  
**No. 1 dated October 2, 2007 respectively.**
- m. **Design Standards and Standard Specifications, Department of Public Works, City of Soledad, June 2007 Edition, or as amended;**
- n. **Additive bid included in the signed and executed Proposal (Bid) of Contractor**

**THIRD:** That said Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work embraced and contemplated in this Agreement as set forth in the Proposal, a true copy thereof hereto attached; also, for all loss or damage arising out of the nature of said work or from the action of the elements or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until the acceptance thereof by the City of Soledad and for all risk connected with the work, and for well and faithfully completing the work, and the whole thereof, in the manner and according to the said Plans and Specifications and the provisions of this Agreement, and the requirements of the Director of Public Works under them, to wit: The prices as set forth in the Proposal of said Contractor for the work to be constructed under this Agreement, which prices should be considered as though repeated herein.

Exhibit     "A"

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The Contractor and City hereby agree that the Contractor shall perform the work, and be paid the bid unit prices of Base Bid Items No. 1 through 30 as specified in the Proposal of the Contractor, for the total price of two hundred forty two thousand nine hundred seventy eight dollars and eighteen cents (\$242,978.18); and in addition Contractor shall perform such Additive or Alternate Bid Items as directed by the City in writing, at the unit prices set forth in the Proposal, in a total amount not to exceed one hundred fifty thousand dollars (\$150,000).

The undersigned Contractor further agrees to so plan the work and to prosecute it with such diligence that said work, and all of it, shall be completed on or before the expiration of the time specified in the Proposal after execution of the Contract on behalf of the City of Soledad and the receipt from the City of Soledad of a notice to proceed with the work.

**FOURTH:** City hereby promises and agrees with said Contractor to employ, and does hereby employ, said Contractor to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the price aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions set forth in the Specifications and the said parties, for themselves, their heirs, executors, administrators, successors, and assigns, do hereby agree to the full performance of the covenants herein contained.

**FIFTH:** No interest in this Agreement shall be transferred by the Contractor to any other party, and any such transfer shall cause the annulment of this Agreement, so far as the City of Soledad is concerned. All rights of action, however, for any breach of this Agreement are reserved to City.

**SIXTH:** The Contractor shall hold harmless and indemnify the City of Soledad, its officers, agents, employees and volunteers, from all loss, damage, cost or expense that arises or is set up for infringement or patent rights of anyone for use by the City of Soledad, its officers, employees or agents, or articles supplied by the Contractor under this Agreement of which he/she is not entitled to use or sell. Contractor agrees to, at his/her own cost and expense, defend in court the City, its officers, agents, employees, and volunteers, in any action which may be commenced or maintained against them, on account of any claimed infringement of patent rights, arising out of this Agreement.

Contractor shall take all responsibility for the work, shall bear all losses and damages directly or indirectly resulting to the Contractor, any subcontractors, the City, its officers, officials, agents, employees, and volunteers, on account of the performance or character of the work, unforeseen difficulties, accidents, or occurrences of other causes predicated on active or passive negligence of the Contractor or of any subcontractor. The Contractor shall indemnify, defend and hold harmless the City, its officials, officers, employees, agents and volunteers from and against any or all loss, liability, expense, claim costs (including costs of defense), suits, and damages of every kind, nature and description directly or indirectly arising from performance of the work. This provision shall not be construed to exempt the City, or its officials, officers, and employees from their own fraud, willful injury or violation of the law, whether willful or negligent. By execution of this Agreement the Contractor acknowledges and agrees that the Contractor has read and understands the requirements of this Agreement, including this indemnity provision, which is a material element of consideration. Approval of the Contractor's certificates of insurance does not relieve the Contractor of liability under this provision.

1. Contractor will defend any action or actions filed in connection with any such claims, damages, penalties, obligations or liabilities and will pay all related costs and expenses, including attorney's fees incurred;

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2. Contractor will promptly pay any judgment rendered against the City, its officials, officers, employees, agents and volunteers or consultants for any such claims, damages, penalties, obligations or liabilities; and,
3. In the event the City, its officials, officers, employees, agents, volunteers or consultants is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligence or wrongful acts of Contractor in the performance of the work, Contractor agrees to pay the City, its official, officers, employees, agents, volunteers and consultants any and all costs and expenses incurred in such action or proceeding, including but not limited to, reasonable attorney's fees.

Contractor shall reimburse the City for all costs and expense (including but not limited to fees and charges of architects, engineers, attorneys and other professional and court costs) incurred by the City in enforcing the provisions of this Section.

**SEVENTH:** In accordance with Public Contract Code Section 20104, the following shall apply in lieu of any contrary provisions concerning disputed work contained in the General Conditions, Special Provisions, Standard Specifications, and any and all related provisions incorporated therein:

1. Pursuant to Public Contract Code Section 20104.2, the following procedures shall apply to claims of \$375,000 or less between the Contractor and the City:

- A. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims
- B. For claims of less than fifty thousand dollars (\$50,000), the City shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 (thirty) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor.
  - i. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor.
  - ii. The City's written response to the claim, as further documented, shall be submitted to the Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.
- C. For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the City shall respond in writing to all written claims within 60 (sixty) days of receipt of the claim, or may request in writing, within 30 (thirty) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor.



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3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

A. Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this section shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

ii. In addition to chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that Chapter, pay the attorney's fees of the other party arising out of the trial de novo.

C. The Court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

3. Pursuant to Public Contract Code Section 20104.6:

A. The City shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the Agreement.

B. In any suit filed under Public Contract Code Section 20104.4 concerning this Agreement, the City shall pay interest at the legal rate on any arbitration award or judgment. Such interest shall accrue from date the suit was filed.

**EIGHTH:** The Contractor agrees to immediately repair and replace all defective material and workmanship discovered within one year after acceptance by the City or final payment to Contractor and to indemnify the City against all loss and damage occasioned by any such defect, discovered within said year, even though the damage or loss may not be ascertained until after the expiration thereof. Provided, however, that if such failure of the Contractor to perform should not, by reasonable diligence, be discoverable or discovered within said one year, then the obligation of the Contractor to repair and replace said defective material or workmanship shall continue until one year after the actual discovery thereof.

**NINTH:** The Contractor agrees at all times during the progress of the work to carry with insurance carriers approved by the City full coverage worker's compensation and public liability insurance in the form and to the extent called for in Section 7.1.12 of both the Standard Specifications, State of California, May 2006, and the Design Standards and Standard Specifications, and the Standard Specifications for the Installation of Water Facilities Department of Public Works, City of Soledad, 2006 Edition as amended. Certificates of Insurance must specify whether coverage is on a claims occurrence or claims made form. If the policy is claims made, Contractor will be required to obtain a bond which must remain in effect until 12 months following completion of work. Contractor shall also advise the insurance carrier to inform the City of the unpaid limits of the policy. Such insurance policy shall contain an endorsement that the same shall not be canceled nor the amount of coverage be reduced until

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at least thirty days after receipt by the City of Soledad by certified or registered mail or a written notice of such cancellation or reduction in coverage.

**TENTH:** Contractor agrees to comply with all applicable federal, state and municipal laws and regulations, including but not limited to California Labor Code Division 2, Part 7, Chapter 1.

**ELEVENTH:** If the Contractor fails to fully perform the work contemplated under this agreement in accordance with the Contract Documents by the agreed upon time for completion, as such time may be amended by change order or other modification to this Agreement in accordance with its terms, and/or if the Contractor fails, by the time for completion, to fully perform all of the Contractor's obligations under this Agreement that have accrued by the time for completion, the Contractor will become liable to the City for all resulting loss and damage in accordance with the Contract Documents and applicable law. The City's remedies for the Contractor's failure to perform include, but are not limited to, assessment of **liquidated damages of \$500 per day** in accordance with California Government Code Section 53069.85 and the Contract Documents, and/or obtaining or providing for substitute performance in accordance with the Contract Documents.

**TWELFTH:** The Contractor will be solely responsible for any and all losses, costs, or liabilities of any kind incurred by the Contractor, any subcontractor engaged in the performance of the contract work, any party supplying material or equipment for the work or any third party that are incurred pursuant to Contractor-proposed change orders prior to issuance of an approved change order.

Any changes in the work and/or the Contract Documents pursuant to change orders and any other amendments issued in accordance with the Contract Documents, will in all respects be subject to all provisions of the Contract Documents, except as modified by such change orders or amendments.

The City has the right to add, delete or change any aspect or any amount of the Work by written directive. If the City believes that it is entitled to a credit of money or time based on the written directive, City must ask contractor for a credit proposal and then negotiate a change order; if no agreement is reached, City may issue a unilateral change order and contractor may follow the contract's claim procedures if it wishes. If the contractor believes that the written directive will lead to additional cost or time for which contractor must be compensated, then contractor may submit a proposed change order. If the Contractor disputes a City directed change order following a reasonable effort by the City and the Contractor to resolve the dispute including, at a minimum, a meeting between appropriate representatives of the Contractor and the City, the Contractor must commence performing the work consistent with the disputed change order within five (5) working days of the last meeting between representatives of the Contractor and the City to resolve the dispute, or within the time specified in the disputed City directed change order, whichever is later. In performing Work consistent with a disputed City-directed change order pursuant to this provision the Contractor will have all of the Contractor's rights concerning claims pursuant to the Contract Documents and applicable law.

If the City disputes a Contractor proposed change order, the City and the Contractor will use reasonable efforts to resolve the dispute including, at a minimum, holding a meeting between appropriate representatives of the Contractor and the City. Regardless of and throughout any such efforts to resolve the dispute the Contractor must continue performing the work, as

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directed by the City, irrespective of and unmodified by the disputed change order. In continuing to perform the work, the Contractor will retain all of the Contractor's rights under contract or law pertaining to resolution of disputes and protests between contracting parties. Disputes between

the City and the Contractor concerning any Contractor-proposed change order or other amendment do not excuse the Contractor's obligation to perform the work in accordance with the Contract Documents excluding such Contractor-proposed change order or other amendment by the time for completion or waive any other Project milestone or other requirement of the Contract Documents.

**THIRTEENTH:** Contractor may request to provide securities in lieu of retention, and if Contractor so requests, Contractor must submit an Agreement to City in the form set forth in Public Contract Code Section 22300.

**FOURTEENTH:** If this Project will involve trenching deeper than four (4) feet, the Contractor must notify the City before disturbing any hazardous waste, subsurface conditions different from those indicated, or unusual conditions that may be encountered. City will promptly investigate and provide for change orders if necessary. If the Project involves trenching deeper than five (5) feet, Contractor must submit a detailed design for shoring and other work protection measures before work commences.

**IN WITNESS WHEREOF,** City has caused this instrument to be executed and its corporate name and seal to be hereunto attached by its Mayor, pursuant to resolution theretofore duly adopted by the Council of the City of Soledad, and Contractor has caused this instrument to be executed, the day and year first herein above written.

CITY OF SOLEDAD

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
"Contractor"  
(Attach Notary Acknowledgment)

Approved as to form:

\_\_\_\_\_  
Michael F. Rodriquez, City Attorney

**\*\*\*ALL SIGNATURES MUST BE NOTARIZED EXCEPT THOSE OF CITY OFFICIALS\*\*\***