

CONSTRUCTION SERVICES AGREEMENT

FY 2017-18 PAVEMENT REHABILITATION PROJECT - PHASE II

DATE: NOVEMBER 13, 2018

1. IDENTIFICATION OF CONTRACTOR:

CONTRACTOR: G. BORTOLOTTO & COMPANY, INC.

CALIFORNIA LICENSE NO: 397341 CLASS: A – GENERAL ENGINEERING CONTRACTOR

2. SCOPE OF THE WORK

See Scope of Work attached as Appendix A.

COMPENSATION FOR WORK. Contractor's total compensation for the Work performed under this Agreement (**Contract Sum**) is \$631,998.20, to be paid as lump sum with progress payments. Payment shall be subject to a five percent (5%) retention.

3. SCHEDULE OF PERFORMANCE FOR THE WORK. Contractor shall commence and complete the Work by the following dates:

Commencement Date shall be on the date established in the Notice to Proceed. Owner reserves the right to modify or alter the Commencement Date of the Work.

Final Completion Date: Within 35 working days of Commencement Date.

3.01 Liquidated Damage Amounts.

- A. As liquidated damages for delay Contractor shall pay Owner Five Hundred dollars (\$500.00) for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.
- B. As liquidated damages for delay Contractor shall pay Owner Five Hundred dollars (\$500.00) for each Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

3.02 Scope of Liquidated Damages

- A. Contractor and Owner agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of such actual damages incurred by Owner because of a delay in completion of all or any part of the Work. Contractor and Owner agree that specified measures of liquidated damages shall be presumed to be the amount of such damages actually sustained by Owner, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.
- B. Liquidated damages for delay shall cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by Owner as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from Owner (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof. Owner may deduct from any money due or to become due to Contractor subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages.


4. TERMS AND CONDITIONS.

- 4.01** Contractor shall perform the Work in accordance with the terms and conditions of this Agreement and the following attachments (together, **Contract Documents**):
- A. Appendix A – Scope of Work
 - B. Appendix B – General Conditions
 - C. Appendix C – Insurance
 - D. Appendix D – Construction Labor and Materials Payment Bond
 - E. Appendix E – Construction Performance Bond
 - F. Appendix F – Technical Specifications and Plans
- 4.02** The Contract Documents are the sole and exclusive provisions that govern the Work. Any provision contained in any Owner purchase order issued in connection with this Agreement or any Work shall be null and void and shall have no force or effect.
- 4.03** The name of the project (**FY 2017-18 PAVEMENT REHABILITATION PROJECT - PHASE II**) must appear on all invoices and correspondence. Send invoices in duplicate immediately upon performance of Work ordered hereon or as otherwise provided in the Contract Documents to :

**City of Pacifica, Department of Public Works,
170 Santa Maria Avenue, Pacifica, CA 94044.**

CONTRACTOR: **G. BORTOLOTTO & COMPANY, INC.**

OWNER: **CITY OF PACIFICA**



Signature

Signature



Print Name & Title

Kevin Woodhouse, City Manager

10/29/18

Date

Date

APPROVED AS TO FORM:

ATTEST:

Michelle Marchetta Kenyon, City Attorney

Sarah Coffey, City Clerk

Addresses for Notices:

Addresses for Notices:

G. Bortolotto & Company, Inc.
580 Bragato Road
San Carlos, CA 94070
Attn: Robert Bortolotto

City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044
Attn: Van Ocampo, DPW Director/City Engineer

SCOPE OF WORK

FY 2017-18 PAVEMENT REHABILITATION PROJECT - PHASE II

The work consists, generally of pavement rehabilitation along Linda Mar Boulevard from Alicante Drive to Oddstad Boulevard by grinding 2 inches of asphalt and 2 inches asphalt overlay. This project will also include pavement grinding for base repair as well as installation of concrete curb ramps, thermoplastic traffic striping, markings, and pavement markers, in accordance with the approved plans and specifications and City standards and as directed by the City Engineer. The work is more specifically laid out in Attachment 1 – Technical Specifications & Plans.

Appendix B to Construction Services Agreement

GENERAL CONDITIONS

ARTICLE 1 TERMS OF PERFORMANCE

Construction Services Agreement (Agreement) Force and Effect. The provisions of the Agreement and other Contract Documents constitute the entire agreement between the Contractor and Owner regarding the Work described herein. No representation, term or covenant not expressly specified in the Contract Documents shall be a part of the parties' agreement. The Agreement and other Contract Documents shall govern the Work (whenever performed), and shall supersede all other purchase orders and agreements between Contractor and Owner, and any proposal, with respect to the Work.

Construction Performance Bond; Construction Labor and Materials Payment Bond; Securities in Lieu of Retention Escrow Account.

If Contract Sum under the Agreement exceeds (or is expected to exceed) \$25,000, Contractor shall provide (i) a construction labor and material payment bond, in accordance with Civil Code Section 9550 and in form attached hereto Appendix D – Construction Labor and Materials Payment Bond, and (ii) a construction performance bond in form attached hereto as Appendix E – Construction Performance Bond. Contractor may not substitute cash in lieu of the required bond(s).

If the Agreement specifies performance retention, Contractor may elect to substitute securities or direct payment to an escrow account, pursuant to Public Contract Code Section 22300 (incorporated herein by this reference).

Records and Payment Requests. Contractor shall submit all billings with all necessary invoices or other appropriate evidence of proper performance, after which Owner shall make payment within 30 days. Upon Owner's written request, Contractor shall make available to Owner, its authorized agents, officers, or employees, any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the Work or the expenditures and disbursement charged to Owner, and all correspondence, internal memoranda, calculations, books and accounts, records documenting its Work under the Contract Documents, and invoices, payrolls, timecards, records and all other data related to matters covered by the Contract Documents. Contractor shall furnish to Owner, its authorized agents, officers, or employees, such other evidence or information as Owner may require with regard to the Work or any such expenditure or disbursement charged by Contractor. Contractor shall maintain all such documents and records prepared by or furnished to Contractor during the course of performing the Work for at least five years following completion of the Work, except that all such items pertaining to hazardous materials shall be maintained for at least 30 years. Contractor shall permit Owner to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any Federal agency having an interest in the subject of the Contract Documents shall have the same rights conferred to Owner by this section. Such rights shall be specifically enforceable.

Use of Contract Documents and Other Information. Drawings, Specifications, and other Contract Documents are made available to Contractor solely for Contractor's use under the Contract Documents. Further, all tangible and intangible property developed, produced and/or provided by Contractor under the Contract Documents, and all such items (other than Contract Documents) provided by Owner to Contractor in connection with the Contract Documents including, without limitation, drawings, specifications, sketches, models, samples, tools, computer programs, technical information, confidential business information, scripts, customer or personnel information and data, whether written, oral or otherwise (all hereinafter referred to as **Information**) shall be Owner's sole property. Contractor may not use Contract Documents or Information for any purpose unrelated to Contract Documents without Owner's prior written consent. All copies of Information in written, graphic or other tangible form shall be delivered to Owner upon completion of Work, or earlier if otherwise provided in Contract Documents.

Performance of Work/No Assignment. Time is of the essence in the performance of the Work. Contractor will perform the Work in a skillful and workmanlike manner; comply fully with criteria established by Owner, and with applicable laws, codes, and all applicable industry standards. Contractor shall maintain its work area in a clean and sanitary condition, clear debris and trash at the end of each work day, and shall not damage or disrupt any property unless specifically part of the scope of the Contract Documents. Contractor shall not contract any portion of the Work or otherwise assign the Contract Documents without prior written approval of Owner. (Contractor shall remain responsible for compliance with all terms of the Contract Documents, regardless of the terms of any such assignment.) Contractor shall permit Owner (or its designees) access to the work area, Contractor's shop, or any other facility, to permit inspection of the Work at all times during construction and/or manufacture and fabrication. The granting of any progress payment, and any inspections, reviews, approvals or oral statements by any Owner representative, or certification by any governmental entity, shall in no way limit or relieve Contractor from its obligations under the Contract Documents. Either party's waiver of any breach, or the

omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of the Contract Documents, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof. Owner shall have, at all times, set-off rights with respect to any payment and Contractor's failure to perform the terms of the Contract Documents.

Defective Work; Warranties. Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices, all Contract Documents requirements, and all laws, codes, standards, licenses, and permits. Contractor warrants that all materials and equipment shall be new, of suitable grade of their respective kinds for their intended uses, and free from defects. Contractor hereby grants to Owner for a period of one year following the date of completion its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers. If either prior to completion of the Work, or within one year after completion, any Work (completed or incomplete) is found to violate any of the foregoing warranties (**Defective Work**), Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct, remove and replace the Defective Work with conforming Work, and correct, remove and replace any damage to other Work or other property resulting therefrom. If Contractor fails to do so within five days of Owner's written notice (or other time period specified in the notice), Contractor shall pay all of the Owner's resulting claims, costs, losses and damages. Where Contractor fails to timely correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.

Earthwork and Underground Facilities. If the Work involves digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall notify Owner in writing of any material that Contractor believes may be hazardous waste that is required to be removed in accordance law, subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids, or unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, pursuant to Public Contract Code Section 7104. For any Work involving trench shoring that costs in excess of \$25,000, Contractor shall submit and Owner (or a registered civil or structural engineer employed by Owner) must accept, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, pursuant to Labor Code Section 6705. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. Consistent with Government Code Section 4215, as between Owner and Contractor, Owner will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or information made available for bidding.

LEGAL

Compliance with Laws; Conflict of Interests. Contractor shall comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back, collusion, prevailing wages, labor compliance, and the provisions of the Americans with Disability Act. Contractor, its officer, partners, associates, agents, and employees, shall not make, participate in making, or in any way attempt to use the position afforded them by the Contract Documents to influence any governmental decision in which he or she knows or has reason to know that he or she has a financial interest under applicable state, federal and local conflict of interest regulations. Contractor warrants that no person or agency has been employed or retained, or will be employed or retained, to solicit or obtain any contract with Owner, upon an agreement or understanding for a contingent fee, except a bona fide employee or agency.

Licenses, Patents, Permits. Before commencing Work, Contractor shall apply for, obtain and maintain in current status, at its own expense, any license, permit or approval required from any agency for the performance of Work, including a City of Pacifica business license, which shall not be unreasonably denied. To the greatest extent permitted by law, Contractor shall not be entitled to any compensation for any Work performed while not properly licensed, etc.

Employee Wages; Records; Apprentices. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices as prescribed by regulation. Contractor shall pay prevailing wages to its employees on any Order in excess of \$1,000.00. Copies of the prevailing rate of per diem wages are on file at Owner's principal office. Contractor shall comply with the 8-hours per day/40 hours per week/overtime/working hours restrictions for all employees, pursuant to the California Labor Code. Contractor and all subcontractors shall keep and maintain accurate employee payroll records for Work performed. The payroll records shall be certified and submitted as required by law, including Labor Code Section 1771.4 and 1776, including (if the Agreement is awarded on or after April 1, 2015 or continues on or after January 1, 2017) to the Labor Commissioner no less frequently than monthly. Contractor shall comply fully with Labor

Code Section 1777.5 in the hiring of apprentices for work relating to the Agreement. If Contract Sum exceeds \$2,000 and is funded with federal funds, then Contractor shall pay federal Davis Bacon wages and comply with applicable federal requirements.

Mandatory Contractor and Subcontractor Registration. Pursuant to Labor Code Section 1771(a), Contractor represents that it and all of its Subcontractors are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor covenants that any additional or substitute Subcontractors will be similarly registered and qualified.

Indemnity/Liability. Contractor shall defend, indemnify, and save harmless, to the fullest extent permitted by law, the Owner and each of its officers, directors, representatives, agents and employees, against all claims, suits, actions, loss, cost, damage, expense, and liability arising from or related to bodily injury to or death of any person or damage to any property, or resulting from any breach and/or Contractor's negligence in performing the Work pursuant to the Contract Documents. Notwithstanding any provision of the Contract Documents, Owner shall not be liable to Contractor or anyone claiming under it, in contract or tort, for any special, consequential, indirect or incidental damages arising out of or in connection with the Contract Documents or the Work. Owner's rights and remedies, whether under the Contract Documents or other applicable law, shall be cumulative and not subject to limitation.

Worker's Compensation. Pursuant to Labor Code Sections 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Labor Code Section 3700 that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work.

MISCELLANEOUS

No Modification or Waiver; Severability. The Contract Documents may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of Owner and Contractor. Contract Documents headings are for convenience only and do not affect the construction of the Contract Documents. Should any part of the Contract Documents be declared invalid, void or unenforceable, all remaining parts, terms and provisions of the Contract Documents shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

Independent Contractor. Contractor is an independent Contractor and does not act as Owner's agent in any capacity, whatsoever. Contractor is not entitled to any benefits that Owner provides to Owner employees including, without limitation, insurance, worker's compensation benefits or payments, pension benefits, health benefits or insurance benefits. Terms within the Contract Documents regarding directives apply to and concern the result of the Contractor's provision of Work not the means, methods, or scheduling of the Contractor's Work. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Work under the Contract Documents. Contractor shall pay all payroll taxes imposed by any governmental entity and will pay all other taxes not specifically identified in the Contract Documents as Owner's responsibility.

Termination; Suspension; Disputes. Owner may direct Contractor to terminate, suspend, delay, interrupt or accelerate Work, in whole or in part, for such periods of time as Owner may determine in its sole discretion. Owner will issue such directives in writing, and may do so, in whole or in part, for its convenience or due to Contractor's fault. Owner will compensate Contractor for extra costs resulting from such directives only to the extent that Owner issues such directives for its convenience and not due to Contractor's fault (but Owner shall not compensate Contractor for costs, profit or overhead anticipated to be earned or incurred on Work terminated for Owner's convenience.) Contractor shall continue its Work throughout the course of any dispute, and Contractor's failure to continue Work during a dispute shall be a material breach of the Contract Documents. All claims by Contractor against Owner shall be submitted in writing to Owner, and shall be governed by Public Contract Code Sections 20104 – 20104.6, after which time the one year time period in Government Code Section 911.2 shall be, pursuant to Government Code Section 930.2, reduced to 90 days. Should Contractor be terminated for default, and such termination is subsequently determined to be wrongful, such termination will be converted to a termination for convenience as provided herein.

Notices. All notices between the parties hereto shall be in writing and may be served by commercial express/overnight courier service or by depositing the same in the United States mail, postage prepaid and certified receipt requested, and addressed as indicated beneath each party's signature in the Master Agreement, or as either party may otherwise provide to the other.

Dispute Resolution. All Contractor claims not otherwise subject to Public Contract Code Sections 20104 et seq shall, as a condition precedent to litigation thereon, first be mediated. Mediation shall be confidential, non-binding, pursuant to the construction mediation procedures of JAMS in San Francisco, California, and utilize the services of a mediator mutually acceptable to the parties. If the parties are unable to agree, the mediator will be selected by JAMS from its panel of approved construction industry mediators, having a minimum of 10 years' experience in the construction industry. The cost of mediation shall be equally shared by all parties to the mediation. The parties shall, prior to the commencement of a mediation pursuant to this Paragraph, upon notice of the other party, exchange relevant, non-privileged project documents in compliance with Code of Civil Procedure Sections 2031.010 et seq. Additionally, the parties may agree mutually to engage in additional discovery prior to mediation. Should the parties proceed with additional discovery, they shall, unless mutually agreed otherwise, comply with Code of Civil Procedure Sections 2019, et. seq. The Mediator will undertake to resolve any discovery disputes relating to the Mediation.

Execution; Venue; Limitations. The Agreement shall be deemed to have been executed in San Mateo County, California. Enforcement of the Contract Documents shall be governed by the laws of the State of California, excluding its conflict of laws rules. Except as expressly provided in the Contract Documents, nothing in the Contract Documents shall operate to confer rights or benefits on persons or entities other than Owner and Contractor. As between the parties to the Agreement, any applicable statute of limitations for any act or failure to act shall commence to run on the date of Owner's issuance of the final Certificate for Payment, or termination of the Contract Documents, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.

Appendix C to Construction Services Agreement

INSURANCE

1. Commercial General Liability Insurance, written on an "occurrence" basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, liability for slander, false arrest and invasion of privacy, blanket contractual liability, broad form endorsement, and completed operations, personal and advertising liability, with limits of not less than **[\$2,000,000]** general aggregate and **[\$1,000,000]** each occurrence, subject to a deductible of not more than **[\$1,000]** payable by Contractor.
2. Business Automobile Liability Insurance with limits not less than **[\$1,000,000]** each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than **[\$1,000]** payable by Contractor.
3. Workers' Compensation Employers' Liability limits not less than **[\$1,000,000]** each accident, **[\$1,000,000]** per disease and **[\$1,000,000]** aggregate. Contractor's Workers' Compensation Insurance policy shall contain a Waiver of Subrogation against the City of Pacifica, its officers, directors, officials, agents, employees and volunteers. In the event Contractor is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.
4. An Installation Floater including, without limitation, coverage against loss or damage to the Work by fire, lightning, wind, hail, vandalism, malicious mischief, and other such hazards as are normally covered by such coverage. Such insurance shall be in amount equal to the replacement cost (without deduction for depreciation and subject to stipulated value in lieu of average clause) of the Work. Such insurance may be subject to deductible clauses not to exceed **[\$10,000]** for any one loss. Such insurance will not cover loss or damage to Contractor's equipment, scaffolding or other materials not to be consumed in the performance of the Work. The insurer shall waive all rights of subrogation against Owner.
5. Insurance policies in Appendix C shall contain an endorsement containing the following terms:
 - 5.01 City of Pacifica, its officers, directors, officials, agents, employees, and volunteers, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured.
 - 5.02 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.
 - 5.03 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to Owner thirty (30) days in advance of the effective date thereof.
 - 5.04 Insurance shall be primary insurance and no other insurance or self-insured retention carried or held by any named or additional insureds other than Contractor shall be called upon to contribute to a loss covered by insurance for the named insured.
6. Certificates of Insurance and Endorsements shall have clearly typed thereon the Project Name, shall clearly describe the coverage and shall contain a provision requiring the mailing of written notices of cancellation described in clause 5.03 above.
7. All policies of insurance shall be placed with insurers acceptable to Owner. The insurance underwriter(s) must be duly licensed to do business in the State of California and (other than for workers' compensation) must have an A. M. Best Company rating of **[A-,VII]** or better. Required minimum amounts of insurance may be increased should conditions of Work, in the opinion of Owner, warrant such increase. Contractor shall increase required insurance amounts upon direction by Owner.

Appendix D to Construction Services Agreement

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND FORM

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, the **City of Pacifica**, a general law city and municipal corporation in the State of California (**Owner**) has awarded to **G. Bortolotto & Company, Inc.**, as Principal, a Construction Services Agreement, dated the _____ day of _____, **2018** ("**Agreement**"), titled the **FY 2017-18 PAVEMENT REHABILITATION PROJECT - PHASE II** in the amount of **\$631,998.20 (Contract Sum)**, which Agreement is by this reference made a part hereof, for the work generally described as follows:

Pavement rehabilitation along Linda Mar Boulevard from Alicante Drive to Oddstad Boulevard. This project will also include pavement grinding for base repair as well as installation of concrete curb ramps, thermoplastic traffic striping, markings, and pavement markers, in accordance with the approved plans and specifications and City standards and as directed by the City Engineer.

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;
3. NOW, THEREFORE, we, the undersigned Principal and _____ as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT SUM (\$_____), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Agreement, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to California Unemployment Insurance Code Section 13020 with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.
5. This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.
6. Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder.
7. Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Agreement; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.
8. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, **2018**.

CONTRACTOR AS PRINCIPAL

Company:

SURETY

Company: (Corp. Seal)

Signature

Name

Title

Street Address

City, State, Zip Code

Signature

Name

Title

Street Address

City, State, Zip Code

Appendix E to Construction Services Agreement

CONSTRUCTION PERFORMANCE BOND FORM

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, **City of Pacifica**, a general law city and municipal corporation of the State of California (**Owner**) has awarded to **G. Bortolotto & Company, Inc.**, as Principal a Construction Services Agreement, dated the _____ day of _____, **2018** ("**Agreement**"), titled the **FY 2017-18 PAVEMENT REHABILITATION PROJECT - PHASE II** in the amount of **\$631,998.20**, (Contract Sum), which Agreement is by this reference made a part hereof, for the work generally described as follows:

Pavement rehabilitation along Linda Mar Boulevard from Alicante Drive to Oddstad Boulevard. This project will also include pavement grinding for base repair as well as installation of concrete curb ramps, thermoplastic traffic striping, markings, and pavement markers, in accordance with the approved plans and specifications and City standards and as directed by the City Engineer.

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement, guaranteeing the faithful performance thereof;
3. NOW, THEREFORE, we, the undersigned Principal and _____ as Surety are held and firmly bound unto Owner in the sum of **100% OF THE CONTRACT SUM** to be paid to Owner or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, shall promptly and faithfully perform the covenants, conditions, and agreements of the Agreement during the original term and any extensions thereof as may be granted by Owner, with or without notice to Surety, and during the period of any guarantees or warranties required under the Agreement, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Agreement made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless Owner as stipulated in the Agreement, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.
5. No extension of time, change, alteration, modification, or addition to the Agreement, or of the work required thereunder, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.
6. Whenever Principal shall be and declared by Owner in default under the Agreement, Surety shall promptly remedy the default, or shall promptly:
- 6.01** Undertake through its agents or independent contractors, reasonably acceptable to Owner, to complete the Agreement in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, indemnities, and the payment of liquidated damages; or
- 6.02** Obtain a bid or bids for completing the Agreement in accordance with its terms and conditions, and, upon determination by Owner of the lowest responsible bidder, reasonably acceptable to Owner, arrange for a contract between such bidder and Owner and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by Owner to the Principal under the Agreement and any amendments thereto, less the amount Owner paid to Principal.
7. Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Agreement, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the others. Surety may not use Contractor to complete the Agreement absent Owner's written consent.

- 8. No right of action shall accrue on this bond to or for the use of any person or corporation other than Owner or its successors or assigns.
- 9. Surety may join in any proceedings brought under the Agreement and shall be bound by any judgment.
- 10. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, **2018**.

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____

Company: _____ (Corp. Seal)

Signature

Signature

Name

Name

Title

Title

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code