

CONSTRUCTION AGREEMENT

Between

The City of Pomona

and

Pavement Coatings Co.

For

**Complete Streets Quick-Build -Park Avenue and Orange Grove
Avenue (FY 26-27)**

Project Worktag 68601

FD428 | CC2590 CIP [Construction]

IFB# 2026-25

(Updated 7/16/2026)

PUBLIC WORKS CONTRACT

Complete Streets Quick-Build -Park Avenue and Orange Grove

Avenue (FY 26-27)

Project Worktag 68601

FD428 | CC2590 CIP [Construction]

IFB# 2026-25

TABLE OF CONTENTS

<u>ARTICLE 1.</u>	<u>SCOPE OF WORK.</u>	57
<u>ARTICLE 2.</u>	<u>TIME FOR COMPLETION.</u>	57
<u>ARTICLE 3.</u>	<u>CONTRACT PRICE.</u>	57
<u>Sec. 3.1</u>	<u>Contract Price.</u>	57
<u>Sec. 3.2</u>	<u>Payment Terms</u>	57
<u>ARTICLE 4.</u>	<u>COMPONENT PARTS OF THE CONTRACT.</u>	57
<u>ARTICLE 5.</u>	<u>PROVISIONS REQUIRED BY LAW.</u>	A-5
<u>Sec. 5.1</u>	<u>Contractors License.</u>	A-5
<u>Sec. 5.2</u>	<u>Ineligible Contractor Prohibited.</u>	A-6
<u>Sec. 5.3</u>	<u>Unfair Business Practices Claims.</u>	A-6
<u>Sec. 5.4</u>	<u>Trenches, Excavations and Unknown Conditions.</u>	A-6
<u>Sec. 5.5</u>	<u>Trench and Pipeline Safety.</u>	A-6
<u>Sec. 5.6</u>	<u>Utility Relocation.</u>	A-7
<u>Sec. 5.7</u>	<u>Third Party Claims Notification.</u>	A-7
<u>Sec. 5.8</u>	<u>State License Board Notice.</u>	A-7
<u>ARTICLE 6.</u>	<u>INSURANCE, BONDS AND INDEMNIFICATION.</u>	A-8
<u>ARTICLE 7.</u>	<u>LABOR AND WAGE PROVISIONS.</u>	A-10
<u>Sec. 7.1</u>	<u>Prevailing Wages.</u>	A-10
<u>Sec. 7.2</u>	<u>Apprentice Program.</u>	A-10
<u>Sec. 7.3</u>	<u>Legal Hours of Work and Overtime.</u>	A-10
<u>Sec. 7.4</u>	<u>Payroll Records.</u>	A-10
<u>ARTICLE 8.</u>	<u>COORDINATION OF WORK</u>	A-12
<u>Sec. 8.1</u>	<u>Representative of Contractor.</u>	A-12
<u>Sec. 8.2</u>	<u>Contracting Officer.</u>	A-13
<u>Sec. 8.3</u>	<u>Prohibition Against Assignment.</u>	A-13
<u>Sec. 8.4</u>	<u>Independent Contractor.</u>	A-13

<u>Sec. 8.5</u>	<u>Identity of Persons Performing Work.</u>	A-13
<u>ARTICLE 9.</u>	<u>ENFORCEMENT OF CONTRACT</u>	A-14
<u>Sec. 9.1</u>	<u>California Law.</u>	A-14
<u>Sec. 9.2</u>	<u>Disputes</u>	A-14
<u>Sec. 9.3</u>	<u>Waiver.</u>	A-14
<u>Sec. 9.4</u>	<u>Rights and Remedies are Cumulative.</u>	A-14
<u>Sec. 9.5</u>	<u>Legal Action.</u>	A-15
<u>Sec. 9.6</u>	<u>Termination for Default of Contractor.</u>	A-15
<u>Sec. 9.7</u>	<u>Termination for Convenience.</u>	A-15
<u>Sec. 9.8</u>	<u>Attorneys' Fees.</u>	A-15
<u>Sec. 9.9</u>	<u>Legal Actions Against the City</u>	A-16
<u>ARTICLE 10.</u>	<u>CITY OFFICERS AND EMPLOYEES, NONDISCRIMINATION</u>	A-18
<u>Sec. 10.1</u>	<u>Non-liability of City Officers and Employees.</u>	A-18
<u>Sec. 10.2</u>	<u>Conflict of Interest.</u>	A-19
<u>Sec. 10.3</u>	<u>Covenant Against Discrimination.</u>	A-19
<u>ARTICLE 11.</u>	<u>MISCELLANEOUS PROVISIONS</u>	A-20
<u>Sec. 11.1</u>	<u>Notice.</u>	A-20
<u>Sec. 11.2</u>	<u>Interpretation.</u>	A-20
<u>Sec. 11.3</u>	<u>Integration; Amendment.</u>	A-20
<u>Sec. 11.4</u>	<u>Severability.</u>	A-21
<u>Sec. 11.5</u>	<u>Hiring of Undocumented Workers Prohibited</u>	A-21
<u>Sec. 11.6</u>	<u>Corporate Authority</u>	A-21
<u>Sec. 11.7</u>	<u>Independent Contractor.</u>	A-21
<u>Sec. 11.8</u>	<u>Legal Responsibilities.</u>	A-21
<u>Sec. 11.9</u>	<u>Sales And/Or Taxes:</u>	A-21

PUBLIC WORKS CONTRACT

Complete Streets Quick-Build -Park Avenue and Orange Grove Avenue (FY 26-27)
Project Worktag 68601
FD428 | CC2590 CIP [Construction]
IFB# 2026-25

THIS CONTRACT ("Contract") is made and entered into by and between the City of Pomona ("City") and Pavement Coatings Co. ("Contractor"). The Contract becomes effective on the date of the last authorized signature after approval by the City's governing body ("Effective Date"). A Conditional Notice to Proceed authorizes only the preconstruction activities expressly stated in that notice, does not commence Contract Time, and does not authorize field construction. Contractor shall not commence field construction before the City issues the Full Notice to Proceed. The City and Contractor agree as follows:

ARTICLE 1. SCOPE OF WORK.

The Contractor shall perform all Work within the time stipulated in the Contract and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 4 below for the following Project(s):

Complete Streets Quick-Build -Park Avenue and Orange Grove Avenue (FY 26-27)
Project Worktag 68601
FD428 | CC2590 CIP [Construction]
IFB# 2026-25

The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

The Work consists of the Base Bid and only those Additive Alternates expressly identified as accepted in Section 3.1 or an attached award schedule. Any Additive Alternate not so identified is rejected and excluded from the Work.

ARTICLE 2. TIME FOR COMPLETION.

The Work shall commence on the date stated in the City's Full Notice to Proceed. Contractor shall complete all Base Bid Work within twenty (20) consecutive Working Days after that date. If the City awards one or more Additive Alternates, the Contract Time shall increase by five (5) Working Days in the aggregate for all accepted Additive Alternates, and not by five (5) Working Days for each alternate. The Contract Time may be adjusted only by an authorized written Change Order.

ARTICLE 3. CONTRACT PRICE.

Sec. 3.1 Contract Price.

The City shall pay Contractor, as full compensation for performance of the Contract and subject to authorized additions and deductions, the total sum of Four Hundred Sixty-Five Thousand Nine Hundred Seventy Dollars and Seventy-Five Cents (\$465,970.75), consisting of: Base Bid –

(\$227,851.80); and accepted Additive Alternate(s) – (\$238,118.95). All unlisted alternates are rejected and excluded from the Work. The Contract Price may be adjusted only by an authorized written Change Order.

Sec. 3.2 Payment Terms

Payment shall be made as set forth in the Section 7 of Special Provisions.

ARTICLE 4. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" consist only of the documents expressly listed below and any document identified by exact title, date, revision, and addendum number in an exhibit or schedule attached to this Contract:

- (1) Executed Change Orders and Supplemental Agreements;
- (2) This Public Works Contract;
- (3) Addenda;
- (4) Technical Provisions;
- (5) Special Provisions;
- (6) Project Plans and details;
- (7) City standard plans, drawings, and specifications;
- (8) The 2024 Standard Specifications for Public Works Construction and adopted supplements;
- (9) The 2025 California Department of Transportation Standard Plans and Standard Specifications, including only the revisions expressly identified in the Contract Documents;
- (10) The accepted Bid Schedule and accepted Additive Alternates, solely as to accepted prices, quantities, and alternates;
- (11) Required bonds, insurance endorsements, and certificates; and
- (12) Other documents expressly identified and incorporated by title, date, and revision.
- Before execution, the City shall attach or identify every Project Plan, Bid Schedule, accepted Additive Alternate, and appendix referenced in the Special or Technical Provisions. A document that is neither attached nor so identified and made available at the stated repository is not incorporated into this Contract and does not add to the Work.
- The Contract Documents are complementary. If an irreconcilable conflict exists, the following order of precedence applies, from highest to lowest: (a) executed Change Orders and Supplemental Agreements, with the most recently executed document controlling; (b) this Public Works Contract; (c) Addenda; (d) Technical Provisions; (e) Special Provisions; (f) Project Plans, with detail drawings controlling over general drawings; (g) City standard plans, drawings, and specifications; (h) the 2024 Standard Specifications for Public Works Construction and adopted supplements; (i) the 2025 Caltrans Standard Plans and Standard Specifications; and (j) other reference specifications. Applicable law and mandatory permit conditions control only to the extent legally required. Any resulting adjustment of Contract Price or Contract Time shall be determined under the Change Order and Claims provisions. No qualification, exclusion, or exception in the Bid modifies the Contract unless expressly accepted in an executed written agreement.

ARTICLE 5. PROVISIONS REQUIRED BY LAW.

Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Project. Such laws, rules and regulations shall include, but not be limited to the following.

Sec. 5.1 Contractors License.

Except where federal funding makes Public Contract Code section 20103.5 applicable, Contractor represents that, when its Bid was submitted, it possessed a valid California Class "A" General Engineering Contractor license and every other classification legally required for Work it proposes to self-perform. In all cases, Contractor shall possess all required licenses at Contract award and shall maintain them in good standing through Final Completion and performance of all warranty obligations.

Sec. 5.2 Ineligible Contractor Prohibited.

Except as expressly permitted by Labor Code section 1771.1, Contractor and each subcontractor shall be currently registered and qualified with the Department of Industrial Relations before bidding, being listed in a bid, entering into a subcontract, or performing any Work, and in every event before Contract award or commencement of performance. Contractor shall provide evidence of licensing and registration upon request and shall not permit an unlicensed, unregistered, suspended, debarred, or otherwise ineligible contractor or subcontractor to perform Work.

Sec. 5.3 Unfair Business Practices Claims.

The Contractor or subcontractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the City renders final payment to the Contractor without further acknowledgment by the parties. (California Public Contract Code Section 7103.5.).

Sec. 5.4 Trenches, Excavations and Unknown Conditions.

Pursuant to California Public Contract Code Section 7104, in the event the work included in this Contract requires excavations more than four (4) feet in depth, the following shall apply.

(a) Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of all: (1) material that Contractor believes is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the site different from those indicated; or (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(b) City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order per Section 3 of the Special Provisions.

(c) That, in the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

Sec. 5.5 Trench and Pipeline Safety.

If this Contract is for more than \$25,000 and involves excavation of any trench five feet or more in depth, the Contractor shall submit a detailed plan of shoring, bracing, sloping or other provisions to be made for worker protection in accordance with Labor Code Section 6705. Such plan shall be reviewed by the City, and if no exceptions are taken by the City the plan shall be deemed accepted by the City. In addition, the Contractor, in accordance with California Labor Code Sections 6500, 6501 and 6502, shall submit a Permit Application Form (see Appendix, Part 7 for sample of this document) to State of California, Department of Industrial Relation, Division of Occupational Safety & Health for a permit.

Sec. 5.6 Utility Relocation.

City is responsible for removal, relocation, or protection of existing main or trunkline utilities to the extent such utilities were not identified in the invitation for bids or specifications. City shall reimburse contractor for any costs incurred in locating, repairing damage not caused by Contractor and removing or relocating such unidentified utility facilities, including equipment idled during such work. Contractor shall not be assessed liquidated damages for delay arising from the removal or relocation of such unidentified utility facilities.

Sec. 5.7 Third Party Claims Notification.

The City shall timely notify the Contractor in writing of any third party claims relating to the contract.

Sec. 5.8 State License Board Notice.

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

ARTICLE 6. INSURANCE, BONDS AND INDEMNIFICATION.

Insurance. All insurance issued in compliance with this section shall be issued in the form, and by an insurer or insurers, satisfactory to and first approved by the City in writing. Certificates of insurance in the amounts required shall be furnished by the Contractor to the City prior to the commencement of work. Refer to ACC Environmental Consultants specifications for additional requirements.

The Contractor shall maintain adequate workman's compensation insurance under the laws of the State of California for all labor employed by him or by any Subcontractor under him who may come within the protection of such workman's compensation insurance laws. At the time of execution of the Contract, the Contractor shall provide the certificate in substantially the following form: "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." (California Labor Code 1860-1861).

The Contractor shall maintain during the life of this Contract public liability and property damage insurance in which the City shall be named as an additional insured, and which shall protect the Contractor or any subcontractor performing work covered by the contract from claims for personal injury, including accidental death as well as for claims for personal damages and property damages which may arise from the operations under any contract entered into whether such operations shall be performed by the Contractor or any subcontractor, or by anyone directly or indirectly employed by any one of them. The City of Pomona and its elected or appointed officials, directors, officers, agents, employees, volunteers, or contractors shall be named as an "Additional Insured" under public liability and property damage insurance. The issuing insurance company must have A.M. Best rating no less than A-:VII. All said insurance policies, as described in this section, shall provide that the same is non-cancelable except upon thirty (30) calendar days written notice to the City.

The limit of liability for such insurance shall be as follows:

1. General Liability:

	Each Person	Each Occurrence	Aggregate
Bodily Injury	\$500,000	\$1,000,000	\$2,000,000
Property Damage	---	\$1,000,000	\$2,000,000

A combined single limit policy with aggregate limits in the amount of \$2,000,000 will be considered equivalent to the above minimum limits.

2. Automobile Liability

Any vehicle, combined single limit \$1,000,000

Bonds. The Contractor shall secure with a responsible corporate surety or corporate sureties, satisfactory bonds conditioned upon faithful performance by the Contractor of all requirements

under the contract and upon the payment of claims of material, men and laborers there-under. The Faithful Performance Bond shall be in the sum of not less than one hundred percent (100%) of the estimated aggregate amount of the payments to be made under the contract computed on the basis of the prices stated in the bid. The Faithful Performance Bond shall convert to a Warranty Bond in the amount of Fifty (50%) percent of the amount of the contract price plus all change orders, and shall cover warranty of the work and materials for a period of one year after the recordation of the Notice of Completion. The Labor and Material Bond shall be in the sum of not less than one hundred percent (100%) of the estimated aggregate amount of the payments to be made under the contract computed on the basis of the prices stated in the bid. Both bonds shall be on forms provided by the City. At the time of submitting the Faithful Performance Bond and the Labor and Material bond the insurer shall submit to the City the following:

- (a) the original, or certified copy of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bond; or
- (b) a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner; or
- (c) a certificate from the Los Angeles County Clerk stating that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted; or
- (d) copies of the insurer'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, Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

Indemnity. Contractor hereby agrees to indemnify, including the cost to defend the City, and its officers, officials, agents, employees, and volunteers, from any and all losses, claims, liens, demands, liability, and causes of action of every kind and character including, but not limited to, the amounts of judgment, interests, court costs, legal fees, expert costs, expert fees and other all expenses incurred by the City to the maximum extent allowed by law arising in favor of any party, that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, its agents, subcontractor's or subcontractor's agents, in the performance of services under this contract, but this indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, arising from the sole negligence, willful misconduct or defects in design by City or the agents, servants, or independent contractors who are directly responsible to City, or arising from the active negligence of City.

ARTICLE 7. LABOR AND WAGE PROVISIONS.

Sec. 7.1 Prevailing Wages.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City Engineer's office or may be obtained online at the California Department of Industrial Relations' current prevailing wage determinations website and which must be posted at the job site. The Contractor shall forfeit as a penalty to the City not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the Department of Industrial Relations for

such work or craft in which such worker is employed for any public work done under the Contract by it or by any subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

Sec. 7.2 Apprentices Program.

The Contractor's attention is directed to the provisions of Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any Subcontractor under him. The Contractor and any Subcontractor under him shall comply with the requirements of said sections in the employment of apprentices.

Information relative to apprenticeship standards and administration of the apprenticeship program may be obtained from the Director of Industrial Relations, P.O. Box 603, San Francisco, California 94101 or from the Division of Apprenticeship Standards and its branch office.

Sec. 7.3 Legal Hours of Work and Overtime.

Pursuant to Labor Code Section 1810, et seq., eight hours of work is a legal days work, and hours worked in excess of that amount must be paid as overtime at a rate of not less than one and one-half time the basic rate of pay. The Contractor and subcontractors shall keep an accurate record showing the name and actual hours worked for each calendar day and week for each workman. The Contractor shall pay a penalty of \$25 per day for each violation of these wage provisions.

Sec. 7.4 Payroll Records.

(a) The Contractor's attention is directed to the following provisions of Labor Code Section 1776. The Contractor shall be responsible for compliance with its provisions by Contractor and his Subcontractors.

(b) In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations on the specified interval and format prescribed by the Department of Industrial Relations, which may include electronic submission. Contractor shall comply with all requirements and regulations from the Department of Industrial Relations relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

(c) Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

(d) Each Contractor and Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the public work.

Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(e) The payroll records enumerated under subdivision (b) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (b) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (b) shall be made available upon request to the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

(f) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(g) Each Contractor shall file a **certified copy** of the records enumerated in subdivision (b) with the entity that requested such records within **10 days** after receipt of a written request.

(h) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the contract or performing the contract shall not be marked or obliterated.

(i) The Contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (b), including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.

(j) The contractor shall have **10 days** in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor fails to comply within the **10-day period**, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit **one hundred dollars (\$100.00)** for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress

payments then due.

(k) The Contractor and Subcontractors shall submit to the City Engineer certified payrolls and copies of all payroll checks and pay stubs showing all itemized deductions for each employee on a weekly basis during the term of this contract.

ARTICLE 8. COORDINATION OF WORK

Sec. 8.1 Representative of Contractor.

The following principals of Contractor are hereby designated as being the principals and representatives of Contractor authorized to act on its behalf with respect to the work specified herein and make all decisions in connection therewith:

Name / Title:	<u>James Wu , Vice President</u>
Company / Firm:	<u>Pavement Coatings Co.</u>
Address:	<u>10240 San Sevaine Way</u>
City/State/Zip:	<u>Jurupa Valley, California 91752</u>
Phone/Email:	714-826-3011 – jwu@pavementrecycling.com

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Contract. Therefore, the foregoing principals shall be responsible during the term of this Contract for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. For purposes of this Contract, the foregoing principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City.

Sec. 8.2 Contracting Officer.

The Contracting Officer shall be the person designated by the City Manager. Contractor shall keep the Contracting Officer informed of progress and refer decisions requiring City action to the Contracting Officer. The Contracting Officer may administer the Contract and issue written directions only within authority delegated by the City Council, City Manager, Municipal Code, and applicable City policies. No oral instruction, field direction, inspection, approval, or purported waiver shall increase the Contract Price, extend the Contract Time, or otherwise modify the Contract. Any such modification must be contained in a written Change Order executed by the official or officials authorized to bind the City.

Sec. 8.3 Prohibition Against Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Contract. Neither this Contract nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Contract shall be void. No approved transfer shall release the Contractor or any

surety of Contractor of any liability hereunder without the express consent of City.

Sec. 8.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its subcontractors, agents or employees, performs the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, subcontractors, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its subcontractors, agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venture or a member of any joint enterprise with Contractor.

Sec. 8.5 Identity of Persons Performing Work.

Contractor represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services set forth herein. Contractor represents that the tasks and services required herein will be performed by Contractor or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services.

ARTICLE 9. ENFORCEMENT OF CONTRACT

Sec. 9.1 California Law.

This Contract shall be construed and interpreted both as to validity and as to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Contract shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

Sec. 9.2 Disputes.

In the event either party fails to perform its obligations hereunder, the non-defaulting party shall provide the defaulting party written notice of such default. The defaulting party shall have ten (10) days to cure the default; provided that, if the default is not reasonably susceptible to being cured within said ten (10) day period, the defaulting party shall have a reasonable time to cure the default, not to exceed a maximum of thirty (30) days, so long as the defaulting party commences to cure such default within ten (10) days of service of such notice and diligently prosecutes the cure to completion; provided further that if the default is an immediate danger to the health, safety and general welfare, the defaulting party shall take such immediate action as may be necessary. Notwithstanding the foregoing, the non-defaulting party may, in its sole and absolute discretion, grant a longer cure period. Should the defaulting party fail to cure the default within the time period provided in this Section, the non-defaulting party shall have the right, in addition to any other rights the non-defaulting party may have at law or in equity, to terminate this Contract. This Section governs notices and cure of contractual defaults only. It does not

replace Special Provisions Section 2-10, alter any Government Claims Act or other statutory deadline, or impose a condition precedent inconsistent with applicable law.

Sec. 9.3 Waiver.

No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Contract.

Sec. 9.4 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Contract, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Sec. 9.5 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Contract, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Contract.

Sec. 9.6 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Contract, Contractor shall vacate any City owned property which Contractor is permitted to occupy hereunder and City may, after compliance with the provisions of Section 9.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of setoff or partial payment of the amounts owed the City as previously stated.

Sec. 9.7 Termination for Convenience.

The City may terminate this Contract without cause for the convenience of the City upon giving contractor thirty (30) days prior written notice of termination of the Contract. Upon receipt of the notice of termination, the Contractor shall cease all further work pursuant to the Contract unless otherwise indicated in the notice. Upon such termination by the City, the Contractor shall not be entitled to any other remedies, claims, actions, profits, or damages except as provided in this paragraph. Upon the receipt of such notice of termination, Contractor shall be entitled to the following compensation:

- a) The contract value of the work completed to the City's satisfaction as solely determined by the City up to and including the termination date indicated in the notice of termination, less the amount of progress payments received by contractor.

- b) Actual move-off costs including labor, rental fees, equipment transportation costs, the costs of maintaining on-site construction office for supervising the mover-off.
- c) The cost of materials custom-made for this Contract which cannot be used by the Contractor in the normal course of his business, and which have not been paid for by City in progress payments.
- d) All costs shall not include any markups as might otherwise be allowed by any plans or specifications which were a part of the Contract.

The provisions of this paragraph shall supersede any other provision of the Contract or any provision of any plans, specification, addendums or other documents which are or may become a part of this Contract. City and Contractor agree that the provisions of this paragraph are a substantive part of the consideration for this Contract.

Sec. 9.8 Attorneys' Fees.

If either party to this Contract is required to initiate or defend or made a party to any action or proceeding in any way connected with this Contract, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

Sec. 9.9 Legal Actions Against the City

In the event litigation is brought against the City concerning compliance by the City with State or Federal laws, rules or regulations applicable to highway work, the provisions of this section shall apply.

- a) If, pursuant to court order, the City prohibits the Contractor from performing all or any portion of the work, the delay will be considered a right of way delay within the meaning of Subsection 6-6 of the Standard Specification unless the contract is terminated as hereinafter provided, in which event compensation payable to the Contractor shall be determined in accordance with said termination provisions.
- b) If, pursuant to court order (other than an order to show cause) the City is prohibited from requiring the Contractor to perform all or any portion of the work, the City may, if it so elects, eliminate the enjoined work pursuant to Section 3 of the Standard Specifications or terminate the contact in accordance with Subsections 6-3 and 6-5 of the Standard Specifications.
- c) If the final judgment in the action prohibits the City from requiring the Contractor to perform all or any portion of the work, the City will either eliminate the enjoined work pursuant to Sections 3 of the Standard Specifications or terminate the contract in accordance with Subsections 6-3 and 6-5 of the Standard Specifications.

d) Termination of the contract and the total compensation payable to the Contractor in the event of termination shall be governed by the following:

(1) The City Engineer will issue the Contractor a written notice specifying that the contract is to be terminated. Upon receipt of said written notice and, except as otherwise directed in writing by the City Engineer, the Contractor shall:

- a. Stop all work under the contract, except that specifically directed to be completed prior to acceptance.
- b. Perform work the City Engineer deems necessary to secure the project for termination.
- c. Remove equipment and plan from the site of the work.
- d. Take such action as is necessary to protect materials from damage.
- e. Notify all Subcontractors and suppliers that the contract is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the City Engineer.
- f. Provide the City Engineer with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the work and not yet used in the work, including its storage location and such other information as the City Engineer may request.
- g. Dispose of materials not yet used in the work as directed by City Engineer. It shall be the Contractor's responsibility to provide the City with good title to all materials purchased by the City hereunder, including materials for which partial payment has been made as provided in Subsection 9-3.2 of the Standard Specifications, and with bills of sale or other documents of title for such materials.
- h. Subject to the prior written approval of the City Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the City Engineer, the Contractor shall assign to the City all the right title and interest of the Contractor under subcontracts or orders for materials terminated hereunder.
- i. Furnish the City Engineer with the documentation required to be furnished by the Contractor under the provisions of the contract including, on projects as to which Federal funds are involved, all documentation required under the Federal requirements included in the contract.
- j. Take such other actions as the City Engineer may direct.

(2) Acceptance of the contract as hereinafter specified shall not relieve the Contractor of responsibility for damage to materials except as follows:

- a. The Contractor's responsibility for damage to materials for which partial payment has been made as provided in Subsection 9-3.2 of the Standard Specifications, and for materials furnished by the City for use in the work and unused, shall terminate when the City Engineer certifies that such materials have been stored in the manner and at the locations he has directed.

b. The Contractor's responsibility for damage to materials purchased by the City subsequent to the issuance of the notice that the contract is to be terminated shall terminate when title and delivery of the materials has been taken by the City.

c. When the City Engineer determines that the Contractor has completed the work under the contract directed to be completed prior to termination and such other work as may have been ordered to secure the project for termination, he will recommend that the City Engineer formally accept the contract, and immediately upon and after such acceptance by the City Engineer, the Contractor will not be required to perform any further work thereon and shall be relieved of his contractual responsibilities for injury to persons or property which occurs after the formal acceptance of the project by the City Engineer.

(3) The total compensation to be paid to the Contractor shall be determined by the City Engineer on the basis of the following:

a. The reasonable cost to the Contractor, without profit, for all work performed under the contract, including mobilization, demobilization and work done to secure the project for termination. Reasonable cost will include a reasonable allowance for project overhead and general administrative overhead not to exceed a total of seven percent (7%) of direct costs of such work.

When in the opinion of the City Engineer, the cost of a contract item of work is excessively high due to costs incurred to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing such work in compliance with the requirements of the plans and specifications and the excessive actual cost shall be disallowed.

b. A reasonable allowance for profit on the cost of the work performed as determined under Subsection (a), provided the Contractor establishes to the satisfaction of the City Engineer that it is reasonably probable that he would have made a profit had the contract been completed and provided further that the profit allowed shall in no event exceed four percent (4%) of said cost.

c. The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City or otherwise disposed of as directed by the City Engineer

d. A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the contract.

e. All records of the Contractor and his Subcontractors, necessary to determine compensation in accordance with the provisions of this section, shall be open to inspection or audit by representatives of the City at all

times after issuance of the notice that the contract is to be terminated and for a period of three years, and such records shall be retained for that period.

f. After acceptance of the work by the City Engineer, the City Engineer may make payments on the basis of interim estimates pending issuance of the Final Estimate when in his opinion the amount thus paid, together with all amounts previously paid allowed, will not result in total compensation in excess of that to which the Contractor will be entitled. All payments, including payment upon the Final Estimate shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the contract.

ARTICLE 10. CITY OFFICERS AND EMPLOYEES, NONDISCRIMINATION

Sec. 10.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

Sec. 10.2 Conflict of Interest.

The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

Sec. 10.3 Covenant Against Discrimination.

Contractor and every subcontractor shall comply with all applicable federal, state, and local nondiscrimination, anti-harassment, equal employment opportunity, and anti-retaliation laws. Contractor shall not discriminate against or harass an applicant, employee, subcontractor, or other person because of any characteristic protected by applicable law.

Contractor shall include this provision in every subcontract. A material violation constitutes a default subject to the notice and cure provisions of this Contract, except where immediate action is permitted or required by law.

No finding by a particular agency is required before the City may exercise remedies available under this Contract or applicable law, subject to due process and the Contract's notice and cure provisions.

ARTICLE 11. MISCELLANEOUS PROVISIONS

Sec. 11.1 Notice.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and shall be deemed to be given when served personally or deposited in the U.S. Mail, prepaid, first-class mail, return receipt requested, addressed as follows:

To City: City of Pomona

Public Works Department, Engineering Division

Street Address: 505 S. Garey Avenue, Pomona, California 91766

Mailing Address: P.O. Box 660, Pomona, California 91769

Attention: City Engineer

To Contractor: James Wu, Vice President
Pavement Coatings Co.

10240 San Sevaire Way

Jurupa Valley, California 91752

Email: jwu@pavementrecycling.com

The above address of Contractor is designated as the place to which all notices, letters and other communications to the Contractor shall be mailed or delivered. The mailing to or delivering at the above-named place of any notice, letter or other communication to the Contractor, shall be deemed sufficient service thereof upon the Contractor. The date of said service shall be the date of such mailing or delivery. Such address may be changed at any time by a written notice signed by the Contractor and delivered to the City Engineer.

Sec. 11.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

Sec. 11.3 Integration; Amendment.

It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. An amendment or Change Order is effective only if it is in writing and executed by the official or officials authorized to bind each party. The Contract Price and Contract Time may be changed only by an authorized written Change Order.

Sec. 11.4 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

Sec. 11.5 Hiring of Undocumented Workers Prohibited

Contractor and every subcontractor shall perform employment-eligibility verification only as required or authorized by applicable law. Neither Contractor nor a subcontractor shall request more or different documents than legally required, refuse documents that reasonably appear genuine, or engage in unlawful immigration-related discrimination or retaliation. Contractor shall include this provision in every subcontract. A material violation constitutes a default subject to the notice and cure provisions of this Contract, except where immediate action is permitted or required by law.

Sec. 11.6 Corporate Authority

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

Sec. 11.7 Independent Contractor.

The Contractor is and shall at all times remain as to the City, a wholly independent contractor. Neither the City, nor any of its officers, employees or agents shall have control over the conduct of the Contractor or any of the Contractors' officers, employees or agents, except as herein set forth. The Contractor shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City, nor shall City officers, employees or agents be deemed the officers, employees, or agents of Contractor as a result of this Agreement.

Sec. 11.8 Legal Responsibilities.

The Contractor shall keep itself informed of City, State, and Federal laws, ordinances and regulations, which may in any manner affect the performance of its services pursuant to this Agreement. The Contractor shall at all times observe and comply with all such laws, ordinances and regulations. Neither the City, nor its officers, agents, or employees shall be liable at law or in equity as a result of the Contractor's failure to comply with this section.

Sec. 11.9 Sales And/or Taxes:

Except as may be otherwise specifically provided herein, all sales and/or use taxes assessed by Federal, State or local authorities on materials used or furnished by the Contractor in performing the work hereunder shall be paid by the Contractor.

This Contract is executed by the **CITY** pursuant to the approval by its Governing Body in session on August 3, 2026, authorizing the same, and **CONTRACTOR** has caused this Contract to be duly executed.

CITY OF POMONA CALIFORNIA

Contractor: PAVEMENT COATINGS CO.

By:

By:

Anita Scott, Ed.D AICP
City Manager

James Wu
Name

ATTEST:

V. P. / SECRETARY
Title

Karla Shipman, Acting City Clerk

Date:

Approved as to form:

7/23/26

AG
City Attorney

(Use of City Bond Form is Required)

CONTRACTOR'S CERTIFICATE REGARDING WORKMEN'S COMPENSATION

Labor Code Section 3700

"Every employer except the State and all political subdivisions of institutions thereof, shall secure the payment or compensation in one or more of the following ways:"

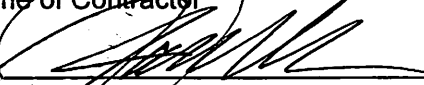
"(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State."

"(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees."

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

CONTRACTOR:

PAVEMENT CONTRACTORS CO.
Name of Contractor

By: 

Date: 7/23/26

JAMES WU
(printed name of signer)

(In accordance with Article 5 {commencing at Section 1860}, Chapter 1, Part 7, Division 2, of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.)