

## REPORT TO CITY COUNCIL

Approved by:

  
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Department Director

  
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Arnoldo Rodriguez, City Manager

Council Meeting of: June 5, 2019

Agenda Number:     B-9    

### SUBJECT:

Consideration of a Resolution Approving the Award of Contract for Golden State Boulevard Shoulder Paving from Pecan Avenue To Madera Community Hospital Entrance, City Project No. R-68, Federal Project No. CML-5157(110), in the Amount of \$141,161 to On Point Grading & Paving, Inc., and Authorizing the Mayor to Execute the Agreement on Behalf of the City; and

Consideration of a Resolution Approving Funding Amendments and Appropriating \$125,000 to the City of Madera Fiscal Year 2018/19 Capital Projects Budget for the Construction of Golden State Boulevard Shoulder Paving from Pecan Avenue To Madera Community Hospital Entrance, City Project No. R- 68, Federal Project No. CML-5157(110)

### RECOMMENDATION:

Staff recommends that the City Council (Council) adopt the following resolution:

1. Approving the award of Contract for Golden State Boulevard Shoulder Paving from Pecan Avenue To Madera Community Hospital Entrance, City Project No. R-68, Federal Project No. CML-5157(110) ("Project"), in the Amount of \$141,161 To On Point Grading & Paving, Inc.
  - a. Authorizing construction contingencies of up to 10 percent as approved by the City Engineer.
  - b. Authorizing funding of up to 15 percent of the contract amount for construction inspection and management as approved by the City Engineer.
  - c. Authorizing funding of up to 5 percent of the contract amount for third party testing, surveying, biological or consulting services as approved by the City Engineer.

- d. Authorizing the Mayor to execute the agreement on behalf of the City.
2. Adopt a Resolution authorizing a funding amendment and appropriating \$125,000 to Fiscal Year (FY) 2018/19 Capital Projects Budget for the Golden State Boulevard Shoulder Paving from Pecan Avenue To Madera Community Hospital Entrance, City Project No. R-68, Federal Project No. CML-5157(110).

**SUMMARY:**

On May 7<sup>th</sup> of this year, the City received four bids for the Project. On Point Grading & Paving, Inc. submitted the lowest responsive and responsible bid that meets the contract requirements; it is recommended that the Council award the project to On Point Grading & Paving, Inc.

**DISCUSSION:**

The Project will provide paved shoulders on both sides of Golden State Boulevard from Pecan Avenue to the Madera Community Hospital entrance. All work will be performed within existing City right-of-way. The work in general consists of furnishing all labor, materials, and equipment necessary to perform all operations for paved shoulders. The project includes a saw cutting edge of the existing pavement, the existing dirt surface will be graded and compacted per the design drawings, and a paved shoulder will be constructed with shoulder backing, minor asphalt repairs and all other work as shown on the Project plans and required by the specifications.

The "Notice Inviting Bids" for the project was duly noticed in the Madera Tribune Newspaper on April 6<sup>th</sup> and April 13<sup>th</sup> of 2019. The construction and bidding documents (specifications) were distributed to Builders Exchanges in Fresno, Modesto, and Visalia. The bid documents were also made available to the Kern-Minority Contractors Association in Bakersfield. The plans and specifications were also posted on EBidBoard.com, a projects online listing service for contractors accessible from the City's website as well as to other contractors that regularly access Bitboard's website.

The four bids received were checked for accuracy with the bidding requirements of the specifications and for validity of licenses and bid security. The third low bid received from Witbro, Inc. DBA Seal Rite Paving and Grading was determined to be non-responsive for failure to acknowledge the addendum, as required per the Public Contract Code.

The qualified bidders and bids received are listed below:

On Point Grading & Paving, Inc.	\$ 141,161.00
Avision Construction, Inc.	\$ 157,050.00
Witbro, Inc. DBA Seal Rite Paving and Grading	\$ 158,248.00*
Bush Engineering, Inc.	\$ 191,946.52
Engineers Opinion of Cost	\$ 118,250.00

\*Denotes a non-responsive bid for failure to acknowledge an addendum.

On Point Grading & Paving, Inc. submitted the lowest responsive and responsible bid that meets the contract requirements. It is recommended that the Council award the project to On Point Grading & Paving, Inc.

**FINANCIAL IMPACT:**

There is no fiscal impact to the City's General Fund.

A portion of the funding for this project was programmed in FY 2018/19 with Local Transportation Fund (LTF) in the amount of \$61,000, Org no. 42005330.

The attached Exhibit AA for the appropriation adjustment will modify the current budget to reflect the following funding in FY 2018/19: \$100,000 of Congestion Mitigation and Air Quality (CMAQ) funds in Org no. 41705070, and \$25,000 of LTF in Org no. 42005330.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

Strategy 101.6 - Ensure infrastructure can sustain population growth in the development of the General Plan.

Strategy 121 - Develop a city-wide multi-modal transportation plan to ensure safe, affordable and convenient transportation modes for residents and businesses within Madera.

Strategy 126 - Provide safe, clean and attractive streets consistent with the Madera Vision 2025 Plan.

**ALTERNATIVES:**

1. Reject all bids which will result in a need to re-bid the project
2. Modify the scope of the project which will result in a need to re-bid the project
3. Provide Staff with additional feedback

**ATTACHMENTS:**

1. Resolution – Contract Award
2. Resolution – Funding Amendment
3. Project Location Map
4. Agreement

**ATTACHMENT 1**  
**RESOLUTION FOR CONTRACT AWARD**

**RESOLUTION NO. 19-\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA APPROVING THE AWARD OF CONTRACT FOR GOLDEN STATE BOULEVARD SHOULDER PAVING FROM PECAN AVENUE TO MADERA COMMUNITY HOSPITAL ENTRANCE, CITY PROJECT NO. R-68, FEDERAL PROJECT NO. CML-5157(110), IN THE AMOUNT OF \$141,161.00 TO ON POINT GRADING & PAVING, INC., AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY**

**WHEREAS**, on April 6<sup>th</sup> and April 13<sup>th</sup>, 2019 the City of Madera (City) Engineering Division advertised a solicitation for bids for Golden State Boulevard Shoulder Paving from Pecan Avenue To Madera Community Hospital Entrance, City Project No. R-68, Federal Project No. CML-5157(110), hereinafter referred to as "the Project"; and

**WHEREAS**, sealed bids were received on May 7<sup>th</sup>, 2019, and opened by the City Engineer; and

**WHEREAS**, funding for Golden State Boulevard Shoulder Paving from Pecan Avenue To Madera Community Hospital Entrance, City Project No. R-68, Federal Project No. CML-5157(110) is partly programmed in the Capital Improvement Projects Budget for Fiscal Year (FY) 2018/19 and an amendment to the FY 2018/19 is necessary to complete the project;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY** finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. The City Council has reviewed and considered all the information presented including the report to the City Council from the Engineering Department.
3. The City finds that On Point Grading & Paving, Inc. is the lowest responsible and responsive bidder.
4. The contract for Golden State Boulevard Shoulder Paving from Pecan Avenue To Madera Community Hospital Entrance, City Project No. R-68, Federal Project No. CML-5157(110) in the amount of \$ 141,161 with On Point Grading & Paving, Inc. a copy of which is on file in the Office of the City Clerk and referred to for particulars, is approved.
5. Authorizing Construction Contingencies of up to 10 percent as approved by the City Engineer.
6. Authorizing Funding of up to 15 percent of the Contract Amount for Construction Inspection and Management as approved by the City Engineer.

7. Authorizing Funding of up to 5 percent of the Contract Amount for Third Party Testing, Surveying, Biological or Consulting services as approved by the City Engineer.
8. The Mayor is hereby authorized to execute the contract on behalf of the City.
9. This Resolution is effective immediately upon adoption.

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**ATTACHMENT 2**  
**RESOLUTION FOR FUNDING AMENDMENTS**

**RESOLUTION NO. 19-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, APPROVING FUNDING AMENDMENTS AND APPROPRIATING \$125,000 TO THE CITY OF MADERA FISCAL YEAR 2018/19 CAPITAL PROJECTS BUDGET FOR THE CONSTRUCTION OF GOLDEN STATE BLVD. SHOULDER PAVING FROM PECAN AVE. TO MADERA COMMUNITY HOSPITAL ENTRANCE, CITY PROJECT NO. R-68, FEDERAL PROJECT NO. CML-5157(110)**

**WHEREAS**, Project comprising of the Construction of Golden State Blvd. Shoulder Paving from Pecan Ave. To Madera Community Hospital Entrance, City Project No. R- 68, Federal Project No. CML-5157(110), hereinafter called “the Project”, is included in the proposed Fiscal Year (FY) 2018/19 Budget for Capital Projects; and

**WHEREAS**, Funds in the amount of \$25,000 are available in the programmed fund balance of the Local Transportation Fund Org. No. 42005330; and

**WHEREAS**, the Fiscal Year 2018/19 Budget needs to be amended to include \$100,000 of Congestion Mitigation and Air Quality (CMAQ) Fund Org. No. 41705070.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF MADERA** hereby resolves, finds, determines and orders as follows:

1. The above recitals are true and correct.
2. The FY 2018/19 Capital Projects Budget is hereby amended in accordance with Exhibit AA, which is incorporated by reference herein.
3. The City Clerk is authorized and directed to forward a copy of the resolution to the Director of Finance who is authorized to take such action as necessary to implement the terms of this resolution.
4. This resolution is effective immediately.

\* \* \* \* \*



EXHIBIT AA

CITY OF MADERA

Resolution 19 -

Golden State Boulevard Shoulder Paving from Pecan Avenue to Madera Community Hospital  
City Project No. R-68, Federal Project No. CML 5157 (110)

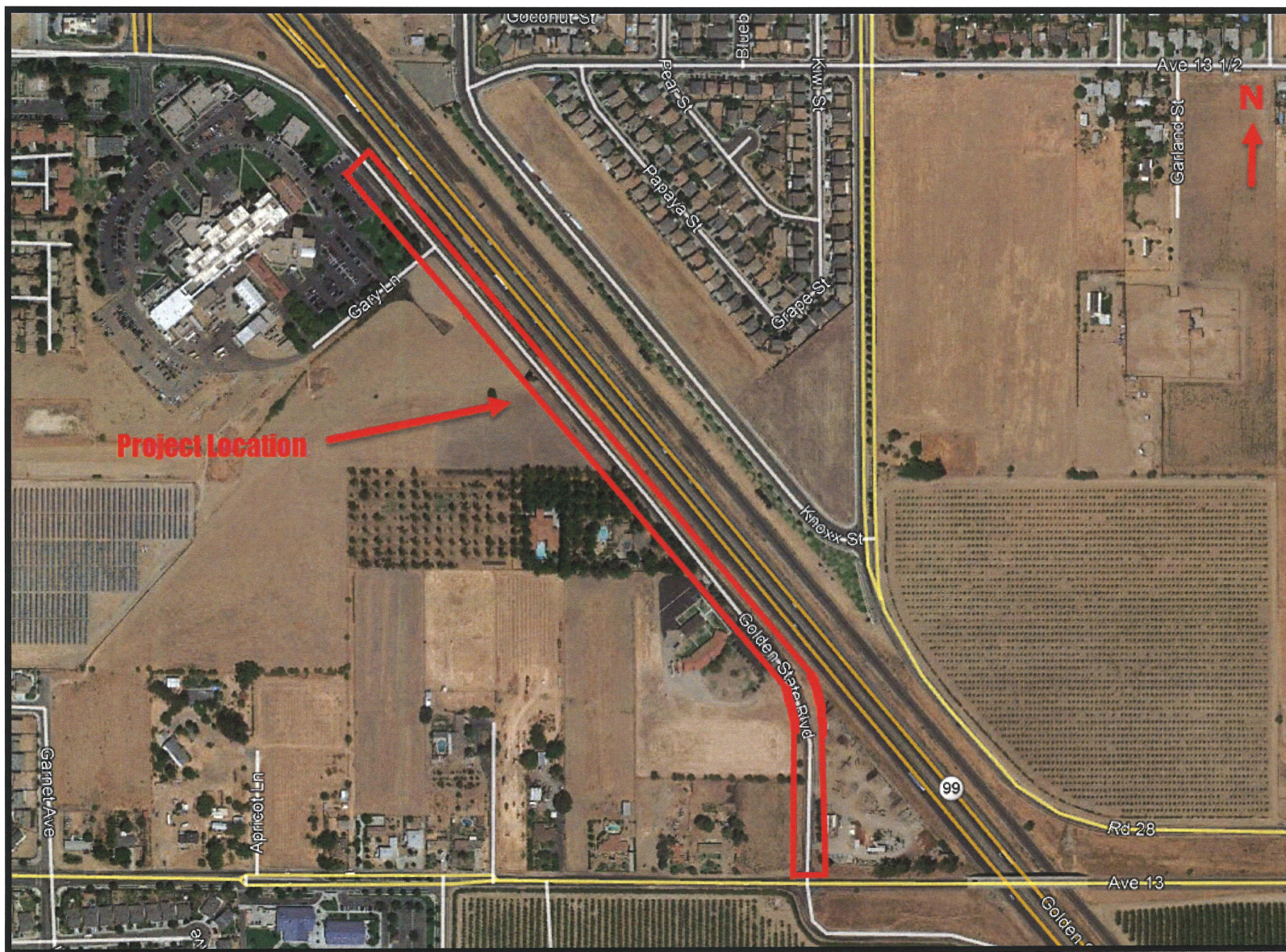
<u>ORG CODE</u>	<u>OBJECT CODE</u>	<u>PROJECT CODE</u>	<u>DESCRIPTION</u>	<u>(+)</u>	<u>(-)</u>
<b><u>Local Transportation Funds (42005330)</u></b>					
Expenditure Account 42005330	7050	R-000068	Golden State Blvd Shoulder Paving	25,000.00	
Expenditure Account 4200	3210		Fund Balance Unappropriated		25,000.00
			Total	<u>25,000.00</u>	<u>25,000.00</u>

**Congestion Mitigation and Air Quality (41705070)**

Expenditure Account 41705070	7050	R-000068	Golden State Blvd Shoulder Paving	100,000.00	
Expenditure Account 4170	3210		Fund Balance Unappropriated		100,000.00
			Total	<u>100,000.00</u>	<u>100,000.00</u>

**ATTACHMENT 3**  
**LOCATION MAP**

# Golden State Blvd. Shoulder Paving from Pecan Ave. to Madera Community Hospital Entrance



**ATTACHMENT 4**  
**AGREEMENT**

## AGREEMENT

**THIS AGREEMENT**, made this 5<sup>th</sup> day of June, 2019, between the City of Madera, hereinafter called "**OWNER**", and On Point Grading & Paving, Inc., doing business as (an individual), or (a partnership), or (a corporation), hereinafter called "**CONTRACTOR**".

**WITNESSETH:** That for and in consideration of the payments and agreements hereinafter mentioned:

1. The **CONTRACTOR** shall commence and complete all **WORK** required for the "**GOLDEN STATE BLVD. SHOULDER PAVING FROM PECAN AVE. TO MADERA COMMUNITY HOSPITAL ENTRANCE, CITY PROJECT NO. R-68, FEDERAL PROJECT NO. CML-5157(110)**"
2. The **CONTRACTOR** shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the **WORK** described herein.
3. The **CONTRACTOR** shall commence the **WORK** required by the **CONTRACT DOCUMENTS** within 10 calendar days after the date of the **NOTICE TO PROCEED** and will complete the same within the time period set forth in the **CONTRACT DOCUMENTS**. The **CONTRACTOR** shall submit a Payment Bond and Performance Bond in the amount of \$141,161.00, each and Insurance Certificates as specified in the **CONTRACT DOCUMENTS** prior to commencing any **WORK**.
4. The **CONTRACTOR** agrees to perform all of the **WORK** described in the **DOCUMENTS** for the unit and lump sum prices set forth in the Bid Schedule.
5. The term "**CONTRACT DOCUMENTS**" means and includes the following:
  - (A) Advertisement for Bids
  - (B) Information for Bidders
  - (C) Bid Proposal
  - (D) Bid Bond
  - (E) Agreement
  - (F) Payment Bond
  - (G) Performance Bond
  - (H) Insurance Requirements for Contractors
  - (I) General Conditions
  - (J) Special Conditions
  - (K) City of Madera Standard Specifications and Drawings
  - (L) State Standard Plans and Specifications
  - (M) **PLANS** and **SPECIFICATIONS** prepared or issued by CITY OF MADERA, entitled "**GOLDEN STATE BLVD. SHOULDER PAVING FROM PECAN AVE. TO MADERA COMMUNITY HOSPITAL ENTRANCE, CITY PROJECT NO. R-68, FEDERAL PROJECT NO. CML-5157(110)**" dated April 2019.

Addenda Nos.   1  , dated 04/30/19  
Addenda Nos.       , dated         
Addenda Nos.       , dated

6. In the event the **CONTRACTOR** does not complete the **WORK** within the time limit specified herein or within such further time as authorized, the **CONTRACTOR** shall pay to the **OWNER** liquidated damages in the amount of **Four Hundred Eighty (\$480.00)** per day for each and every calendar day delay in finishing the **WORK** beyond the completion date so specified.

7. The **OWNER** will pay to the **CONTRACTOR** in the manner and at such times as set forth in the General Conditions such amounts as required by the **CONTRACT DOCUMENTS**. For any moneys earned by the **CONTRACTOR** and withheld by the **OWNER** to ensure the performance of the Contract, the **CONTRACTOR** may, at his request and expense, substitute securities equivalent to the amount withheld in the form and manner and subject to the conditions provided in Division 2, Part 5, Section 22300 of the Public Contract Code of the State of California.

8. In the event of a dispute between the **OWNER** and the **CONTRACTOR** as to an interpretation of any of the specifications or as to the quality or sufficiency of material or workmanship, the decision of the **OWNER** shall for the time being prevail and the **CONTRACTOR**, without delaying the job, shall proceed as directed by the **OWNER** without prejudice to a final determination by negotiation, arbitration by mutual consent or litigation, and should the **CONTRACTOR** be finally determined to be either wholly or partially correct, the **OWNER** shall reimburse him for any added costs he may have incurred by reason of work done or material supplied beyond the terms of the contract as a result of complying with the **OWNER'S** directions as aforesaid. In the event the **CONTRACTOR** shall neglect to prosecute the work properly or fail to perform any provisions of the **CONTRACT**, the **OWNER**, after three days written notice to the **CONTRACTOR**, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to the **CONTRACTOR**, subject to final settlement between the parties as in this paragraph herein above provided.

9. Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical conditions, marital status, or sex of such persons except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for by violation of this chapter".

10. In accordance with the provisions of Article 5, Chapter I, Part 7, Division 2 (commencing with Section 1860) and Chapter 4, Part I, Division 4 (commencing with Section 3700) of the Labor Code of the State of California, the **CONTRACTOR** is required to secure the payment of compensation to his employees and shall for that purpose obtain and keep in effect adequate Worker's Compensation Insurance.

The undersigned **CONTRACTOR** is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against Liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the **WORK** of this Agreement.

11. The **CONTRACTOR** shall comply with Part 7, Chapter I, Article 2, Section 1775 of the Labor Code of the State of California. The **CONTRACTOR** shall, as a penalty to the **OWNER**, forfeit fifty dollars (\$50.00) for each calendar day, or portion thereof, for each workman paid less than the prevailing rates for such work or craft in which such workman is employed for any public work done under the Contract by him or by any **SUBCONTRACTOR** under him. The difference

between such prevailing wage rates and the amount paid to each workman for each calendar day or portion thereof for which each workman was paid less than a prevailing wage rate, shall be paid to each workman by the **CONTRACTOR**.

12. The **CONTRACTOR** shall comply with Part 7, Chapter 1, Article 2, Section 1776 of the Labor Code of the State of California. The **CONTRACTOR** shall keep and require that all **SUBCONTRACTORS** keep accurate payroll records showing the name, address, social security number, work classification, 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 in connection with public work. Such payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the **CONTRACTOR** by the **OWNER**, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations. In the event of non-compliance with the requirements of Section 1776, the **CONTRACTOR** shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the **CONTRACTOR** must comply. Should non-compliance still be evident after the ten (10) day period, the **CONTRACTOR** shall, as a penalty to the **OWNER** forfeit twenty-five dollars (\$25.00) 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.

13. Attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the **CONTRACTOR** or any **SUBCONTRACTOR** under him. It is the **CONTRACTOR'S** responsibility to ensure compliance by both itself and all **SUBCONTRACTORS**.

Section 1777.5 provides, in part, as follows:

The **CONTRACTOR** or **SUBCONTRACTOR**, if he is covered by this section, upon the issuance of the approval certificate, or if he has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeyman stipulated in the apprenticeship standards. Upon proper showing by the **CONTRACTOR** that he employs apprentices in the craft or trade in the State on all of his/her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by a journeyman, or in the land surveyor classification, one apprentice for each five journeyman, the Division of Apprenticeship Standards may grant a certification exempting the **CONTRACTOR** from the one (1) to five (5) hourly ratio as set forth in this section. This section shall not apply to contracts of general **CONTRACTORS** or to contracts of specialty contractors not bidding for work through a general or prime **CONTRACTOR**, when the contracts of general **CONTRACTORS**, or those specialty **CONTRACTORS** involve less than thirty thousand dollars (\$30,000). Any work performed by a journeyman in excess of eight hours per day or forty (40) hours per week shall not be used to calculate the hourly ratio required by this section.

Apprenticeable craft or trade, as used in this section, shall mean a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a **CONTRACTOR** from the 1 to 5 ratio set forth in this section when it finds that any one of the following conditions is met:

- (a) In the event unemployment for the previous three month period in such area exceeds

an average of 15 percent, or

- (b) In the event the number of apprentices in training in such area exceeds a ratio of 1 to 5, or
- (c) If there is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either (1) on a statewide basis, or (2) on a local basis, or
- (d) If assignment of an apprentice to any work performed under a public works contract would create a condition which should jeopardize his life or the life, safety, or property of fellow employees, or the public at large or if the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

When such exemptions are granted to an organization which represents **CONTRACTORS** in a specific trade from the 1 to 5 ratio on a local or statewide basis the member **CONTRACTORS** will not be required to submit individual applications for approval to local joint apprenticeship committees, provided they are already covered by the local apprenticeship standards.

The **CONTRACTOR** is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in apprenticeable trade on such contracts and if other **CONTRACTORS** on the public work site are making such contributions. The **CONTRACTOR**, and any **SUBCONTRACTOR** under him, shall comply with the requirements of Sections 1777.5 and 1777.6 of the Labor Code in the employment of apprentices. Information relative to number of apprentices, identifications, wages, hours of employment and standards of working conditions shall be obtained from the Division of Apprenticeship Standards. Consult the white pages of your telephone directory under California, State of, Industrial Relations, Apprenticeship Standards, for the telephone number and address of the nearest office. Willful failure by the **CONTRACTOR** to comply with the provisions of Sections 1777.5 will subject the **CONTRACTOR** to the penalties set forth in Section 1777.7 of the Labor Code.

14. Pursuant to California Labor Code Section 1813, eight hours in any one calendar day and forty (40) hours in any calendar week shall be the maximum hours any workman is required or permitted to work, except in cases of extraordinary emergency caused by fires, flood, or danger to life and property. The **CONTRACTOR** doing the work, or his duly authorized agent, shall file with **OWNER** a report, verified by his oath, setting forth the nature of the said emergency, which report shall contain the name of said worker and the hours worked by him on the said day, and the **CONTRACTOR** and each **SUBCONTRACTOR** shall also keep an accurate record showing the names and actual hours worked of all workers employed by him in connection with the work contemplated by this Agreement, which record shall be open at all reasonable hours to the inspection of the **OWNER**, or its officer or agents and to the Chief of all Division of Labor Statistics and Law Enforcement of the Department of Industrial Relations, his deputies or agents; and it is hereby further agreed that said **CONTRACTOR** shall forfeit as a penalty to the **OWNER** the sum of Twenty-Five Dollars (\$25.00) for each laborer, workman or any **SUBCONTRACTOR** under him for each calendar day during which such laborer, workman or mechanic is required or permitted to labor more than eight (8) hours in violation of this stipulation.

Overtime and shift work may be established as a regular procedure by the **CONTRACTOR** with reasonable notice and written permission of the **OWNER**. No work other



than overtime and shift work established as a regular procedure shall be performed between the hours of 6:00 P.M. and 7:00 A.M. nor on Saturdays, Sundays or holidays except such work as is necessary for the proper care and protection of the work already performed or in case of an emergency.

**CONTRACTOR** agrees to pay the costs of overtime inspection except those occurring as a result of overtime and shift work established as a regular procedure. Overtime inspection shall include inspection required during holidays, Saturdays, Sundays and weekdays. Costs of overtime inspection will cover engineering, inspection, general supervision and overhead expenses which are directly chargeable to the overtime work. **CONTRACTOR** agrees that **OWNER** shall deduct such charges from payments due the **CONTRACTOR**.

15. The **CONTRACTOR** shall comply with Division 2, Chapter 4, Part 1 of the Public Contract Code relating to subletting and subcontracting, specifically included but not limited to Sections 4104, 4106, and 4110, which by this reference are incorporated into this Agreement as though fully set forth herein.

16. The **CONTRACTOR** and the **OWNER** agree that changes in this Agreement or in the work to be done under this Agreement shall become effective only when written in the form of a supplemental agreement or change order and approved and signed by the **OWNER** and the **CONTRACTOR**. It is specifically agreed that the **OWNER** shall have the right to request any alterations, deviations, reductions or additions to the contract or the plans and specifications or any of them, and the amount of the cost thereof shall be added to or deducted from the amount of the contract price aforesaid by fair and reasonable valuations thereof.

This contract shall be held to be completed when the work is finished in accordance with the original plans and specifications as amended by such changes. No such change or modification shall release or exonerate any surety upon any guaranty or bond given in connection with this contract.

17. **Contractor** shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees, and volunteers from and against all liability, loss, damage, expense, and cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with **Contractor's** negligence, recklessness, or willful misconduct in the performance of work hereunder, or its failure to comply with any of its obligations contained in this AGREEMENT, except such loss or damage caused by the sole active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and **Contractor**, or should City otherwise find **Contractor's** legal counsel unacceptable, then **Contractor** shall reimburse the City its costs of defense, including without limitation, reasonable legal counsel fees, expert fees, and all other costs and fees of litigation. The **Contractor** shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the **Contractor's** negligent, reckless, or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

**Contractor** obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without

affecting the rights of City under any provision of this agreement, **Contractor** shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of **Contractor** will be for that entire portion or percentage of liability not attributable to the active negligence of City.

**Contractor** agrees to obtain or cause to be obtained executed defense and indemnity agreements with provisions identical to those set forth in this Section from each and every Subcontractor and Subconsultant, of every Tier. In the event the **Contractor** fails to do so, **Contractor** agrees to be fully responsible to provide such defense and indemnification according to the terms of this Section.

18. Contractor must comply with the insurance requirements as described in the section "INSURANCE REQUIREMENTS FOR **CONTRACTOR**", pages 43-44 of the Contract Documents.

19. Amendments- Any changes to this Agreement requested by either City or **On Point Grading & Paving, Inc.** may only be effected if mutually agreed upon in writing by duly authorized representatives of the parties hereto. This Agreement shall not be modified or amended or any rights of a party to it waived except by such writing.

20. Termination.

A. This Agreement may be terminated at any time by either party upon fifteen (15) calendar days written notice. In the event the Agreement is terminated by either party, **On Point Grading & Paving, Inc.** shall be compensated for services performed to the date of termination based upon the compensation rates and subject to the maximum amounts payable agreed to together with such additional services performed after termination which are authorized in writing by the City representative to wind up the work performed to date of termination.

B. City may immediately suspend or terminate this Agreement in whole or in part by written notice where, if in the determination of City, there is:

1. An illegal use of funds by **On Point Grading & Paving, Inc.**;
2. A failure by **On Point Grading & Paving, Inc.** to comply with any material term of this Agreement;
3. A substantially incorrect or incomplete report submitted by **On Point Grading & Paving, Inc.** to City.

In no event shall any payment by City or acceptance by **On Point Grading & Paving, Inc.** constitute a waiver by such party of any breach of this Agreement or any default which may then exist on the part of either party. Neither shall such payment impair or prejudice any remedy available to either party with respect to such breach or default. City shall have the right to demand of **On Point Grading & Paving, Inc.** the repayment to City of any funds disbursed to **On Point Grading & Paving, Inc.** under this Agreement which, as determined by the appropriate court or arbitrator, were not expended in accordance with the terms of this Agreement.

Notice of termination shall be mailed to the City:

City of Madera  
Engineering Department  
205 W. 4<sup>th</sup> Street  
Madera, Ca 93637

To the Contractor **On Point Grading & Paving, Inc.**  
1702 N. Chateau  
Fresno, CA 93723

Notices. All notices and communications from the **On Point Grading & Paving, Inc.** shall be to City's designated Project Manager or Principal-In-Charge. Verbal communications shall be confirmed in writing. All written notices shall be provided and addressed as soon as possible, but not later than thirty (30) days after termination.

21. Compliance With Laws- City shall comply with all Federal, State and local laws, ordinances, regulations and provisions applicable in the performance of City's services.

Wherever reference is made in this Agreement to standards or codes in accordance with which work is to be performed or tested, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly stated.

22. Attorneys' Fees/Venue- In the event that any action is brought to enforce the terms of this Agreement, the party found by the court to be in default agrees to pay reasonable attorneys' fees to the successful party in an amount to be fixed by the Court. The venue for any claim being brought for breach of this Agreement shall be in Madera County or as appropriate in the U.S. District Court for the Eastern District of California, located in the City of Madera.

23. Governing Law- The laws of the State of California shall govern the rights and obligations of the parties under the Agreement, including the interpretation of the Agreement. If any part of the Agreement is adjudged to be invalid or unenforceable, such invalidity shall not affect the full force and effect of the remainder of the Agreement.

24. City's Authority- Each individual executing or attesting to this Agreement on behalf of the City hereby covenants and represents: (i) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of such corporation in accordance with a duly adopted resolution of the corporation's articles of incorporation or charter and bylaws; (ii) that this Agreement is binding upon such corporation; and (iii) that Contractor is a duly organized and legally existing municipal corporation in good standing in the State of California.

25. Contractor's Legal Authority - Each individual executing or attesting this Agreement on behalf of **On Point Grading & Paving, Inc.** hereby covenants and represents: (i) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of such corporation in accordance with such corporation's articles of incorporation or charter and by-laws; (ii) that this Agreement is binding upon such corporation; and (iii) that **On Point Grading & Paving, Inc.** is a duly organized and legally existing corporation in good standing in the State of California.

26. Remedies for Default. Failure by a party to perform any term, condition or covenant required of the party under this Agreement shall constitute a "default" of the offending party under this Agreement. In the event that a default remains uncured for more than ten (10) days following receipt of written notice of default from the other party, a "breach" shall be deemed to have occurred. Any failure or delay by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

27. Independent Contractor. In performance of the work, duties, and obligations assumed by the Contractor under this Agreement, it is mutually understood and agreed that the

City, including any and all of City's officers, agents and employees will, at all times, be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of **City**. Furthermore, **City** shall have no right to control or supervise or direct the manner or method by which City shall perform its work and functions. The City shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over the subject matter hereof.

Because of its status as an independent contractor, City shall have absolutely no right to employment rights and benefits available to **City** employees. City shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, City shall be solely responsible and hold **City** harmless from all matters relating to payment of City's employees, including compliance with Social Security, withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, City may be providing services to others unrelated to **City** or to this Agreement.

28. Sole Agreement- This instrument constitutes the sole and only Agreement between City and **On Point Grading & Paving, Inc.** in connection to the Project and correctly sets forth the obligations of the City and **On Point Grading & Paving, Inc.** to each other as of its date. Any Agreements or representations in connection with the Project, not expressly set forth in this instrument are null and void.

27. Assignment- Neither the **On Point Grading & Paving, Inc.** nor City will assign its interest in this Agreement without the written consent of the other.

28. Caltrans is required by 23 code of Federal Regulations (CFR), part 200, Section 200.9 (b)(7) to conduct reviews of sub-recipients (Local Agencies) of federal-aid to ensure compliance with Title VI of the Civil Rights Act of 1964 and the related statues (Title VI) through the requirements under the Federal Highway Administration (FHWA), the U.S. Department of Transportation (USDOT), and the U.S. Department of Justice (USDOJ) regulations and guidance materials related to the implementation of Title VI.

The scope of the process reviews conducted by Caltrans focuses on the Local Agency's adherence to the FHWA's Title VI Program (Race, Color and National Origin) and the related statues protecting additional classes as required under

- Federal-Aid Highway Act of 1973 (Sex)
- The Age Discrimination Act of 1975 (Age), and
- The Americans with Disabilities Act of 1990 (ADA)(Disability) and Section 504 of the Rehabilitation Act of 1973 (Disability).

29 This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

**IN WITNESS WHEREOF** the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in THREE copies, each of which shall be deemed an original on the date first above written.

**City of Madera**  
Herein Called OWNER

By: \_\_\_\_\_  
Andrew J. Medellin, Mayor

APPROVE AS TO FORM:

\_\_\_\_\_  
Hilda Cantu Montoy, Interim City Attorney

ATTEST:

\_\_\_\_\_  
Claudia Mendoza, Interim City Clerk

BY: \_\_\_\_\_  
Herein Called CONTRACTOR

BY: \_\_\_\_\_

\_\_\_\_\_  
Federal Tax I.D. No.

\_\_\_\_\_  
Contractor License Number

\_\_\_\_\_  
DIR Registration Number

Attachment A) **General Wage Decision No. CA190018 02/22/2019 CA18**

Attachment B) **Form FHWA 1273 required to be incorporated into all contracts with Contractors and Subcontractors.**

NOTE: This Notary Acknowledgment on the following page is required for verification of Contractor's signature.

**Acknowledgment**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of \_\_\_\_\_ )

On \_\_\_\_\_, 2019 before me, \_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)