CONSENT AGENDA

AGENDA ITEM 12.09
TO: Mayor and City Council
FROM: Robert Murdoch, Director
Public Works Department

SUBJECT: AWARD CONSTRUCTION CONTRACT TO BAY CITIES PAVING AND GRADING, INC.– MANTHEY ROAD RELOCATION PROJECT, PHASE 1 (PROJECT NO. 11-20) & AUTHORIZE PAYMENT TO SAN JOAQUIN COUNCIL OF GOVERNMENTS

RECOMMENDATION

It is recommended that the City Council adopt a resolution authorizing the City Manager to approve the plans and specifications for the Manthey Road Relocation Project, Phase 1 (Project No. 11-20) and award a construction contract in the amount of $2,461,881.44 to Bay Cities Grading and Paving, Inc. of Concord, CA, waiving two minor bid irregularities as inconsequential; and approve a motion authorizing the City Manager to approve a payment in the amount of $262,720.22 to the San Joaquin Council of Governments (SJCOG) for participation in the San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) for the Manthey Road Relocation and French Camp Road/I-5 Interchange Reconstruction Projects (Project No. 99-01).

It is further recommended that the City Manager be authorized to take appropriate actions to carry out the purpose and intent of the resolution and motion.

Summary

On October 6, 2011, the City received bids for construction of the Manthey Road Relocation Project, Phase 1 (Attachments A and B). This Project is part of a Council approved Economic Development Strategic Initiative and will relocate a portion of Manthey Road by constructing a two-lane roadway from French Camp Road to Manthey Road just north of San Joaquin General Hospital, widen a portion of French Camp Road west of I-5, and install a traffic signal at the new intersection of French Camp Road and Manthey Road.

Bay Cities Grading and Paving, Inc. was the lowest responsible bidder. Therefore, staff is recommending that the Council adopt a resolution to award a construction contract to Bay Cities Grading and Paving, Inc. in the amount of $2,461,881.44. The resolution will also waive as inconsequential two minor irregularities in their bid documentation. The Local Employment Ordinance will apply to this project.

Staff also recommends that the City Council approve a motion authorizing the City Manager to approve a payment in the amount of $262,720.22 to SJCOG for participation in the San Joaquin Multi-Species Habitat Conservation and Open Space
AWARD CONSTRUCTION CONTRACT TO BAY CITIES PAVING AND GRADING, INC.- MANTHEY ROAD RELOCATION PROJECT, PHASE 1 (PROJECT NO. 11-20) & AUTHORIZE PAYMENT TO SAN JOAQUIN COUNCIL OF GOVERNMENTS

(Page 2)

Plan to serve as environmental mitigation measures for both phases of the Manthey Road Relocation and the French Camp Road/I-5 Interchange Reconstruction Projects.

There will be no impact to the General Fund as a result of taking the recommended actions.

DISCUSSION

Background

The Manthey Road Relocation and French Camp Road/I-5 Interchange Reconstruction Projects are associated with the Sperry Road Extension Project, construction of which is underway. The three projects, together, will create a much needed connection between I-5 and State Route 99 in south Stockton, easing traffic on I-5, State Route 4, and local streets; increasing traffic safety; and providing increased access to the airport, the railroad intermodal facility, the Port of Stockton, and industrial areas in south Stockton that are both developed and yet to be developed. The Manthey Road Relocation, French Camp Road/I-5 Interchange Reconstruction, and Sperry Road Extension Projects are listed in the City of Stockton 2011 Business Plan as an Economic Development Strategic Initiative.

The Manthey Road Relocation Project was split from the French Camp Road/I-5 Interchange Reconstruction Project to allow construction to begin sooner, taking advantage of available funding. The realignment of Manthey Road is necessary to provide adequate spacing between the southbound on and off-ramp intersection and Manthey Road, in accordance with the Caltrans Highway Design Manual.

The Manthey Road Relocation Project was also separated into two phases, due to the additional time required to secure right of way from the Walmart property located north of French Camp Road and west of I-5. The Manthey Road Relocation Project, Phase 1, would construct Manthey Road south of French Camp Road to existing Manthey Road just north of the San Joaquin General Hospital. The Manthey Road Relocation Project, Phase 2, would construct Manthey Road north of French Camp Road and along Henry Long Boulevard (See Attachment B – Project Area Map).

Present Situation

The Plans and Specifications, and Estimate for the Manthey Road Relocation Project, Phase 1, were completed in late August 2011. A Notice Inviting Bids for construction of Phase 1 was advertised on September 8, 2011, with eight bids received on October 6, 2011 with the following results:
AWARD CONSTRUCTION CONTRACT TO BAY CITIES PAVING AND GRADING, INC. - MANTHEY ROAD RELOCATION PROJECT, PHASE 1 (PROJECT NO. 11-20) & AUTHORIZE PAYMENT TO SAN JOAQUIN COUNCIL OF GOVERNMENTS

(Page 3)

<table>
<thead>
<tr>
<th>CONTRACTOR'S NAME</th>
<th>ADDRESS</th>
<th>BID AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bay Cities Paving and Grading, Inc.</td>
<td>Concord, CA</td>
<td>$2,461,881.44</td>
</tr>
<tr>
<td>Teichert Construction, Inc.</td>
<td>Stockton, CA</td>
<td>$2,534,331.00</td>
</tr>
<tr>
<td>Granite Construction Company</td>
<td>Watsonville, CA</td>
<td>$2,544,397.48</td>
</tr>
<tr>
<td>DeSilva Gates Construction</td>
<td>Dublin, CA</td>
<td>$2,633,633.80</td>
</tr>
<tr>
<td>O.C. Jones &amp; Sons-Disney</td>
<td>Berkeley, CA</td>
<td>$2,652,464.20</td>
</tr>
<tr>
<td>RGW Construction</td>
<td>Livermore, CA</td>
<td>$2,678,027.09</td>
</tr>
<tr>
<td>Knife River Construction</td>
<td>Stockton, CA</td>
<td>$2,746,604.31</td>
</tr>
<tr>
<td>George Reed, Inc.</td>
<td>Modesto, CA</td>
<td>$2,935,657.00</td>
</tr>
<tr>
<td>Engineer's Estimate</td>
<td></td>
<td>$3,193,183.68</td>
</tr>
</tbody>
</table>

Upon review, the apparent lowest responsive bidder is Bay Cities Paving and Grading, Inc. in the amount of $2,461,881.44. There are two irregularities in the bid from Bay Cities Paving and Grading. The first is that they were late in submitting the signed Letter of Clarification, and the second is that they did not initial one change made in the total cost of a bid item. The second lowest bidder, Teichert Construction, Inc. protested the bid (Attachment C), because Bay Cities Paving and Grading did not include a signed Letter of Clarification with its bid. Bay Cities Paving and Grading, Inc. filed a response to the protest (Attachment D) stating that any alleged irregularity in their bid was inconsequential.

After consultation with the City Attorney's Office, it was determined that the irregularities were minor and can be waived, because they don't give the bidder a competitive advantage. Therefore, staff recommends awarding the construction contract to Bay Cities Paving and Grading, Inc.

Construction for Phase 1 is scheduled to begin in January 2012 and is anticipated to take eight months to complete. The Manthey Road Relocation Project, Phase 2, will begin as soon as the right-of-way is acquired, which is anticipated in spring 2012. Phase 2 will be bid as a separate contract or bid with the French Camp/I-5 Interchange Project.

The acquisition of right-of-way and preparation of final design plans for the French Camp Road/I-5 Interchange Reconstruction Project are nearing completion. The interchange project is anticipated to be advertised for bid in the spring of 2012, with construction to start in summer 2012.
AWARD CONSTRUCTION CONTRACT TO BAY CITIES PAVING AND GRADING, INC.- MANTHEY ROAD RELOCATION PROJECT, PHASE 1 (PROJECT NO. 11-20) & AUTHORIZE PAYMENT TO SAN JOAQUIN COUNCIL OF GOVERNMENTS

(Page 4)

In June 2007, City Council approved the Environmental document for the French Camp Road/I-5 Interchange Reconstruction (including the Manthey Road Relocation), and Sperry Road Extension Projects. The document stipulated mitigation measures to be implemented to reduce environmental impacts to potential habitat of endangered or threatened species, such as the Giant Garter Snake and Swainson’s Hawk. Those mitigation measures included participation in the San Joaquin Multi-Species Habitat Conservation and Open Space Plan.

The SJCOG developed and administers the Plan and in 2010 they approved participation for the Sperry Road Extension, French Camp Road/I-5 Interchange Reconstruction and the Manthey Road Relocation Projects.

To participate in the SJMSCP, a project sponsor must agree to mitigate construction phase impacts through Incidental Take Minimization Measures, and then pay the appropriate fees to mitigate the permanent impacts to habitat that will occur due to the footprint of the project. The required mitigation payments are as follows:

<table>
<thead>
<tr>
<th>Habitat Type</th>
<th>Acreage of Habitat Lands</th>
<th>2011 SJMSCP Cost/Acre</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural</td>
<td>17.25</td>
<td>$13,262</td>
<td>$228,769.50</td>
</tr>
<tr>
<td>Natural</td>
<td>2.56</td>
<td>$13,262</td>
<td>$33,950.72</td>
</tr>
<tr>
<td>Urban</td>
<td>43.12</td>
<td>Fee exempt</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>$262,720.22</strong></td>
</tr>
</tbody>
</table>

The alternatives to participating in the SJMSCP are either to purchase credits in an approved mitigation bank or to purchase land and develop it as habitat acceptable to all permitting agencies. Mitigation credits from approved banks are not readily available in this area for all of the species potentially impacted, and the purchase, development, and maintenance costs associated with pursuing mitigation outside the SJMSCP would far exceed the fees for participation. Therefore, participation in the SJMSCP and payment of the required fees are recommended.

The Local Employment Ordinance (Stockton Municipal Code Section 3.68.095) applies to this contract. This ordinance requires the contractor “to make a good faith effort . . . to employ qualified individuals who are, and have been for one year prior to the effective date of the contract, residents of Stockton in sufficient numbers so that no less than 50 percent of the contractor’s total construction work force, including any subcontractor work force, measured in labor work hours, is comprised of Stockton residents.”

Contractors who fail to achieve the 50% goal must demonstrate that they made a good faith effort to do so by undertaking and documenting at least 6 of 11 specified employee
recruitment activities. Failure to comply may cause the contractor to be barred from bidding on future City contracts.

FINANCIAL SUMMARY

Funding for the Manthey Road Relocation project is provided by Street Improvement Public Facilities Fees (PFF). Staff estimates that a total of $3,820,398 will be needed for Manthey Road, Phase 1. Of this amount, $352,516 has already been appropriated for construction management services. Therefore, additional appropriations will be needed as follows:

Construction contract with Bay Cities Paving and Grading, Inc. $2,461,881.44
Construction contingencies $266,000.00
Staff Costs $300,000.00
Indirect Costs $200,000.00
$3,227,881.44

Staff proposes to fully fund Phase 1 at this time by transferring the remaining needed funding from the French Camp/I-5 interchange account. The following financial actions are needed:

Transfer appropriation from:

French Camp/I-5 interchange, Street Improvement PFF account
Account 910-9945 $3,227,881.44

Transfer appropriation to:

Manthey Road Relocation, Street Improvement PFF account
Account 910-9281 $3,227,881.44

The French Camp/I-5 interchange can afford this transfer out, as other funding sources are (or will be) available. In contrast, PFF is the sole funding source for the Manthey Road Relocation.

The mitigation fee amount of $262,720.22 is proposed to be charged 100% to the French Camp Road/I-5 Interchange Reconstruction Project (Account 910-9945).

The City Manager is authorized to record the above noted transactions and take other financial actions as necessary and appropriate to carry out the intent of this resolution and motion.
AWARD CONSTRUCTION CONTRACT TO BAY CITIES PAVING AND GRADING, INC. - MANTHEY ROAD RELOCATION PROJECT, PHASE 1 (PROJECT NO. 11-20) & AUTHORIZE PAYMENT TO SAN JOAQUIN COUNCIL OF GOVERNMENTS (Page 6)

There is no impact to the City's General Fund of taking the recommended actions.

Respectfully submitted,

ROBERT MURDOCH, DIRECTOR
PUBLIC WORKS DEPARTMENT

APPROVED:

MICHAEL E. LOCKE
DEPUTY CITY MANAGER

RM:AM:RD:SH:nla

Attachment A- Vicinity Map
Attachment B- Project Area Map
Attachment C- Bid Protest Letter from Teichert Construction, Inc.
Attachment D- Letter of Response from Bay Cities Paving & Grading, Inc.

::ODMA\GRPWISE\COS.PW.PW_Library:187914.1
October 27, 2011

Via Facsimile and U.S. Mail

Robert Murdoch
Director
Public Works Department
City of Stockton
22 East Weber Avenue, Room 301
Stockton, CA 95202-2317

Re:  Bid Protest of Teichert Construction
Manthey Road Relocation Project, Phase I
Project No. 99-01
Bid Opening: October 6, 2011

Dear Mr. Murdoch:

We are submitting this bid protest on behalf of our client, A. Teichert & Son, Inc. dba Teichert Construction.

As you know, Bay Cities Paving & Grading, Inc. submitted the lowest monetary bid for the Manthey Road Relocation, Phase I project, and Teichert submitted the second lowest monetary bid. Bay Cities' bid is non-responsive because Bay Cities failed to sign and return Letter of Clarification No. 1 with its bid as expressly required by the bidding documents. Consequently, Bay Cities' bid must be rejected.

A. REQUIREMENTS OF THE BIDDING DOCUMENTS.

The bidding documents include the following requirements:

1. Instructions To Bidders, Introductory Paragraph

"The bidder shall carefully examine the instruction (sic) contained herein and satisfy himself/herself as to the conditions with which he/she must comply prior to bid and to the conditions affecting the award of contract."
2. Instructions To Bidders, Section 4

"Each bid shall include all addenda or clarifications issued during the bidding period acknowledged by the bidder’s signature thereon. Failure to include or acknowledge an addendum or clarification will result in the bid being rejected as non-responsive." (Emphasis added.)

3. Section 3. Contract Award And Execution

"The award of the contract, if it be awarded, will be to the lowest responsible bidder whose proposal complies with all of the requirements prescribed." (Emphasis added.)

4. Letter of Clarification No. 1

"THIS FORM MUST BE SIGNED AND RETURNED WITH YOUR BID. FAILURE TO SO INCLUDE OR ACKNOWLEDGE A CLARIFICATION MAY RESULT IN THE BID BEING REJECTED AS NONRESPONSIVE." (Capitalization in original.)

B. BOTH THE BIDDING DOCUMENTS AND THE RELEVANT LEGAL AUTHORITIES STATE THAT FAILURE TO ACKNOWLEDGE AN ADDENDUM PRIOR TO BID OPENING MEANS THAT THE BID MUST BE REJECTED.

As noted above, Section 4 of the Instructions To Bidders states clearly and unequivocally that failure to sign and return an addendum or clarification with the bid "will result in the bid being rejected as non-responsive." (Emphasis added.) This requirement of the bidding documents is entirely consistent with the relevant legal authorities. Although no California court has addressed the question squarely, the general rule with respect to failure to acknowledge an addenda or clarification prior to bid opening has been summarized by a leading authority on public contracting as follows: "Rejection of bids for lack of acknowledgment of an amendment [addenda] is obviously proper because the issue boils down to whether the bidder, in the absence of an acknowledgment, could be required to perform in accordance with the terms of the amendment [addenda]." Shnitzer, Paul, Government Contract Bidding, p. 11-28 (Emphasis in original.)

Numerous decisions of the Comptroller General of the United States have interpreted similar addenda acknowledgment requirements in federal contracts and have uniformly held that a bidder's failure to acknowledge in writing a material addenda prior to bid opening renders the bid non-responsive. See, e.g., Matter of Jeness Wockuts (1994) No. B-257345, 1994 WL 526334 (citing to Firetech Automatic Sprinklers, Inc. (1992) No B-248452, 92-2 Comp. Gen. Proc. Dec. 100 (Failure to acknowledge an amendment renders the bid non-responsive since "the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amendment."); Matter of: Adrian Supply Company

(1993) B-251886.2, 1993 WL 198873 (a bid that fails to acknowledge an amendment "must be rejected because absent such an acknowledgment, the bidder is not legally obligated to comply with the terms of the amendment, and its bid is thus nonresponsive."); Tri-Tech International, Inc. (1992) No. B-246701, 92-1 Comp. Gen. Proc. Dec. 304 (Absent acknowledgment, "the bidder is not obligated to comply with the terms of the amendment, and it bid is thus nonresponsive."); Martech, USA, Inc. (1992) No B-245957; B-245957.2, 92-1 Comp. Gen. Proc. Dec. 173 ("Absent acknowledgment, "the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs . . . .").

An addendum is considered material when it affects price, quantity or quality. Alternatively, "[e]ven where an amendment may not have a clear effect on price, quantity, or quality, it nonetheless is considered material where it changes the legal relationship between the parties, as, for example, if the amendment increases or changes the contractor's obligation or responsibilities . . . . The materiality of an amendment which imposes new legal obligations on the contractor is not diminished by the fact that the amendment may have little or no effect on the bid price or the work to be performed." Favino Mechanical Construction, Ltd. (1990) No. B-237511, 90-1 Comp. Gen. Proc. Dec. 174; All Building Services, Inc. (2004) No.B-293519, 2004 WL 595025 ("an amendment that imposes a legal obligation upon an offeror different from those imposed by the original solicitation is material.")

The addendum in this case unquestionably is material because it modifies the Special Provisions by both deleting a provision relating to temporary traffic screens and adding a requirement that the contractor provide Construction Project Funding Signs.

Once it is determined that a bidder failed to acknowledge an addenda, the awarding agency may not permit the bidder to submit an acknowledgment after bids are opened. North Santiam Paving Co. (1991) No. B-241062, 91-1 Comp. Gen. Proc. Dec. 18; Matter of: Hackney Group (1995) No. B-261241, 1995 WL 523528 ("Bidders are responsible for the timely delivery of their bids and amendments, and late delivery generally requires the bid's rejection.") The rationale for this rule is as follows: "[i]f an agency were to give the bidder an opportunity to acknowledge the . . . amendment after bid opening, the bidder could decide to render itself ineligible for award by choosing not to cure the defect." Thus, if a bidder fails to acknowledge a material addendum, its bid must be rejected as non-responsive.

This rationale is entirely consistent with California bidding authorities. When the City brought the omission to Bay Cities' attention after bid opening, Bay Cities could have either refused to acknowledge the addendum, or it could have sought relief from its bid on the grounds of mistake. In effect, Bay Cities gave itself an advantage not available to the other bidders, i.e., a second look at its bid after bid submission and bid opening. Under California law, this type of advantage means that the irregularity in Bay Cities' bid cannot be waived and Bay Cities' bid must be rejected. As the Court of Appeals emphasized in Valley Crest Landscape v. City of Davis, 41 Cal.App.4th 1432, 1442 (1996), the important point is that the bidder could have sought relief: "That [the low bidder] did not seek such relief is of no moment. The key point is

---

2 In substance, Clarification No. 1 is an "addendum" notwithstanding its title. Moreover, as noted above, Section 4 of the Instructions To Bidders uses the two terms interchangeably.
that such relief was available. Thus, [the low bidder] had a benefit not available to the other bidders; it could have backed out. Its mistake, therefore, could not be corrected by waiving an irregularity." In this case, as noted above, Bay Cities' could have backed out either by claiming mistake or by simply refusing to acknowledge the addendum. The principle is the same either way.

C. **THE DEFECT IN BAY CITIES' BID CANNOT BE WAIVED.**

City staff has indicated informally that it plans to recommend to the City Council that the Council waive the defect in Bay Cities' bid on the theory that Bay Cities did not obtain a competitive advantage by failing to sign and return Clarification No. 1 with its bid. Such a recommendation, however, would be contrary to law for at least three reasons.

First, as detailed above, the relevant legal authorities uniformly hold that a bidder's failure to acknowledge an addendum is not a waiveable defect and that the resulting bid must be rejected. Second, under the **Valley Crest Landscape** case, discussed above, Bay Cities' failure to acknowledge Clarification No. 1 gave it "a benefit not available to the other bidders," which in turn means that the irregularity in Bay Cities' bid cannot be "corrected by waiving an irregularity."

Third, City staff's intended recommendation would require the City to disregard a mandatory provision in its own bidding documents, which is not permitted under California law. This principle is articulated clearly in **Pozar v. Department of Transportation**, 145 Cal.App.3d 269 (1983). In that case, Caltrans ignored a mandatory requirement in its bidding documents concerning the manner in which a discrepancy between a unit price and a total price should be resolved. Instead of following its own rule, Caltrans made its own determination of what the bidder intended. Petitioner Pozar challenged Caltrans' action in a writ proceeding. On appeal, the Third District Court of Appeal held that, although it had no power to direct an award to Pozar, it did have the power to "direct an agency to follow its own rules when it has a ministerial duty to do so or when it has abused its discretion. (Citation omitted.) Here ... Caltrans' own rules obligate it to accept the per-unit price in the absence of specified circumstances, none of which are here present." Accordingly, the Court of Appeal issued a peremptory writ directing Caltrans to follow its own rules. **Id.** at 271-272.

Again, as noted above, Section 4 of the City's Instructions To Bidders clearly states: "Failure to so include or acknowledge an addendum or clarification will result in the bid being rejected as non-responsive."

D. **REJECTION OF BAY CITIES' BID POSSES NO RISK TO THE CITY.**

It is beyond dispute that, because Bay Cities failed to sign and return Clarification No. 1 with its bid, its bid is irregular on its face and, consequently, is subject to legal challenge. In this context, if the City decides to reject Bay Cities' bid as non-responsive, the City's decision will not be subject to legal challenge, even if it were to be subsequently determined that the irregularity in Bay Cities' bid was inmaterial and could have been waived. As stated by the Court of Appeal in **MCM Construction, Inc. v. City and County of San Francisco**, 66 Cal.App.4th 359 (1998); "An agency has discretion to waive inmaterial deviations from bid specifications and may accept the bid under certain conditions. The point of discretion is that the agency may properly act in either
direction. It may waive or refuse to waive such deviations." Id. at 374. In this case, as in MCM Construction, rejection of the defective bid as non-responsive poses no risk to the public agency, whereas overlooking the irregularity and awarding the contract to Bay Cities places the agency and the award at risk.

E. CONCLUSION.

For the reasons stated above, Bay Cities' bid must be rejected as non-responsive. After rejection of Bay Cities' bid, Teichert respectfully requests that the contract be awarded to Teichert as the lowest responsive and responsible bidder.

Very truly yours,

Robert W. O'Connor

ROC:tg

cc: (via e-mail) Ray Deyto
     Mas Cramer
November 1, 2011

Attention: Ray Deyto
City of Stockton, Public Works Dept.
22 East Weber Ave., Room 301
Stockton, CA 95202

Re: Bid Protest of A. Teichert & Son
Project: Manthey Road Relocation Project, Phase 1
Bid Opening: October 6, 2011

Dear Mr. Deyto,

Bay Cities received a copy of Robert O’ Connor’s letter of October 27, 2011 on behalf of A. Teichert & Sons, Inc. ("Teichert") protesting Bay Cities’ bid. Teichert argues that Bay Cities’ bid is non-responsive because Bay Cities neglected to include a signed Letter of Clarification with its bid. There is no basis to Teichert’s protest and any alleged irregularity in Bay Cities’ bid is inconsequential. The City is wholly within its rights and discretion to award the Contract to Bay Cities as the lowest responsible bidder for the public good.

THE CONTRACT DOCUMENTS UNDERCUT TEICHERT’S ARGUMENT THAT BAY CITIES’ BID MUST BE REJECTED

Teichert has mis-interpreted the bid documents to limit the City’s discretion to rejecting Bay Cities’ bid. In fact, when read together, the City’s Contract Documents provide that the City retains discretion to waive any minor bid irregularities.

Teichert correctly references two conflicting sections of the Contract Documents which address letters of clarification: 1) Letter of Clarification No. 1 and 2) the Instructions to Bidders. For instance, Letter of Clarification No. 1 provides that:

"THIS FORM MUST BE SIGNED AND RETURNED WITH YOUR BID. FAILURE TO DO SO INCLUDE OR ACKNOWLEDGE A CLARIFICATION MAY RESULT IN THE BID BEING REJECTED AS NOT RESPONSIVE."

The use of “MAY” is permissive and indicates that the City reserved the right to award a contract to bidder even if the bidder did not include or acknowledge a clarification in his bid. In contrast to the language in Clarification No. 1, the Instructions to Bidders provided that the failure to acknowledge an addendum or clarification “will” result in the bid being rejected. To the extent that Teichert is correct in arguing that the use of “will” implies a mandatory requirement, there is a conflict between the permissive language of the clarification and the Instructions to Bidders.
On a common-sense basis, it would be logical to believe that the City’s most current contract documents such as its Letter of Clarification best reflect the City’s requirements. But there is no need for conjecture because the City's contract documents dictate the order of precedence whenever there are conflicts within any of the contract documents. Under Section 1, Specifications and Plans, of the Special Provisions, Addenda to Contract Agreement take precedence over the more generic Notice Inviting Bids and Instructions to Bidders. And as Teichert correctly observed, “In substance, Clarification No. 1 is an ‘addendum’ notwithstanding its title” [see Footnote No. 2, Page 2 of Teichert Letter]. Clearly, the more specific and permissive language of “MAY” in Clarification No. 1 takes precedence over the conflicting generic language of the Instructions to Bidders. Therefore, per the order of precedence set forth in the Contract Documents, the City has the discretion to award the contract to a contractor who failed to include or acknowledge a clarification with his bid.

ALTHOUGH BAY CITIES NEGLECTED TO INCLUDE A SIGNED LETTER OF CLARIFICATION WITH ITS BID, BAY CITIES BID NEVERTHELESS ACKNOWLEDGED THE CITY'S LETTER OF CLARIFICATION.

The Letter Clarification No. 1 notified bidders that:

"the form must be signed and returned with the bid and the failure to do so include or acknowledge a clarification may result in the bid being rejected." [emphasis added].

By its own terms, the form must be signed and returned with the bid OR acknowledged. Bay Cities neglected to sign and return Letter of Clarification No. 1, however, Bay Cities acknowledged this clarification when it signed the bid documents. To “acknowledge” is to “admit, affirm, declare, testify, avow, confess, or own as genuine” [Black’s Law Dictionary].

On October 6, 2011, the president of Bay Cities, Ben Rodriguez, Jr. signed the Bidder’s Checklist/Agreement agreeing that he had

"Reviewed and understand (sic) all Questions/Answers/Clarifications on the City website."

Prior to the bid opening the City’s website contained a section of Questions/Answers and the Letter of Clarification No. 1. By signing the Bidder’s Checklist/Agreement, Bay Cities acknowledged that it had reviewed and understood the questions and answers on the City’s website as well as Letter of Clarification No. 1. Moreover, on the Signature Page of the Bid, Bay Cities again agreed that “he/she has carefully examined the site of the work and the bid documents and any addenda thereto, and is fully informed of the nature and location of the work, the quantities of the work, and the conditions to be encountered in performing the work” (emphasis added). Bay Cities’ bid was signed by Bay Cities’ president under penalty of perjury and the signing was affirmed by a notary. The affirmations by Bay Cities that it understood the clarifications on the City’s website were acknowledgments of the Letter of Clarification so that Bay Cities’ bid was responsive to the City’s request for bids.
BAY CITIES HAD NO ADVANTAGE OVER ANY OTHER BIDDER AND COULD NOT HAVE WITHDRAWN ITS BID

Teichert has argued that Bay Cities’ neglect in submitting a signed Letter of Clarification renders Bay Cities’ bid as non-responsive since either the City could not bind Bay Cities to the terms of the Clarification or because Bay Cities enjoyed a benefit over other bidders. This argument is baseless because Bay Cities’ affirmations on its bid bound Bay Cities to the Letter of Clarification. As stated above, the Bidder’s Checklist, the Bid’s Signature Page and Clarification No. 1 all provided for the Bidder to acknowledge that they were bidding in accordance with the addendum and letters of clarification. Although Teichert argues that the City would have been unable to bind Bay Cities to the terms of the Letter of Clarification because it was not signed and submitted with the bid, Bay Cities was bound to Letter of Clarification No. 1 because it signed the Bidder’s Checklist and attested that it had reviewed the clarification on the City’s website and was bidding in accordance with this clarification.

Teichert has also argued that Bay Cities had a benefit unavailable to other bidders because Bay Cities could have withdrawn its bid without forfeiting its bid bond. This argument does not stand up to scrutiny because Bay Cities had no right to withdraw its bid under California Public Contract Code § 5103. The leading case on bid responsiveness is Meneefee v. County of Fresno (1985) 163 Cal.App.3d 1175. Meneefee is progenitor of almost all the bid cases issued in the past 25 years and was cited as authority for all of the cases referenced by Teichert. In Meneefee, a bidder submitted a bid that was signed in several locations but not on the bid proposal sheet. The second-low bidder argued, as Teichert now argues, that the irregularity made the bid non-responsive and that the County of Fresno lacked the power to award to the low bidder. To determine responsiveness, the court sought to determine whether the low bidder had the benefit of withdrawing its bid without forfeiting its bid bond. The Court stated:

“Thus, we should ask -- what would have happened if Brewer-Kalar had refused to enter into a contract and sought to recover its bid bond? If they could use the absence of an executing signature on their bid to avoid a contract, then they had an unfair advantage -- the opportunity to back out -- not given to other bidders who signed their bids properly. If they could not use the absence of the signature to avoid their bid, then they did not gain any advantage from the defect, and waiver should be permitted.” Id at 1181.

The Court noted that under California public contract law, bidders are only allowed for relief of bids for typographical or arithmetical errors. Relief is only allowed if the bidder can establish that "[t]he mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications.” The court held that the low bidder’s failure to sign on one location of the bid did not allow him to withdraw his bid so he did not have an unfair advantage and the County of Fresno was entitled to waive the irregularity.

To determine whether Bay Cities’ bid was responsive, the only question that needs to be asked is
whether Bay Cities could withdraw its bid without jeopardizing its bid bond if the City sought to award the contract to Bay Cities. The answer is an emphatic “No.” There is no possible argument that Bay Cities could have made that it was unaware of Letter of Clarification No. 1 when Bay Cities affirmed that it had reviewed the City’s website including its Letter of Clarification. Moreover, Bay Cities’ president signed the bid under penalty of perjury that he had carefully examined the bid documents and any addenda and that the bid was submitted in accordance with the bid documents. Though Bay Cities neglected to sign and submit the Letter of Clarification No. 1 with the bid, Bay Cities signature on the Bidder Checklist, Bay Cities’ check-mark next to the item regarding Questions/Answers and Letters of Clarification on the Checklist and Bay Cities’ signature under penalty of perjury meant that Bay Cities could not avoid its bid. Like the low bidder in *Menefee*, Bay Cities had no means to withdraw its bid and therefore enjoyed no benefit over other bidders.

Here the City has the discretion to waive the deviation because the variance was inconsequential. “A basic rule of competitive bidding is that bids must conform to the specification, and that if a bid does not so conform, it may not be accepted. [Citations.] However, it is further well established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage not allowed other bidders or, in other words, if the variance is inconsequential.” *(47 Ops. Cal. Atty. Gen. 129, 130 (1966), quoted with approval in Ghilotti Construction Company v. City of Richmond, 45 Cal.App. 4th 897).*

Bay Cities’ neglect in submitting the signed Letter of Clarification with its bid was inconsequential because the variance did not affect the amount of the bid or provide Bay Cities with any advantage over other bidders.

Although Teichert has cited several Federal cases regarding bid responsiveness, none of these cases are relevant because in none of the cases did the bidder sign a notarized affidavit under penalty of perjury affirming that he had reviewed a specific website and the letters of clarification/addenda listed on that website. In the cases cited by Teichert, the Federal government rejected the bids of contractors who had failed to sign amendments because there was no way to determine from the Federal government’s bid documents whether the contractor was aware of the amendments and whether the federal agencies could bind the contractor to the terms of these amendments. Unlike the contractors in the Federal cases cited by Teichert, Bay Cities affirmed under penalty of perjury that it had reviewed the City’s website and understood the City’s clarification prior to the bid. Obviously, the City could legally bind Bay Cities’ to the terms of the Letter of Clarification following this affirmation.

**Purpose Served By Competitive Bidding**

Though competitive bidding laws are written to prevent fraud and corruption, their purpose is to
benefit the public and not any individual, lone bidder. As quoted by the Supreme Court in *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 173,

"The provisions of statutes, charters and ordinances requiring competitive bidding in the letting of municipal contracts are for the purpose of inviting competition, to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable, and they are enacted for the benefit of the property holders and taxpayers, and not for the benefit or enrichment of bidders, and should be so construed and administered as to accomplish such purpose fairly and reasonably with sole reference to the public interest. These provisions are strictly construed by the courts, and will not be extended beyond their reasonable purpose. Competitive bidding provisions must be read in the light of the reason for their enactment, or they will be applied where they were not intended to operate and thus deny municipalities authority to deal with problems in a sensible, practical way." (10 McQuillen Municipal Corporations (3d rev.ed 1990) § 29.29 [emphasis added].

Bay Cities' bid did not involve favoritism, improvidence, extravagance, fraud, corruption or uncompetitive bidding practices. Teichert simply wants to be awarded its higher bid for its own enrichment to the detriment of the City and the public.

**CONCLUSION**

By signing the Bidder's Checklist stating that it had reviewed and understood the clarifications listed on the City's website, Bay Cities bound itself to the terms of Letter of Clarification No. 1 which was listed on the website. In *Judson Pacific-Murphy Corp. v. Durkee* (1956) 144 Cal.App. 2d 377, the court stated that:

"It certainly amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal or license application of the low bidder after the fact, [and] cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy." (Cited with approval in *Ghilotti Construction Company v. City of Richmond* (1996) 45 Cal.App. 4th 897).

Here, Bay Cities' bid is responsive. To the extent that there are any irregularities in Bay Cities' bid, they are minor deviations which the City is empowered to waive. We respectfully request that the City award this Contract to Bay Cities as the lowest responsive bidder.

Sincerely,

Marlo Manqueros  
General Counsel

cc: File
Resolution No. ____________

STOCKTON CITY COUNCIL

RESOLUTION AWARDING A CONSTRUCTION CONTRACT TO BAY CITIES PAVING AND GRADING, INC., IN THE AMOUNT OF $2,461,881.44, FOR CONSTRUCTION OF THE MANTHEY ROAD RELOCATION PROJECT, PHASE 1 (PROJECT NO. 99-01) AND WAIVING TWO MINOR BID DOCUMENT IRREGULARITIES AS INCONSEQUENTIAL

On October 6, 2011, the City Clerk of the City of Stockton opened, examined, and publicly declared the sealed proposals or bids offered for the construction of the Manthey Road Relocation Project, Phase 1 (Project No. 99-01); now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The plans and/or specifications and all letters of clarification, contained in the bid for the construction of Manthey Road Relocation Project, Phase 1 (Project No. 99-01) are incorporated by reference and are approved and adopted.

2. All bids except that next mentioned are rejected.

3. The work is authorized and the contract awarded to the lowest and best regular responsible bidder, to wit: Bay Cities Paving and Grading, Inc., at the price of $2,461,881.44, waiving two minor irregularities to their bid documents as inconsequential and not giving the bidder a competitive advantage.

4. The City Manager is authorized to execute a contract on behalf of the City of Stockton with Bay Cities Paving and Grading, Inc., in accordance with the plans and/or specifications and all letters of clarification, for such work adopted by the City Council, a copy of which is attached as Exhibit 1.

5. The City Clerk is authorized to return to each of the unsuccessful bidders, the bidder's bonds, certified checks, and cashier's checks which accompanied their respective bids for the above-mentioned work.

6. The City Manager is authorized and directed to make all appropriations and transactions appropriate to complete the funding of the project.

City Atty:
Review:
Date December 6, 2011
7. The City Manager is authorized to take the appropriate actions to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED December 13, 2011.

ATTEST: 

ANN JOHNSTON
Mayor of the City of Stockton

BONNIE PAIGE, City Clerk
of the City of Stockton
CONSTRUCTION CONTRACT

This contract is made and entered into on ______________, by and between BAY CITIES PAVING AND GRINDING, INC., a corporation, with a business address at 5029 Forni Drive, Concord, CA 94520, hereinafter called "CONTRACTOR," and CITY OF STOCKTON, a municipal corporation, hereinafter called "CITY."

WITNESSETH:

WHEREAS, plans and specifications for the construction of MANTHEY ROAD RELOCATION, PHASE 1 (PROJECT NO. 99-01), hereinafter called "PROJECT," were regularly adopted by Council Resolution No._______, on _________________; and

WHEREAS, the contract for said work was regularly awarded to CONTRACTOR, by Council Resolution No. ______, on ________________.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto expressly agree as follows:

1. CONTRACTOR agrees:

   (a) To do the work and furnish all the labor, materials, tools, equipment, and insurance required for the construction of PROJECT in accordance with the plans and specifications therefore regularly adopted on ______________, by Council Resolution No. _______. The "contract documents," which include the project plans, specifications, and all letters of clarification, and the City of Stockton Standard Specifications and Plans, are incorporated into and made a part of this contract by this reference to the same extent as if fully set forth.

   (b) To do and perform the work contemplated hereby in a good and workmanlike manner and to furnish all labor, materials, tools, and equipment necessary therefor at the prices specified in Exhibit "A," attached hereto and by reference made a part hereof, under the direction of and to the complete satisfaction of the Director of Public Works of the City of Stockton.

   (c) CONTRACTOR shall provide insurance as set forth in Exhibit "B", which is attached to this contract and incorporated by this reference, and as provided in the "contract documents" including Section 7-1.12 of the City of Stockton Standard Specifications and Plans as adopted on November 25, 2003, by Council Resolution No. 03-0707, effective December 1, 2003.
Before permitting any subcontractors to perform work under the contract, CONTRACTOR shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by CONTRACTOR as may be applied to each subcontractor's work.

Contractor shall defend, indemnify, and hold harmless City, its officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses, including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of Contractor, any sub-contractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the City.

(d) The performance of said work and the furnishing of said materials shall be executed in accordance with Section 8-1.03 of the City of Stockton Standard Specifications and Plans as adopted on November 25, 2003, by Council Resolution No. 03-0707, effective December 1, 2003, and the provisions of the issued project specifications.

The Director will furnish CONTRACTOR a weekly statement showing the number of days charged to the contract for the preceding week, the number of days specified for completion of the contract, and the number of days remaining to complete the contract. CONTRACTOR will be allowed one (1) week in which to file a written protest setting forth in what respects said weekly statement is incorrect, otherwise the statement shall be deemed to have been accepted by CONTRACTOR as correct.

It is agreed by the parties to the contract that in case all the work called for under the contract in all parts and requirements, is not finished or completed within the number of days as set forth, damage will be sustained by the CITY, and that it is and will be impracticable and extremely difficult to ascertain the actual damage which CITY will sustain in the event of and by reason of such delay; and it is therefore agreed that CONTRACTOR will pay to CITY the sum of THREE THOUSAND AND NO/100 DOLLARS ($3,000.00) per day for each and every calendar day's delay in finishing the work in excess of the number of days prescribed; and CONTRACTOR agrees to pay said liquidated damages as herein provided, and in case the same are not paid, agrees that CITY, may deduct the amount thereof from any monies due or that may become due CONTRACTOR under the contract.
It is further agreed that in case the work called for under the contract is not finished and completed in all parts and requirements within the number of days as specified, the CITY shall have the right to increase the number of days or not, as may seem best to serve the interest of CITY, and if the CITY decides to increase the said number of days, the CITY shall further have the right to charge to CONTRACTOR, CONTRACTOR’s heirs, assigns or sureties, and to deduct from the final payment for the work, all or any part, as may be deemed proper, the liquidated damages as specified or the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of such extension, whichever is greater, except the cost of final surveys and preparation of final estimate shall not be included in such charges.

A working day shall not include, nor shall CONTRACTOR be assessed with liquidated damages nor the additional cost of engineering and inspection during any delay beyond the time named for the completion of the work caused by acts of God or of the public enemy, acts of CITY, fire, floods, epidemics, quarantine restrictions, strikes, and freight embargoes and subject to approval by the Director, inability to get materials ordered by CONTRACTOR or subcontractor due to such causes provided that CONTRACTOR shall notify the Director in writing of the causes of delay within five (5) working days from the beginning of any such delay, and the Director shall ascertain the facts and the extent of the delay, and Director’s findings of the facts thereon shall be final and conclusive.

If CONTRACTOR is delayed by reason of alterations made in these specifications, or by any act of the Director or of the CITY, not contemplated by the contract, the time of completion shall be extended proportionately and CONTRACTOR shall be relieved during the period of such extension of any claim for liquidated damages, engineering or inspection charges or other penalties. CONTRACTOR shall have no claim for any other compensation for any such delay.

(e) To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California.

To forfeit as a penalty to CITY the sum of TWENTY-FIVE AND NO/100 DOLLARS ($25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under CONTRACTOR, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing
rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California.

(f) That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.

(g) CONTRACTOR and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. CONTRACTOR performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime CONTRACTOR and each subcontractor’s responsibility to insure that the prevailing wage rates of concern is current and paid to the employee.

(h) Pursuant to Stockton Municipal Code Section 3.68.095 the CONTRACTOR and all subcontractors shall make a good faith effort to employ at least 50% of the workforce on this project from local residents, as measured by total labor work hours. Failure of any CONTRACTOR or subcontractor to comply with these requirements shall be deemed a material breach of the contract or subcontract. CONTRACTORS and subcontractors shall maintain records necessary for monitoring their compliance with Section 3.68.095.

2. CITY agrees:

(a) To pay CONTRACTOR for the work herein contemplated in the following manner: Progress payments will be made on or about the first day of each calendar month, in such sum as shall make the aggregate of payment up to such day equal to ninety percent (90%) of the proportional contract price, upon the basis of the progress certificate of the Director of Public Works as to the amount of work done and the proportional amount of the contract price represented therefore; and all of the remaining part of the contract price not as aforesaid paid, shall be paid at the expiration of thirty-five (35) days from the completion of said work of construction and the certification by the Director of Public Works of such completion.
(b) Pursuant to Section 22300 of the Public Contract Code, the contractor will be permitted, at its request and sole expense, to substitute securities for any monies withheld by the CITY to ensure performance under the contract. Said securities will be deposited either with the CITY or with a state or federally chartered bank as escrow agent. Securities eligible for this substitution are those listed in Section 16430 of the California Government Code or bank or savings and loan certificates of deposit. The CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

3. CHANGE ORDERS:

CITY reserves the right to make such alterations, deviations, additions to or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Engineer to be necessary or advisable and to require such extra work as may be determined by the Engineer to be required for the proper completion or construction of the whole work contemplated.

Any such changes will be set forth in a contract change order which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by the City Manager and/or the City Council.

Processing of change orders shall be in accordance with Section 4-1.03 of the City of Stockton Standard Specifications and Plans as adopted by Council on November 25, 2003, by Resolution No. 03-0707, effective December 1, 2003, except that the $23,578 limit shown in Section 4-1.03 shall be increased to $30,737. When the compensation for an item of work is subject to adjustment under the provisions of Standard Specifications and Plans, Section 4-1.03, CONTRACTOR shall, upon request, promptly furnish the Engineer with adequate detailed cost data for such item of work.

4. AUDITS:

(a) CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under the contract. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance.

(b) CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of the contract.
CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under the contract.

5. It is expressly understood and agreed by and between the parties hereto that a waiver of any of the conditions of this contract shall not be considered a waiver of any of the other conditions thereof.

6. It is further understood and agreed by and between the parties hereto that time is of the essence of this contract in all respects.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

ATTEST:
BONNIE PAIGE
CITY CLERK

CITY OF STOCKTON, a municipal corporation
By________________________
BOB DEIS
CITY MANAGER
"CITY"

Bay Cities Paving and Grinding, Inc.
a corporation
5029 Forni Drive
Concord, CA 94520

By: _______________________
"CONTRACTOR"

(Indicate status: corporation, partnership, or sole proprietorship)

By: _______________________
Tax Identification No.
**MANTHEY ROAD RELOCATION, PHASE 1**  
**PROJECT NO. 99-01**

Manthey Road Relocation, Phase I  
Project No. 99-01

**BIDDING SCHEDULE**

Each bidder shall bid each item, including all alternate bid(s). Failure to bid an item shall be just cause for considering the bid as non-responsive. Line item costs should include all Contractor’s overhead and profit and indirect costs. Bids not presented on City forms shall be cause for considering the bid as non-responsive.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Quantity</th>
<th>Unit price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Construction Site Management</td>
<td>LS</td>
<td>1</td>
<td>10,000</td>
<td>10,000</td>
</tr>
<tr>
<td>2</td>
<td>Prepare Storm Water Pollution Prevention Plan</td>
<td>LS</td>
<td>1</td>
<td>1,120</td>
<td>1,120</td>
</tr>
<tr>
<td>3</td>
<td>Temporary Silt Fence</td>
<td>LF</td>
<td>2,220</td>
<td>1.13</td>
<td>2,500.60</td>
</tr>
<tr>
<td>4</td>
<td>Temporary Concrete Washout Facility</td>
<td>EA</td>
<td>3</td>
<td>530</td>
<td>1,590</td>
</tr>
<tr>
<td>5</td>
<td>Temporary Construction Entrance</td>
<td>EA</td>
<td>3</td>
<td>2,500</td>
<td>7,500</td>
</tr>
<tr>
<td>6</td>
<td>Temporary Drainage Inlet Protection</td>
<td>EA</td>
<td>3</td>
<td>300</td>
<td>900</td>
</tr>
<tr>
<td>7</td>
<td>Street Sweeping</td>
<td>LS</td>
<td>1</td>
<td>18,000</td>
<td>18,000</td>
</tr>
<tr>
<td>8</td>
<td>Temporary Hydraulic Mulch</td>
<td>SQYD</td>
<td>5,881</td>
<td>0.53</td>
<td>3,169.93</td>
</tr>
<tr>
<td>9</td>
<td>Storm Water Annual Report</td>
<td>EA</td>
<td>2</td>
<td>2,050</td>
<td>4,100</td>
</tr>
<tr>
<td>10</td>
<td>Construction Area Signs</td>
<td>LS</td>
<td>1</td>
<td>11,625</td>
<td>11,625</td>
</tr>
<tr>
<td>11</td>
<td>Traffic Control System</td>
<td>LS</td>
<td>1</td>
<td>18,500</td>
<td>18,500</td>
</tr>
<tr>
<td>12</td>
<td>Temporary Type III Barricade</td>
<td>EA</td>
<td>6</td>
<td>200</td>
<td>1,200</td>
</tr>
<tr>
<td>13</td>
<td>Temporary Traffic Stripe (Paint)</td>
<td>LF</td>
<td>13,957</td>
<td>0.44</td>
<td>6,141.08</td>
</tr>
<tr>
<td>14</td>
<td>Temporary Railing (Type K)</td>
<td>LF</td>
<td>6,880</td>
<td>5</td>
<td>34,400</td>
</tr>
<tr>
<td>15</td>
<td>Channelizer (Surface Mounted)</td>
<td>EA</td>
<td>60</td>
<td>31</td>
<td>1,860</td>
</tr>
<tr>
<td>16</td>
<td>Channelizer (Surface Mounted) (Left In Place)</td>
<td>EA</td>
<td>38</td>
<td>31</td>
<td>1,186</td>
</tr>
<tr>
<td>17</td>
<td>Relocate Channelizer (Surface Mounted)</td>
<td>EA</td>
<td>65</td>
<td>21.14</td>
<td>1,374.10</td>
</tr>
<tr>
<td>18</td>
<td>Portable Changeable Message Sign</td>
<td>EA</td>
<td>5</td>
<td>3150</td>
<td>15,750</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Unit</td>
<td>Quantity</td>
<td>Unit price</td>
<td>Total Price</td>
</tr>
<tr>
<td>------</td>
<td>--------------------------------------------</td>
<td>------</td>
<td>----------</td>
<td>------------</td>
<td>--------------</td>
</tr>
<tr>
<td>19</td>
<td>Temporary Crash Cushion Module</td>
<td>EA</td>
<td>110</td>
<td>21</td>
<td>23,210</td>
</tr>
<tr>
<td>20</td>
<td>Contractor Supplied Biologist</td>
<td>LS</td>
<td>1</td>
<td>19,000</td>
<td>19,000</td>
</tr>
<tr>
<td>21</td>
<td>Abandon Water Well</td>
<td>EA</td>
<td>2</td>
<td>7925</td>
<td>15850</td>
</tr>
<tr>
<td>22</td>
<td>Remove Fence</td>
<td>LF</td>
<td>2031</td>
<td>317</td>
<td>6438.12</td>
</tr>
<tr>
<td>23</td>
<td>Remove Traffic Stripe</td>
<td>LF</td>
<td>1982</td>
<td>0.79</td>
<td>1565.78</td>
</tr>
<tr>
<td>24</td>
<td>Remove Pavement Marking</td>
<td>SQFT</td>
<td>32</td>
<td>3.17</td>
<td>101.49</td>
</tr>
<tr>
<td>25</td>
<td>Remove Pavement Marker</td>
<td>EA</td>
<td>48</td>
<td>1.06</td>
<td>50.84</td>
</tr>
<tr>
<td>26</td>
<td>Remove Roadside Sign</td>
<td>EA</td>
<td>3</td>
<td>160</td>
<td>480</td>
</tr>
<tr>
<td>27</td>
<td>Remove Standpipe</td>
<td>EA</td>
<td>1</td>
<td>1165</td>
<td>1165</td>
</tr>
<tr>
<td>28</td>
<td>Remove Inlet</td>
<td>EA</td>
<td>2</td>
<td>600</td>
<td>1200</td>
</tr>
<tr>
<td>29</td>
<td>Remove AC Surfacing</td>
<td>CY</td>
<td>101</td>
<td>46</td>
<td>4646</td>
</tr>
<tr>
<td>30</td>
<td>Remove Base and Surfacing</td>
<td>CY</td>
<td>678</td>
<td>30</td>
<td>20340.00</td>
</tr>
<tr>
<td>31</td>
<td>Relocate Mailbox</td>
<td>EA</td>
<td>1</td>
<td>130</td>
<td>130</td>
</tr>
<tr>
<td>32</td>
<td>Adjust Water Valve Cover to Grade</td>
<td>EA</td>
<td>3</td>
<td>420</td>
<td>1260</td>
</tr>
<tr>
<td>33</td>
<td>Adjust Maintenance Hole to Grade</td>
<td>EA</td>
<td>2</td>
<td>420</td>
<td>840</td>
</tr>
<tr>
<td>34</td>
<td>Cold Plane Asphalt Concrete Pavement</td>
<td>SQYD</td>
<td>399</td>
<td>9.65</td>
<td>3850.35</td>
</tr>
<tr>
<td>35</td>
<td>Remove Concrete Curb</td>
<td>LF</td>
<td>733</td>
<td>4.28</td>
<td>3137.24</td>
</tr>
<tr>
<td>36</td>
<td>Clearing and Grubbing</td>
<td>LS</td>
<td>1</td>
<td>10,000</td>
<td>10,000</td>
</tr>
<tr>
<td>37</td>
<td>Develop Water Supply</td>
<td>LS</td>
<td>1</td>
<td>8000</td>
<td>8000</td>
</tr>
<tr>
<td>38</td>
<td>Roadway Excavation</td>
<td>CY</td>
<td>18,007</td>
<td>9</td>
<td>162,063</td>
</tr>
<tr>
<td>39</td>
<td>Dust Control Plan</td>
<td>LS</td>
<td>1</td>
<td>1650</td>
<td>1650</td>
</tr>
<tr>
<td>40</td>
<td>Move-In/Move-Out (Erosion Control)</td>
<td>EA</td>
<td>2</td>
<td>800</td>
<td>1600</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Unit</td>
<td>Quantity</td>
<td>Unit price</td>
<td>Total Price</td>
</tr>
<tr>
<td>------</td>
<td>--------------------------------------------------</td>
<td>------</td>
<td>----------</td>
<td>------------</td>
<td>-------------</td>
</tr>
<tr>
<td>41</td>
<td>Erosion Control (Hydroseed)</td>
<td>ACRE</td>
<td>2.4</td>
<td>3225.5</td>
<td>7,740.0</td>
</tr>
<tr>
<td>42</td>
<td>Finishing Roadway</td>
<td>LS</td>
<td>1</td>
<td>30,000.0</td>
<td>30,000.0</td>
</tr>
<tr>
<td>43</td>
<td>Class 2 Aggregate Base</td>
<td>CY</td>
<td>18,606</td>
<td>29.60</td>
<td>555,787.60</td>
</tr>
<tr>
<td>44</td>
<td>Hot Mix Asphalt</td>
<td>TON</td>
<td>14,113</td>
<td>72.91</td>
<td>1,028,978.28</td>
</tr>
<tr>
<td>45</td>
<td>Place Hot Mix Asphalt Dike (Type D)</td>
<td>FT</td>
<td>2,996</td>
<td>5.85</td>
<td>15,818.30</td>
</tr>
<tr>
<td>46</td>
<td>Place Hot Mix Asphalt (Miscellaneous Area)</td>
<td>SQYD</td>
<td>4</td>
<td>157.93</td>
<td>628.00</td>
</tr>
<tr>
<td>47</td>
<td>Roadside Sign (Wood Post)</td>
<td>EA</td>
<td>11</td>
<td>21.67</td>
<td>238.37</td>
</tr>
<tr>
<td>48</td>
<td>Roadside Sign (Steel Post)</td>
<td>EA</td>
<td>18</td>
<td>21.72</td>
<td>390.96</td>
</tr>
<tr>
<td>49</td>
<td>12&quot; Reinforced Concrete Pipe (Class III)</td>
<td>LF</td>
<td>85</td>
<td>79.00</td>
<td>6,615.00</td>
</tr>
<tr>
<td>50</td>
<td>Curb Inlet Catch Basin</td>
<td>EA</td>
<td>1</td>
<td>2300.00</td>
<td>2300.00</td>
</tr>
<tr>
<td>51</td>
<td>Type 1 Maintenance Hole</td>
<td>EA</td>
<td>2</td>
<td>2300.00</td>
<td>4600.00</td>
</tr>
<tr>
<td>52</td>
<td>Minor Concrete (Curb)</td>
<td>CY</td>
<td>14</td>
<td>500.00</td>
<td>7000.00</td>
</tr>
<tr>
<td>53</td>
<td>Minor Concrete (Miscellaneous Construction)</td>
<td>CY</td>
<td>5</td>
<td>200.00</td>
<td>1000.00</td>
</tr>
<tr>
<td>54</td>
<td>Chain Link Fence (Type CL-6)</td>
<td>LF</td>
<td>698</td>
<td>10.50</td>
<td>7199.50</td>
</tr>
<tr>
<td>55</td>
<td>Delineator (Class 1)</td>
<td>EA</td>
<td>53</td>
<td>45.45</td>
<td>2408.85</td>
</tr>
<tr>
<td>56</td>
<td>Object Marker (Type K-2 (CA))</td>
<td>EA</td>
<td>2</td>
<td>52.85</td>
<td>105.70</td>
</tr>
<tr>
<td>57</td>
<td>4&quot; Thermoplastic Traffic Stripe</td>
<td>LF</td>
<td>31,072</td>
<td>0.48</td>
<td>15216.96</td>
</tr>
<tr>
<td>58</td>
<td>8&quot; Thermoplastic Traffic Stripe</td>
<td>LF</td>
<td>2,142</td>
<td>1.06</td>
<td>2270.52</td>
</tr>
<tr>
<td>59</td>
<td>Thermoplastic Pavement Marking</td>
<td>SQFT</td>
<td>607</td>
<td>5.28</td>
<td>3204.96</td>
</tr>
<tr>
<td>60</td>
<td>4&quot; Thermoplastic Traffic Stripe (Broken 17.0-7.0)</td>
<td>LF</td>
<td>1,105</td>
<td>0.37</td>
<td>408.85</td>
</tr>
<tr>
<td>61</td>
<td>Thermoplastic Traffic Stripe (Sprayable)</td>
<td>LF</td>
<td>229</td>
<td>5.28</td>
<td>1209.12</td>
</tr>
<tr>
<td>62</td>
<td>Pavement Marker (Non-Reflective)</td>
<td>EA</td>
<td>18</td>
<td>2.11</td>
<td>37.98</td>
</tr>
</tbody>
</table>
# MANTHEY ROAD RELOCATION, PHASE 1
PROJECT NO. 99-01

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>63</td>
<td>Pavement Marker (Retroreflective)</td>
<td>EA</td>
<td>619</td>
<td>3.28</td>
<td>2,050.32</td>
</tr>
<tr>
<td>64</td>
<td>Installation of Traffic Signal</td>
<td>LS</td>
<td>1</td>
<td>13,500</td>
<td>13,500</td>
</tr>
<tr>
<td>65</td>
<td>Street Lighting</td>
<td>LS</td>
<td>1</td>
<td>44,000</td>
<td>44,000</td>
</tr>
<tr>
<td>66</td>
<td>Fiber Optic Interconnect System</td>
<td>LS</td>
<td>1</td>
<td>47,500</td>
<td>47,500</td>
</tr>
<tr>
<td>67</td>
<td>Utility Connection Fee – PG&amp;E Coordination</td>
<td>EA</td>
<td>1</td>
<td>2,600</td>
<td>2,600</td>
</tr>
<tr>
<td>68</td>
<td>Mobilization</td>
<td>LS</td>
<td>1</td>
<td>30,000</td>
<td>30,000</td>
</tr>
</tbody>
</table>

TOTAL BID **2,462,183**

BIDDER'S NAME: Bay Cities Paving & Grading Inc.
BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS:

That we, ___________________________, a corporation, as Principal and ___________________________, a corporation, organized and existing under the laws of the State of ________________ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly created and existing under and by virtue of the laws of the State of California, as obligee, in the just and full sum of TWO MILLION FOUR HUNDRED SIXTY-TWO THOUSAND ONE HUNDRED EIGHTY-THREE AND 84/100 DOLLARS ($2,462,183.84), in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to the said CITY, the said Principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that the above bounded Principal has simultaneously entered into a contract with the CITY, to do and perform the following work, to wit:

MANTHEY ROAD RELOCATION, PHASE 1
(PROJECT NO. 99-01)

NOW, THEREFORE, if the above bounded Principal, CONTRACTOR, Company or Corporation or its subcontractor, shall well and truly perform the work contracted to be done under said contract, then this obligation to be null and void; otherwise to remain in full force and effect.

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract, or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY, and no forbearance on the part of the said CITY shall operate to relieve any Surety or Sureties from liability on this bond, and consent by said Surety is hereby given, and the said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.
SIGNED AND SEALED on ______________________________

BAY CITIES PAVING AND GRADING, INC.  
a corporation

By ___________________________  
"PRINCIPAL"

APPROVED AS TO SURETY:

______________________________

SURETY

APPROVED AS TO FORM & CONTENT:

JOHN M. LUEBBERKE  
OFFICE OF THE CITY ATTORNEY

By ___________________________  
DEPUTY CITY ATTORNEY

By ___________________________  
ATTORNEY-IN-FACT
BOND FOR LABOR AND MATERIAL

KNOW ALL MEN BY THESE PRESENTS:

That we, BAY CITIES PAVING AND GRADING, INC., a corporation, as Principal and ______________________ , corporation, organized and existing under the laws of the State of ____________ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly created and existing under and by virtue of the laws of the State of California, and unto any and all material suppliers, persons, companies, or corporations furnishing materials, provisions, provender or other supplies used in, upon, for or about the performance of the work contemplated to be executed or performed under the contract hereinafter mentioned, and all persons, companies, or corporations renting or hiring teams, or implements of machinery, for or contributing to said work and all persons who perform work or labor upon the same, and all persons who supply both work and materials, and whose claims have not been paid by the contractor, company or corporation in the just and full sum of TWO MILLION FOUR HUNDRED SIXTY-TWO THOUSAND ONE HUNDRED EIGHTY-THREE AND 84/100 DOLLARS ($2,462,183.84), in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to said City of Stockton and to said persons jointly and severally, the said principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligations is such that the above bounden Principal has simultaneously entered into a contract of even date herewith, with the CITY, to do and perform the following work, to-wit:

MANTHEY ROAD RELOCATION, PHASE 1
(PROJECT NO. 99-01)

NOW, THEREFORE, if the above bounden Principal, CONTRACTOR, Company or Corporation or its subcontractor, fail to pay for all materials, provisions, provender, or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay
the same, in an amount not exceeding the sum specified in this bond, provided that any and all claims hereunder shall be filed and proceedings had in connection therewith as required by the provisions of Division 3, Part 4, Title 15, Chapter 5, Article 1 of the Civil Code of California, provided that in case suit is brought upon this bond, a reasonable attorney's fee shall be awarded by the Court to the prevailing party in said suit; said attorney's fee to be fixed as costs in said suit, and to be included in the judgment therein rendered.

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY and no forbearance on the part of the said CITY shall operate to relieve any surety or sureties from liability on this bond, and consent to make such alterations without further notice to or consent by any such surety is hereby given, and the said sureties hereby waive the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

SIGNED AND SEALED on ________________________________________

BAY CITIES PAVING AND GRADING, INC.
a corporation

APPROVED AS TO SURETY:

By __________________________
"PRINCIPAL"

SURETY

APPROVED AS TO FORM & CONTENT:

JOHN M. LUEBBERKE
OFFICE OF THE CITY ATTORNEY

By __________________________
DEPUTY CITY ATTORNEY

By __________________________
ATTORNEY-IN-FACT
EXHIBIT B
INSURANCE REQUIREMENTS
CONTRACTORS

CONTRACTOR shall procure and maintain for the duration of the Agreement, insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, its agents, representatives, volunteers, or employees.

1. INSURANCE  Throughout the life of this Contract, the Contractor shall pay for and maintain in full force and effect with an insurance company admitted by the California Insurance Commissioner to do business in the State of California and rated not less than “A: VII” in Best Insurance Key Rating Guide, the following policies of insurance:

A. COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY insurance, endorsed for “any auto” with combined single limits of liability of not less than $1,000,000 each occurrence.

B. WORKERS’ COMPENSATION insurance as required under the California Labor Code and Employers Liability Insurance with limits not less than $1,000,000 per accident/injury/disease.

C. COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY AND MISCELLANEOUS SUPPLEMENTARY INSURANCE;

FOR ADDITIONAL REQUIREMENT(S):

(i) COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY insurance which shall include Contractual Liability, Products and Completed Operations coverage’s, Bodily Injury and Property Damage Liability insurance with combined single limits of not less than $1,000,000 per occurrence, and if written on an Aggregate basis, $3,000,000 Aggregate limit. Contractors with excavation and underground risks shall have coverage for and exclusions removed for “x, c, and u.”

(ii) EXCESS LIABILITY: $1,000,000 per occurrence, and if written on an Aggregate basis, $1,000,000 Aggregate limit.

Deductibles and Self-Insured Retentions must be declared and are subject to approval by the CITY.

The Policy(s) shall also provide the following:

1. The Commercial General Liability and Automobile Liability insurance shall be written on ISO approved occurrence form with additional insured endorsement naming: City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds. ISO form CG 20 37 10 01 edition shall be used as the Additional Insured Endorsement. This form must be used with either ISO form CG 20 10 10 01, or CG 20 33 10 01.

2. All insurance required by this Agreement shall be with a company acceptable to the CITY and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

3. For any claims related to products provided under this contract, the Contractor’s insurance coverage shall be primary insurance as respects the City of Stockton its officers, agents, and employees. Any coverage maintained by the CITY shall be excess of the Contractor’s insurance.
and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.

4. Each insurance policy required by this clause shall have a provision that coverage shall not be cancelled by either party, except after thirty (30) days' prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers' compensation, or non-payment of premium, which shall permit ten (10) days advance notice. The insurer and/or the contractor and/or the contractor's insurance agent shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.

5. Regardless of these contract minimum insurance requirements, the Contractor and its insurer shall agree to commit the Contractor's full policy limits and these minimum requirements shall not restrict the Contractor's liability or coverage limit obligations.

6. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnity the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

7. The Company shall furnish the City of Stockton with the Certificates and Endorsement for all required insurance, prior to the CITY's execution of the Agreement and start of work.

8. Proper address for mailing certificates, endorsements and notices shall be:

    City of Stockton
    Attention: Risk Services
    425 N. El Dorado Street
    Stockton, CA 95202

9. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the Contractor shall immediately file with the CITY a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the CITY's Risk Manager (209) 937-8682. Our fax is (209) 937-5702.

If at any time during the life of the Contract or any extension, the Contractor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

If the Contractor should subcontract all or any portion of the work to be performed in this contract, the Contractor shall cover the sub-contractor, and/or require each sub-contractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-contractor's insurance shall have the same impact as described above.