

## SECTION 400 - CONTRACT FOR CONSTRUCTION

THIS CONTRACT is made this 8th day of June, 2021, in San Bernardino County, State of California, by and between the Town of Apple Valley, hereinafter called Town, and Onyx Paving Company, Inc., hereinafter called Contractor. Town and Contractor agree, for valuable consideration, as follows:

**ARTICLE 1. SCOPE OF WORK.** The Contractor shall perform all Work and provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents (specified in Article 5 below) for the public work of improvement titled:

### **Resurfacing 2021- Roadway Repair**

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

**ARTICLE 2. CONTRACT TIME.** Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the Town's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within **45** Working Days from the commencement date stated in the Notice to Proceed, hereafter the Contract Time. By its signature hereunder, Contractor agrees the Contract Time is adequate and reasonable to complete the Work.

**ARTICLE 3. CONTRACT PRICE.** The Town shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of Five Hundred Ninety-Six Thousand Dollars (\$596,000.00), hereinafter, the Contract Price. Payment shall be made as set forth in the General Conditions.

**ARTICLE 4. LIQUIDATED DAMAGES.** Contractor acknowledges that Town will sustain actual damages for each and every Working Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the Town's actual damages. Accordingly, as provided in Government Code section 53069.85, it is agreed that the Contractor will pay the Town the sum of \$500.00 for each and every Working Day of delay in completing the Work beyond the Contract Time, as Liquidated Damages and not as a penalty or forfeiture. In the event the Liquidated Damages are not paid, Town may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not affect the Town's rights to other damages or remedies specified in the Contract Documents or allowed by law.

Should Contractor be inexcusably delayed in the performance of the Work, Town may deduct liquidated damages based on its estimate of when Contractor will achieve Final Completion or other Milestones. Town need not wait until Final Completion to withhold liquidated damages from Contractor.

Liquidated damages are not a penalty but an agreed estimate of the actual damages that would be sustained by the Town for delay, including but not limited to loss of revenue, inconvenience to the Town and the public, and increased Project administration expenses such as extra inspection, construction management, staff time, and architectural and engineering expenses. Liquidated

damages do not include damages the Town incurs on account of claims by third parties against the Town on account of any delay.

Should money due or to become due to Contractor be insufficient to cover liquidated damages or other offsets due, then Contractor forthwith shall pay the remainder of the assessed liquidated damages to Town.

**ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.** The "Contract Documents" include only the following documents, each of which is incorporated into this Contract for Construction by reference:

- Notice Inviting Bids
- Instructions to Bidders
- Contractor's Bid Forms
- Contractor's Certificate Regarding Workers' Compensation
- Bid Bond
- Designation of Subcontractors
- Information Required of Bidders
- Non-Collusion Declaration Form
- Iran Contracting Act Certification
- Public Works Contractor Registration Certification
- Performance Bond
- Payment (Labor and Materials) Bond
- General Conditions
- Special Provisions (or Special Conditions)
- Technical Specifications
- Standard Specifications (Excluding sections 1-9 in their entirety)
- Addenda
- Plans and/or project Exhibits
- Change Orders executed by Town

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of a conflict, the various Contract Documents will be given effect in the order set forth in Article 2.b of the General Conditions.

This Contract constitutes the full and complete agreement between the parties with regard to the Project and the Work, and supersedes any prior agreement of the parties, whether written or oral. The Contract can be modified only by a written Change Order executed in accordance with the Contract Documents.

**ARTICLE 6. 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 Work.

**ARTICLE 7. INDEMNIFICATION.** Contractor shall provide indemnification and defense as set forth in the General Conditions.

**ARTICLE 8. PREVAILING WAGES.** Contractor shall pay not less than the prevailing rate of wages in accordance with the Labor Code, which rates have been determined by the Director of the California Department of Industrial Relations and shall be made available at the office of the Town Clerk or may be obtained online at <http://www.dir.ca.gov/dlse>.

If the Work involves federal funds or otherwise requires compliance with the Davis-Bacon Fair Labor Standards Act, the Contractor and all its subcontractors shall pay the higher of the state or federal prevailing wage rates.

The wage rates must be posted at the job site.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

**TOWN OF APPLE VALLEY**

**ONYX PAVING COMPANY, INC.**

By: \_\_\_\_\_  
Curt Emick  
Mayor

By: \_\_\_\_\_  
Corey R. Kirschner  
CEO, President

*ATTEST:*

\_\_\_\_\_  
Ms. La Vonda M. Pearson, Town Clerk

*APPROVED AS TO CONTENT:*

\_\_\_\_\_  
Douglas B. Robertson, Town Manager

*APPROVED AS TO FORM:*

BEST BEST & KRIEGER LLP

\_\_\_\_\_  
Thomas Rice, Town Attorney

**END OF CONTRACT**