

AGREEMENT NO. _____

CONSTRUCTION PROJECTS AGREEMENT

This **CONSTRUCTION PROJECTS AGREEMENT** is made and entered into on _____, by and between the **CITY OF BAKERSFIELD**, a municipal corporation ("CITY"), and **BOWMAN ASPHALT, INC.**, a California Corporation ("CONTRACTOR").

RECITALS

WHEREAS, CONTRACTOR represents that CONTRACTOR is experienced and well qualified in the field of construction; and

WHEREAS, CONTRACTOR has conducted a thorough site inspection; and

WHEREAS, CITY desires to retain CONTRACTOR to construct the **Median Modification: Dual Left Turn Lane Construction, Ming Avenue at Stine Road**, as set forth herein, part or all of which is paid for with federal funds.

NOW, THEREFORE, incorporating the foregoing recitals herein, CITY and CONTRACTOR mutually agree as follows:

1. **SCOPE OF WORK.**

1.1. In exchange for the Compensation (defined below), CONTRACTOR must perform the work outlined in the Special Provisions for the Project ("Scope of Work"). The Scope of Work shall include all items and procedures necessary to properly complete the task CONTRACTOR has been hired to perform, whether specifically included in the Scope of Work or not. The following documents are incorporated herein as if fully set forth:

- Notice to Contractors
- Special Provisions
- Bid Proposal
- Bidder's Bond
- Performance Bond
- Material and Labor Bond
- Letters of transmittal, if any
- All provisions required by law to be inserted in this Agreement whether actually inserted or not

- Current State of California DAS 140 Form (if required by Specifications)
- Drawings, if any
- Public Contract Code § 22300 (Escrow Accounts)
- Current State of California DIR – PWC 100 Form
- Required Federal-Aid Contract Language (Exhibit 12-G) **(if Project Federally Funded)**
- Required Contract Provisions Federal-Aid Contracts (Form FHWA1273, Exhibit 12-G) **(if Project Federally Funded)**
- Subcontracting Request Form (Exhibit 16-B, LAPM) **(if Project Federally Funded)**
- Prevailing Wage Rates (Davis-Bacon) **(if Project Federally Funded)**
- Title VI Assurances and Appendices **(if Project Federally Funded)**

1.2. If CITY is receiving federal-aid for the construction of all or a portion of the Project, CONTRACTOR must physically incorporate all federally required contract provisions, including Form FHWA-1273, in their various subcontracts and purchase orders for the federally funded portions of this Project. CONTRACTOR acknowledges that failure to incorporate Form FHWA-1273 into those subcontracts and purchase orders will jeopardize CITY's eligibility for federal-aid funding. In the event of noncompliance in regards to this requirement, CONTRACTOR will be required to correct the noncompliance. CITY will withhold payment for subcontracted work involved with the noncompliance from progress payments due, or to become due, until correction is made. Failure to comply may result in termination of this Agreement.

2. COMPENSATION/PAYMENT PROCEDURE.

- 2.1.** Subject to the conditions of this section, CITY will pay CONTRACTOR for performing the Scope of Work as defined in the Bid Proposal and in accordance with the Special Provisions applicable to this Project, in an amount not to exceed **Three Hundred Six Thousand, One Hundred Ninety One Dollars and Zero Cents (\$306,191.00)**. The Compensation shall be the total compensation under this Agreement including, but not limited to, all out-of-pocket costs and taxes. CITY will pay no other compensation to CONTRACTOR.
- 2.2.** For projects falling under Title 49 Code of Federal Regulations (CFR) Part 26.29, CITY shall not require the withholding of any retention from CONTRACTOR. CONTRACTOR agrees that it will not cause retention

to be withheld from subcontractors working under this Agreement which are subject to the provisions of 49 CFR Part 26.29. For projects, or any severable parts of a project under Federal law, which do not fall under 49 CFR Part 26.29, CITY shall retain ten percent from payments to CONTRACTOR, unless otherwise prohibited by law.

3. **SCHEDULING.** When required by CITY in contract bid documents, or upon reasonable notice, CONTRACTOR shall supply CITY with scheduling documents showing all information in a form requested by CITY. CONTRACTOR's scheduling personnel shall have experience in and be knowledgeable in scheduling. CITY may require CONTRACTOR to supply the schedule on programs named by CITY (Microsoft Project, for example), and may require those schedules to be undated or revised on a regular basis. CITY may require recovery schedules if CONTRACTOR falls behind the Project schedule. CITY's review or comment on the schedule shall not constitute acceptance thereof.
4. **STARTING WORK.** CONTRACTOR shall not begin work until authorized to do so in writing by CITY. No work will be authorized before the Effective Date.
5. **TERMINATION.**
 - 5.1. This Agreement may be terminated as set forth in the Special Provisions for this Project. If no termination clauses are included in the Special Provisions, this Agreement may be terminated for CONTRACTOR default. The following circumstances shall be deemed a CONTRACTOR default:
 - 5.1.1. A material breach of the contract where CONTRACTOR fails to cure the breach within ten days after CITY provides notice of the breach; provided, however, if the breach cannot reasonably be cured within ten days, CONTRACTOR must have taken significant steps to cure the breach including, without limitation, providing a written plan acceptable to CITY to cure the default and immediately beginning to cure the default;
 - 5.1.2. CONTRACTOR's violation of any law, statute, regulation, rule, ordinance, permit or order of any governmental agency applicable to the Project if CONTRACTOR does not cure the violation within ten days after CITY provides notice of the violation and demands a cure;
 - 5.1.3. CONTRACTOR makes an assignment for benefit of creditors, admits an inability to pay debts, files a petition in bankruptcy or is otherwise determined bankrupt or insolvent; and

5.1.4. CONTRACTOR fails to adequately respond in writing to CITY's written demand for adequate assurances within ten days with all necessary information to assure CITY that CONTRACTOR has the financial and other necessary resources to perform the contract without breach. CONTRACTOR's failure to provide all information requested by CITY will be a material breach of this Agreement.

5.2. In the event of termination by CITY as set forth above, CONTRACTOR shall remain fully liable for any work not completed, liquidated damages (as set forth in the Special Provisions), delays by follow up contractors, materials and equipment provided, designs commenced through the date of termination, and consequential damages. CONTRACTOR will immediately deliver to CITY possession of the work including all designs, engineering, project records, cost data, drawing specifications and contracts, and construction supplies and aids dedicated solely to performing the work. CONTRACTOR shall assign all subcontracts to CITY; however, CITY may accept or reject those subcontracts at its sole discretion.

5.3. Should CITY's termination for cause be determined by a court of law to be wrongful or without cause, such termination will be treated as a termination for convenience entitling CONTRACTOR to an equitable settlement for claims and liabilities outstanding at the date of termination and reasonable compensation for work actually performed to the date of termination. No other Compensation shall be due CONTRACTOR for termination for convenience.

6. COMPLIANCE WITH ALL LAWS. CONTRACTOR shall, at CONTRACTOR's sole cost, comply with all of the requirements of Municipal, State, and Federal authorities now in force, or which may hereafter be in force, pertaining to this Agreement, and shall faithfully observe in all activities relating to or growing out of this Agreement all Municipal ordinances and State and Federal statutes, rules or regulations, and permitting requirements now in force or which may hereafter be in force including, without limitation, obtaining a City of Bakersfield business tax certificate (Bakersfield Municipal Code Chapter 5.02) where required.

7. INDEPENDENT CONTRACTOR. This Agreement calls for CONTRACTOR's performance of the Scope of Work as an independent contractor. CONTRACTOR is not an agent or employee of the CITY for any purpose and is not entitled to any of the benefits provided by CITY to its employees. This Agreement shall not be construed as forming a partnership or any other association with CONTRACTOR other than that of an independent contractor.

8. **DIRECTION.** CONTRACTOR retains the right to control or direct the manner in which the services described herein are performed.
9. **EQUIPMENT.** CONTRACTOR will supply all equipment, tools, materials and supplies necessary to perform the services under this Agreement.
10. **LICENSES.** CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits and approvals which are legally required for CONTRACTOR to practice its profession and perform the Scope of Work. If CONTRACTOR is a corporation, at least one officer or key employee shall hold the required licenses or professional degrees. If CONTRACTOR is a partnership, at least one partner shall hold the required licenses or professional degrees.
11. **STANDARD OF PERFORMANCE.** The Scope of Work shall be performed in conformity with all legal requirements and industry standards observed by a specialist of CONTRACTOR's profession in California.
12. **SB 854 COMPLIANCE.** To the extent Labor Code Section 1771.1 applies to this Agreement, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, be subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of Labor Code Section 1771.1 for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. The prime contractor is required to post job site notices in compliance with Title 8 California Code of Regulations Section 16451. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
13. **NO WAIVER OF DEFAULT.** The failure of any party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement.
14. **INSURANCE AND SECURITY.**
 - 14.1. **Types and Limits of Insurance.** In addition to any other insurance or security required under this Agreement, CONTRACTOR must procure and maintain, for the duration of this Agreement, the types and limits of insurance below ("Basic Insurance Requirements").

14.1.1. **Automobile liability insurance**, providing coverage for owned, non-owned, and hired autos on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than \$1,000,000 per occurrence.

14.1.2. **Commercial general liability insurance**, unless otherwise approved by CITY's Risk Manager, providing coverage on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than \$1,000,000 per occurrence. The policy must:

14.1.2.1. Provide contractual liability coverage for the terms of this Agreement;

14.1.2.2. Provide products and completed operations coverage;

14.1.2.3. Provide premises, operations, and mobile equipment coverage; and

14.1.2.4. Contain an additional insured endorsement in favor of CITY and its mayor, council, officers, agents, employees, and designated volunteers.

14.1.3. **Workers' compensation insurance** with limits of not less than \$1,000,000 per occurrence. In accordance with the provisions of Labor Code Section 3700, every contractor will be required to secure the payment of compensation to his employees. Pursuant to Labor Code Section 1861, CONTRACTOR must submit to CITY the following certification before beginning any work on the Improvements:

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

By executing this Agreement, CONTRACTOR is submitting the certification required above.

The policy must contain a waiver of subrogation in favor of CITY and its mayor, council, officers, agents, employees, and designated volunteers.

14.2. General Provisions Applying to All Insurance Types.

- 14.2.1.** All policies required of CONTRACTOR must be written on a first-dollar coverage basis, or contain a deductible provision. Subject to CITY's advance approval, CONTRACTOR may utilize a self-insured retention in any or all of the policies provided, but the policy or policies may not contain language, whether added by endorsement or contained in the policy conditions, that prohibits satisfaction of any self-insured provision or requirement by anyone other than the named insured or by any means including other insurance or which is intended to defeat the intent or protection of an additional insured.
- 14.2.2.** All policies required of CONTRACTOR must be primary insurance as to CITY and its mayor, council, officers, agents, employees, or designated volunteers and any insurance or self-insurance maintained by CITY and its mayor, council, officers, agents, employees, and designated volunteers must be excess of CONTRACTOR's insurance and must not contribute with it.
- 14.2.3.** The insurance required above, except for workers' compensation insurance, must be placed with insurers with a Best's rating as approved by CITY's Risk Manager, but in no event less than A-:VII. Any deductibles, self-insured retentions, or insurance in lesser amounts, or lack of certain types of insurance otherwise required by this Agreement, or insurance rated below Best's A-:VII, must be declared prior to execution of this Agreement and approved by CITY in writing.
- 14.2.4.** The insurance required in this section must be maintained until the Scope of Work is satisfactorily completed as evidenced by CITY's written acceptance. All policies must provide that there will be continuing liability thereon, notwithstanding any recovery on any policy.
- 14.2.5.** Full compensation for all premiums which the CONTRACTOR is required to pay to satisfy the Basic Insurance

Requirements shall be considered as included in the prices paid for the performance of the Scope of Work, and no additional allowance will be made therefor or for additional premiums which may be required by extensions of the policies of insurance.

14.2.6. It is further understood and agreed by CONTRACTOR that its liability to CITY will not in any way be limited to or affected by the amount of insurance obtained and carried by CONTRACTOR in connection with this Agreement.

14.2.7. Unless otherwise approved by CITY, if any part of the Scope of Work is subcontracted, the Basic Insurance Requirements must be provided by, or on behalf of, all subcontractors even if CITY has approved lesser insurance requirements for CONTRACTOR, and all subcontractors must agree in writing to be bound by the provisions of this section.

14.3. Security. CONTRACTOR shall provide performance and labor and material security in amounts and in a form suitable to CITY. CITY shall approve in writing all such security instruments before CONTRACTOR begins to perform the Scope of Work.

15. THIRD PARTY CLAIMS. In the case of public works contracts, CITY will timely notify CONTRACTOR of third party claims relating to this Agreement. CITY shall be allowed to recover from CONTRACTOR, and CONTRACTOR shall pay on demand, all costs of notification.

16. INDEMNITY. CONTRACTOR shall indemnify, defend, and hold harmless CITY and CITY's officers, agents and employees against any and all liability, claims, actions, causes of action or demands whatsoever against them, or any of them, before administrative or judicial tribunals of any kind whatsoever, arising out of, connected with, or caused by CONTRACTOR or CONTRACTOR's employees, agents, independent contractors, companies, or subcontractors in the performance of, or in any way arising from, the terms and provisions of this Agreement whether or not caused in part by a party indemnified hereunder, except for CITY's sole active negligence or willful misconduct.

17. REMEDIES. The remedies provided in this Agreement are cumulative and are in addition to any other remedies in law or equity which may be available to CITY. The election of one or more remedies shall not bar the use of other remedies unless the circumstances make the remedies incompatible.

18. **SITE INSPECTION.** CITY shall be allowed to inspect the construction site at any time and CONTRACTOR shall make all areas of the construction site available to inspection including, without limitation, any construction trailers or offices at the site and all plans, drawings, documents, schedules, photographs and other documentation relating to the Project.
19. **STOP NOTICES OR LIENS.** CONTRACTOR shall not allow any stop notices or liens to be filed on the Project and shall pay all costs and fees to CITY, including without limitation attorney's fees, incurred by CITY because of the filing of any such stop notice, lien or legal action relating thereto. CONTRACTOR agrees that CITY may withhold from any funds held by CITY concerning CONTRACTOR's performance of the Scope of Work amounts sufficient to cover costs and fees, including without limitation attorney's fees, incurred by CITY because of the filing of any stop notice, lien, or legal action relating thereto.
20. **ASSIGNMENT.** Neither this Agreement nor any rights, interests, duties, liabilities, obligations or responsibilities arising out of, concerning or related in any way to this Agreement (including, but not limited to, accounts, actions, causes of action, claims, damages, demands, liabilities, losses, obligations, or reckonings of any kind or nature whatsoever, for compensatory or exemplary and punitive damages, or declaratory, equitable or injunctive relief, whether based on contract, equity, tort or other theories of recovery provided for by the common or statutory law) may be assigned or transferred by any party. Any such assignment is prohibited, and shall be unenforceable and otherwise null and void without the need for further action by the non-assigning party or parties.
21. **ACCOUNTING RECORDS.** CONTRACTOR shall maintain accurate accounting records and other written documentation pertaining to all costs incurred in performance of this Agreement. Such records and documentation shall be kept at CONTRACTOR's office during the term of this Agreement, and for a period of three years from the date of the final payment hereunder, and made available to CITY representatives upon request at any time during regular business hours.
22. **BINDING EFFECT.** The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to the Agreement and their heirs, administrators, executors, personal representatives, successors and assigns.
23. **CORPORATE AUTHORITY.** Each individual signing this Agreement on behalf of entities represents and warrants that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

24. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be considered as an original and be effective as such.
25. **EXECUTION.** This Agreement is effective upon execution. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.
26. **EXHIBITS.** In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and those in exhibits attached hereto, the terms, conditions, or specifications set forth in this Agreement shall prevail. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached.
27. **FURTHER ASSURANCES.** Each party shall execute and deliver such papers, documents, and instruments, and perform such acts as are necessary or appropriate, to implement the terms of this Agreement and the intent of the parties to this Agreement.
28. **GOVERNING LAW.** The laws of the State of California will govern the validity of this Agreement and its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in Kern County, California.
29. **INTERPRETATION.** Whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.
30. **MERGER AND MODIFICATION.** This Agreement sets forth the entire agreement between the parties and supersedes all other oral or written representations. This Agreement may be modified only in a writing approved and signed by all the parties. If any modification of this Agreement results in total Compensation which exceeds \$40,000, the modification must be approved by the City Council.
31. **NON-INTEREST.** No CITY officer or employee shall hold any interest in this Agreement (California Government Code section 1090).
32. **NOTICES.** All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon actual personal service or depositing in the United States mail. The parties shall be addressed as follows, or at any other address designated by notice:

CITY: CITY OF BAKERSFIELD
CITY HALL
1600 Truxtun Avenue
Bakersfield, California 93301

CONTRACTOR: BOWMAN ASPHALT, INC.
3351 Fairhaven Drive
Bakersfield, California 93308

33. RESOURCE ALLOCATION. All CITY obligations under the terms of this Agreement are subject to the appropriation and allocation of resources by the City Council.

34. TITLE TO DOCUMENTS. All documents, plans, and drawings, maps, photographs, and other papers, or copies thereof prepared by CONTRACTOR pursuant to the terms of this Agreement, shall, upon preparation, become CITY property.

35. CONTRACTOR'S LICENSE INFORMATION.

License Number 862672
Expiration Date 08/31/2021
License Classification A - General Engineering Contractor

36. TAX NUMBERS.


CONTRACTOR's Federal Tax ID Number 20-1112522
CONTRACTOR is a corporation? Yes X No
(Please check one.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, as of the Effective Date.

"CITY"
CITY OF BAKERSFIELD

"CONTRACTOR"
BOWMAN ASPHALT, INC.

By: _____
KAREN GOH
Mayor

By:  _____
PRINT NAME: Jose L. Hernandez

Title: Vice President

APPROVED AS TO FORM:
VIRGINIA GENNARO
City Attorney

By: _____
VIRGINIA GENNARO
City Attorney

Insurance: _____

APPROVED AS TO CONTENT:
PUBLIC WORKS DEPARTMENT

By: _____
NICK FIDLER
Public Works Director

COUNTERSIGNED:

By: _____
RANDY MCKEEGAN
Finance Director