



City of Portola, CA.

REQUEST FOR BID **ASPHALT CONCRETE** BID No: 2021-001

Type of Bid: General Service

Bid Submittals: Responses must be submitted to:

Mail Delivery
City of Portola
Department of Public Works
PO Box 1225
Portola, CA 96122

Hand Delivery, FedEx, UPS, other
City of Portola
Department of Public Works
City Hall, 3rd Ave.
Portola, CA 96122

SCHEDULE OF EVENTS:

Post Bid	6/10/21
Questions Due	6/17/21 by 5:00 P.M.
Post Addendum (if needed)	6/21/21
Bid Due Date	6/23/21 by 3:00 P.M.

(The City reserves the right to change schedule of events without prior notice or responsibility to Bidders.)

Website address: <http://www.cityofportola.com>

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1. **INTRODUCTION**

The City of Portola is soliciting sealed bids from qualified companies for rapid road repair by patch or overlay hot mix asphalt concrete material within a 36-hour window, on an on-call basis, as specified herein. Material delivery travel time from load-out to Portola site shall not be more than one-hour (to ensure required laydown temperature.)

2. **BID SUBMISSION INSTRUCTIONS**

Bids must be submitted in a **sealed package**, clearly marked with “**Asphalt Concrete, Bid No: 2021-001**”. Bids received after the due date and time specified will not be accepted. Submittals must include:

- One (1) original;
- One (1) copy

Bids submitted by telephone, e-mail, or fax will be rejected. Rejected Bids will not be returned and will be destroyed by the City 30 days after bid opening. The City reserves the right to cancel the Bid, return any unopened response to the Bidder, and re-advertise for whatever reason.

Bids must be received in accordance with the published “Schedule of Events” and delivered to the following location:

Mail Delivery
City of Portola
Department of Public Works
PO Box 1225
Portola, CA 96122

Hand Delivery, FedEx, UPS, other
City of Portola
Department of Public Works
City Hall, 3rd Ave.
Portola, CA 96122

Bids will be publicly opened on the date and time identified herein. Bid results for general services are typically available for notification within one (1) to two (2) days after bids have been opened. Posted bid prices are preliminary in nature and may not reflect the final cost calculation. **No notification will be sent to unsuccessful bidders.**



Please note: No other letters or correspondence will be sent.

3. **INQUIRIES**

Bidders must carefully examine the bid document and any addenda that may be posted on the City’s website and seek clarification of any ambiguity, conflict, omission or error in writing prior to the due date and time for questions specified in the “Schedule of Events”. If an answer materially affects the Bid, the information will be incorporated into an addendum and distributed to all bidders via the City’s website @ <http://www.ci.portola.ca.us/public-documents.html>



No other contact will be made by the City to bidders regarding addenda to the bid. It shall be the bidder’s sole responsibility to check the City’s website to determine if any addenda have been posted prior to the bid due date and time.

All questions related to this bid or proposal must be directed to Todd Roberts, Public Works Superintendent at (530) 832-6806, or via e-mail to troberts@cityofportola.com.



Please note that any unauthorized contact by the bidder during the bid or proposal process with an official or city employee, other than those shown on the RFP or bid, the City Manager, or City Engineer, or Public Works Superintendent shall cause the bidder to be immediately disqualified from participating in the bidding process.

4. **SPECIFICATIONS**

All materials supplied under this contract shall be in accordance with the California Department of Transportation 2018 Standard Specifications hereinafter referred to as the Standard Specifications.

The Contractor will be responsible for the following specifications and requirements for this contract:

1. Asphalt Concrete. The grade of asphalt binder mixed with aggregate for HMA Type A must be PG 64-28 PM and shall conform to Section 39 of the Standard Specifications or as otherwise mutually agreed by the City and the Contractor. A Job Mix Formula (JMF) shall be provided pursuant to Section 39 at the execution of the Notice to Proceed. There is no estimate for the paving quantity or repair area(s). This is an on call general service request for proposal.
2. The HMA delivered temperature shall conform to the JMF recommended compaction temperature.
3. HMA asphalt concrete shall be fresh from the Bidder's plant with a travel time of not more than 1-hour from load-out to delivery site within the Portola City limits.
4. If the material provided by the contractor's supplier is determined to be below the quality standards required by the specifications, either by visual inspection or other test, the material will be rejected, and upon the City's request, must be picked-up by the Contractor, and at the Contractor's expense. The Contractor shall have no recourse against the City of Portola for the value of rejected material.
5. Bidder/Contractor must be able to deliver HMA on call service requests within 36 hours of notification, Monday through Friday, between the hours of 7:00 A.M. and 5:00 P.M.
6. Paving requests will be for any location within the Portola City limits.

7. Unit prices shall be inclusive of all costs (labor, equipment, materials, training, travel, overhead, insurance, taxes, employee benefits, ancillary personnel, fuel, etc.) expected to be incurred by the Bidder to fulfill the requirements of this Contract. Unit prices will prevail.

5. CONTRACT TERM

The City is asking for fixed prices for one (1) year, commencing from the date of Council award, with the option to renew for up to four (4) additional years, in one (1) year increments.

The prices shall be in effect for a one (1) year period. Sixty (60) days prior to the end of the annual contract expiration date, the Contractor may request a price adjustment, which must be submitted to the City Manager in writing for review and approval. The price increase or decrease must be in accordance with the Yearly Consumer Price Index for Northern California Counties.

6. CONTRACT EXTENSION

If the City exercises its option to extend the Agreement, the City shall provide written notice to the Contractor no later than thirty (30) days before the end of the initial term. The City's decision to exercise its option will be based upon Contractor's past performance being satisfactory to the City of Portola. Contractor's performance will be formally reviewed on an annual basis.

7. CONTRACT TERMINATION

Termination for Convenience: Either the CITY or the CONTRACTOR may terminate this AGREEMENT at any time without cause by giving thirty (30) calendar days written notice to the other of such termination and specifying the effective date thereof. If this AGREEMENT is terminated as provided herein, CONTRACTOR shall be paid only the total amount equal to the service CONTRACTOR has provided as of the termination date. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this AGREEMENT or the value of services provided as of date of termination.

Termination for Cause: If for any reason, CONTRACTOR shall fail to fulfill in a timely and proper manner its obligation under this AGREEMENT, or if CONTRACTOR shall violate any of the covenants or stipulations of this agreement, CITY shall then have the right to terminate this agreement by giving a five (5) calendar day written notice to CONTRACTOR. The notice shall refer to this clause, shall specify the nature of the alleged default, and shall specify the effective date of the termination. The CONTRACTOR will be paid a total amount equal to the service CONTRACTOR has provided as of the termination date. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this AGREEMENT.

8. REQUIRED FORMS

Forms included in the Required Forms section of this bid must be completed and signed by a company principal or officer. All completed forms must be returned with the Bid response, accept as noted. Bids submitted without the Required Forms may be deemed as non-responsive and may be rejected. In order to maintain uniformity, bid responses must be organized and submitted using the following format:

- Company Summary Sheet
- Bid Sheet
- References Form (optional at time of Bid, but may be required prior to Notice of Award determination)
- Acknowledgment and Signature of Authorization
- Statement of Non-Collusion by Contractor
- Agreement for Indemnification and Acknowledgment of Procurement Practices

9. SELECTION CRITERIA

The following selection criteria will be used when evaluating bid responses and selecting the successful bidder.

- **General Provision** – The award of the contract shall be at the sole discretion of the City. It is the intent to make an award to one bidder, although the City reserves the right to make multiple awards depending on the needs and best interests of the City. The City may accept or reject any or all bids in whole or in parts and may waive informalities in the process. The contents of the Bid response submitted by the selected Bidder will become the basis for a contractual obligation when the award is made.
- **General Goods and Services** – Award will be made to the lowest, responsive, and responsible bidder. The City may make an award without further discussion of the bids submitted; therefore, the bid response must be submitted on the most favorable terms that the Bidder can offer.

10. RESERVATION OF RIGHTS



The City reserves the right to:

- Reject any and all bids at its discretion;
- Cancel the entire bid;
- Waive any minor errors or informalities in any bid, to the extent permitted by law.

11. TERMS AND CONDITIONS

- a) **Addendum to the Bid** – If it becomes necessary to revise any part the Bid, an addendum will be posted on the City’s website. If an answer materially affects the Bid, the information will be incorporated into an addendum and will be posted to the City’s website for download. All addenda issued during the time of bidding will be incorporated into the resulting contract.



No other contact will be made by the City to bidders regarding addenda to the Bid. It shall be the Bidder’s sole responsibility to check the City’s website on a consistent basis to determine if any addenda or changes have been posted prior to the bid due date and time.

- b) **Applicable Laws** – The laws of the State of California will govern the contract. The applicable law for any legal dispute arising out of the contract shall be the law of the State of California. The Bidder shall comply with all federal, state, county and local laws concerning this type of commodity/service. All materials and transportation provided by the Bidder shall comply with all applicable federal, state, and local building, fire, safety, and all relevant industry standards.
- c) **Appropriation of Funds** – If the term of this agreement extends into fiscal years subsequent to that in which it was approved, such continuation of the contract is subject to the appropriation of funds for such purpose by the City of Portola City Council. If funds to affect such continued payment are not appropriated, the Bidder agrees to terminate any goods or service supplied to the City under this agreement.
- d) **Assignment** – The Bidder shall, under no circumstances, assign any contract issued as a result of this bid by any means whatsoever, or any part thereof to another party without express written permission of the City of Portola.
- e) **Award of Contract** – A contract may be awarded as a result of this bid and may require approval by the City of Portola City Council as prescribed by City Ordinances and Codes. All awarded contracts must be issued a City of Portola Purchase Order prior to delivering goods or performing services. If the awarded Contractor imposes additional terms or conditions after the award of a contract, the award may be rescinded, and the Contract will be canceled.




It shall be the Bidder’s sole responsibility to check the City’s website on a consistent basis for bid award notices. Award notices will be posted to the City’s website after Council approval. No other contact shall be made by the City to bidders regarding bid award.

- f) **Bidder's Cost to Develop a Response** – Costs for developing a response to this solicitation are entirely the obligation of the Bidder and shall not be chargeable in any manner to the City of Portola.
- g) **Conflict of Interest** – Except for items that are clearly promotional in nature, mass produced, trivial in value and not intended to invoke any form of reciprocation, employees of the City of Portola may not accept gratuities, entertainment, meals of anything of value whatsoever from current or potential suppliers. The offer of such

gratuity to an employee of the City shall be cause for declaring such supplier to be an irresponsible bidder and will be prevented from bidding.

- h) **Default of Contractor** - The City of Portola shall hold the Contractor responsible for any damage, which may be sustained because of the failure or neglect of the Contractor to comply with any term or condition, listed herein.
- i) **Equal Employment Opportunity** – The Bidder shall comply with all applicable state and federal laws addressing Equal Employment Opportunity.
- j) **General Services** – Award will be made to the lowest, responsive, and responsible bidder. The City may make an award without further discussion of the bids submitted; therefore, the bid should be submitted with the most favorable terms that the Bidder can offer.
- k) **Independent Contractor Status** – It is expressly understood that the Bidder named in any contract entered by the City is acting as an “independent contractor” and not as an agent or employee of the City of Portola.
- l) **Late Submission of Bid** – Any bids received after the due date and time specified in this bid will not be accepted. The City will not return late submittals. Late submittals will be destroyed by the City 30 days after bid opening.
- m) **News Releases** – The Bidder shall not make news releases pertaining to an award resulting from bids made in response to the bid without the prior written approval of the City of Portola Finance Director. In addition, the successful Bidder must agree not to release any advertising copy mentioning the City of Portola or quoting the opinion of any City employee without written approval by the City of Portola Finance Director.
- n) **Permits and Licenses** – The Bidder shall secure or maintain in force during the period covered by any contract resulting from this specification all licenses and permits required by law for the operation of their business including a Portola Business License when required.
- o) **Public Information** – After the date specified for the opening of the bid, all materials received relative to general service bids become public information and are available for inspection. Professional service bids become public upon award of contract. The City reserves the right to retain all bids submitted, whether or not the bid was selected or judged to be responsive.
- p) **Rejection of Bids** – This request for bid does not commit the City of Portola to award any contract. The City reserves the right, at its sole discretion, to reject any or all bids without penalty, to waive irregularities in any bid response or in the bid procedures, and to be the final judge in determining a responsive and responsible bid.

 The City reserves the right, at its sole discretion, to reject any or all bids that include items not specified, incorrect specifications and/or scope of services, incomplete schedule of required items, additional terms and conditions, and bids that are not responsive to the published specifications and/or scope of services. Bids received by telephone or facsimile will be considered non-responsive and will be rejected. Bids offering less than 90 days for acceptance from the published closing date may be considered non-responsive and may

be rejected.

- q) **Signatures** – Bid responses must be signed in longhand by the Bidder with his/her usual signature in the designated areas within the bid documents. Submission of bids must be signed by all representatives legally authorized to contractually bind the Corporation.
- r) **Unauthorized Use of City Seal or Logo** – The City of Portola prohibits the use of the City’s Seal or Logo, or any reproduction thereof, for any purpose other than for official business of the city, its council, officers or departments.
- s) **Withdrawal of Bids** – Bid responses received by the Public Works Department may be withdrawn. An authorized representative of the Bidder must submit a signed, written request to the Public Works Superintendent, formally requesting their bid to be withdrawn from the bid process.

12. **DEFINITIONS**

The following words, terms and phrases have the meanings ascribed to as follows:

Lowest responsible bidder. In addition to price, the "lowest responsible bidder" will be determined by consideration of the following factors:

- (1) The quality, availability and suitability of the supplies, equipment or services to the particular use required.
- (2) The ability, capacity and skill of the bidder to perform the service required in the short time-frame specified.
- (3) Whether the bidder has the financial resources and facilities to perform or provide the service promptly, or within the time specified, without delay or interference.
- (4) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- (5) The bidder's record of performance or previous contracts or services, including compliance by the bidder with laws and ordinances relating to such contracts or services.
- (6) The ability of the bidder to provide future maintenance and service for the use of the equipment or materials to be purchased.
- (7) The scope of conditions attached to the bid by the bidder.

Nonresponsive bidder means an offer, submitted by a bidder, to furnish supplies, equipment or services that are not in conformity with the specifications, delivery terms or conditions or other requirements specified in the invitation for bids.

Nonresponsible bidder is a bidder that provides a bid but fails to demonstrate their capacity (financial or otherwise) to provide the supplies, equipment or service as specified in the bid.

Responsive bid means a bid, submitted by a responsible bidder, to furnish supplies, equipment or services in conformity with the specifications, delivery terms and conditions and other requirements specified in the invitation for bids.

Services means any and all services, including but not limited to the repair or maintenance of equipment, machinery and other property. This term does not include services rendered by city officers or employees or other professional services, which by their nature do not lend themselves to normal competitive procedures.

13. SAMPLE AGREEMENT FOR CONTRACTOR SERVICES

THIS AGREEMENT (“AGREEMENT”) is entered into by and between the CITY OF PORTOLA (“the CITY”) and xxxxxxxxxxxx (“CONTRACTOR”), collectively referred to hereinafter as the Parties.

RECITALS

WHEREAS, the CITY desires to engage CONTRACTOR to provide xxxxxxxxxxxx services for the CITY;
WHEREAS, CONTRACTOR is willing to perform the services defined herein; and
WHEREAS, CONTRACTOR represents that the principal representative stated below is authorized to act as such on behalf of CONTRACTOR.

NOW, THEREFORE, the Parties agree as follows:

1. **TERM.** This AGREEMENT shall be for a term of X years commencing on xxx, 2021, continuing through xxx, 2021, with xx, one-year extension options, subject to written agreement by the Parties. An Amendment to extend the AGREEMENT shall be fully executed by the Parties no later than thirty (30) days prior to expiration of the then current term.

2. REPRESENTATIVES OF THE PARTIES AND SERVICE OF NOTICE.

The representatives of the Parties who are primarily responsible for the administration and performance of the AGREEMENT, and to whom formal notice, demands and communications shall be given, are as follows:

A. The principal representative of the CITY shall be:

City Manager
City of Portola
City Hall, 3rd Ave
Portola, CA 96122
(530) 832 -4216

B. The principal representative of the CONTRACTOR shall be:

XXXXXXXXXX

C. Formal notices, demands and communications to be given hereunder by either party shall be made in writing and may be affected by personal delivery or by mail. Formal notices and demands sent by E-mail or facsimile shall not be acknowledged.

D. If the name of the principal representative designated to receive the notices, demands or communications, or the address of such person, is changed, written notice shall be given within five (5) working days of said changes.

3. **RETENTION.** The CITY retains CONTRACTOR to provide **XXXX** pursuant to this AGREEMENT. CONTRACTOR agrees to render such services on the terms and conditions stated herein.

4. **SCOPE OF SERVICES.** The scope of services to be provided is set forth in the attached Scope of Services, which is made Exhibit “A” to this AGREEMENT.

5. **COMPENSATION.**

The CITY agrees to pay CONTRACTOR for the services set forth in the aforementioned Scope of Services. CONTRACTOR agrees that the fees for services shall not exceed the authorized amount of \$**xxxx** as set forth in the fee schedule, attached hereto as Exhibit “B,” unless the CITY has given specific advance approval in writing.

If the term of this AGREEMENT extends into fiscal years subsequent to that in which it was approved, such continuation of the contract is subject to the City Council’s appropriation of funds for such purpose. If funds to affect such continued payment are not appropriated, CONTRACTOR agrees to terminate provision of any goods or services supplied to the CITY under this AGREEMENT.

6. **INDEPENDENT CONTRACTOR.**

A. CONTRACTOR is an independent contractor. As such, CONTRACTOR shall have no power or authority to incur any debt, obligation or liability on behalf of the CITY, unless such authority is expressly conferred under this AGREEMENT. Further, CONTRACTOR is not entitled to any benefit typically associated with an employee such as medical, sick leave, retirement, or vacation benefit. CONTRACTOR expressly waives any claim to any such rights.

B. The personnel performing services pursuant to this AGREEMENT on behalf of CONTRACTOR shall, always be under CONTRACTOR’s exclusive direction and control. Neither the CITY, nor any of its employees, shall have any control over the manner, mode, or means by which CONTRACTOR, its agents, or its employees, perform the services required herein, except as otherwise set forth herein.

C. CONTRACTOR shall perform services pursuant to this AGREEMENT as an independent contractor and shall, always remain a wholly independent contractor. The CITY shall not in any way or for any purpose become or be deemed to be a partner of CONTRACTOR in its business or otherwise a joint venture or member of any joint enterprise with CONTRACTOR.

7. **PERS INDEMNITY.**

In the event that CONTRACTOR or any employee, agent, or subcontractor of CONTRACTOR providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the CITY, CONTRACTOR shall indemnify, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONTRACTOR or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the

responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONTRACTOR and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by the CITY, including but not limited to eligibility to enroll in PERS as an employee of the CITY and entitlement to any contribution to be paid by the CITY for employer contribution and/or employee contributions for PERS benefits.

CONTRACTOR is solely responsible for compliance with PERS restrictions applicable to any of CONTRACTOR's employees, agents, or subcontractors.

8. ECONOMIC INTEREST STATEMENT.

CONTRACTOR hereby acknowledges that pursuant to Government Code Section 87300 and the Conflict of Interest Code adopted by the CITY hereunder, CONTRACTOR is designated in said Conflict of Interest Code and is therefore required to file an Economic Interest Statement (Form 700) with the City Clerk, for each employee providing advise under this Agreement, prior to the commencement of work.

9. INDEMNITY AND INSURANCE.

A. INDEMNITY. CONTRACTOR hereby agrees to protect, indemnify and hold the CITY and its employees, officers and agents free and harmless from any and all losses, claims, liens, demands and causes of action of every kind and character including, but not limited to, the amounts of judgment, interests, court costs, legal fees, expert costs, expert fees and all other expenses incurred by the CITY to the maximum extent allowed by law arising in favor of any party, including claims, liens, debts, personal injuries, including employees of the CITY, death or damages to property (including property of the CITY) and without limitation by enumeration, all other claims or demands of every character occurring or arising directly out of or as a consequence of the performance of the work performed hereunder, except only such injury to persons or damage to property due or claimed to be due to the sole negligence of the CITY. This provision is not intended to create any cause of action in favor of any third party against CONTRACTOR or the CITY or to enlarge in any way the CONTRACTOR's liability but is intended solely to provide for indemnification of the CITY for liability for damages or injuries to third persons or property arising from CONTRACTOR's negligent performance hereunder.

B. INSURANCE. CONTRACTOR shall always procure and maintain during the term of this Agreement insurance as set forth in Exhibit "C" attached hereto.

10. OWNERSHIP OF WORK PRODUCT.

All reports, documents or other written material developed by CONTRACTOR in the performance of this AGREEMENT shall be and remain the property of the CITY without restriction or limitation upon its use or dissemination by the CITY. Such material shall not be the subject of a copyright application by CONTRACTOR. Any re-use by CITY of any such materials on any project other than the project for which they were prepared shall be at the sole risk of CITY unless CITY compensates CONTRACTOR for such use.

11. TERMINATION FOR CONVENIENCE.

The CITY may terminate this AGREEMENT at any time without cause by giving thirty (30) calendar days written notice to CONTRACTOR of such termination and specifying the effective date thereof. If this AGREEMENT is terminated as provided herein, CONTRACTOR shall be paid only the total amount equal to the service CONTRACTOR has provided, to the CITY's satisfaction, as determined solely by the CITY, as of the termination date. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this AGREEMENT or the value of services provided as of date of termination.

12. TERMINATION FOR CAUSE.

If for any reason, CONTRACTOR shall fail to fulfill in a timely and proper manner its obligation under this AGREEMENT, or if CONTRACTOR shall violate any of the covenants or stipulations of this AGREEMENT, the CITY shall then have the right to terminate this AGREEMENT by giving a five (5) calendar day written notice to CONTRACTOR. The notice shall refer to this clause, shall specify the nature of the alleged default, and shall specify the effective date of the termination. The CONTRACTOR will be paid a total amount equal to the service CONTRACTOR has provided, to the CITY's satisfaction, as determined solely by the CITY, as of the termination date. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this AGREEMENT.

13. ASSIGNMENT AND SUBCONTRACTING.

Neither party shall assign or subcontract the rights or responsibilities under this agreement without the express, written consent of the other party, which may be withheld for any reason or for no reason.

14. STANDARD.

CONTRACTOR agrees that the services to be rendered pursuant to this Agreement shall be performed in accordance with the standards customarily provided by an experienced and competent professional organization rendering the same or similar services.

CONTRACTOR shall re-perform any of said services, which are not in conformity with standards as determined by the CITY. CONTRACTOR will be relieved of its obligation to re-perform said services if the CITY does not notify CONTRACTOR within 180 days after the completion of the non-conforming service. Compensation for CONTRACTOR to re-perform said services shall be subject to the approval of the CITY, but in no event, shall such compensation exceed the actual cost of said services.

Except as hereinafter provided in respect of personal injury or property damage, the foregoing are CONTRACTOR's entire responsibilities and the CITY's exclusive remedies for service rendered or to be rendered hereunder, and no other warranties, guarantees, liabilities, or obligations are to be implied.

15. RESOLUTION OF DISPUTES.

A. Disputes regarding the interpretation or application of any provisions of this AGREEMENT shall, to the extent reasonably feasible, be resolved through good faith negotiations between the Parties.

B. If any action, at law or in equity, is brought to enforce or to interpret any provisions of this AGREEMENT, the prevailing party in such action shall be entitled to recover reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and

awarded.

16. FORCE MAJEURE.

The respective duties and obligations of the Parties hereunder shall be suspended while and so long as performance hereto is prevented or impeded by strikes, disturbances, riots, fire, severe weather, government action, war acts, acts of God, or any other cause similar or dissimilar to the foregoing which are beyond the control of the party from whom the affected performance was due.

17. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY.

In the performance of this AGREEMENT, CONTRACTOR shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age physical or mental handicap, medical condition, or sexual orientation. CONTRACTOR will take affirmative action to ensure that subcontractors and applicants are employed without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

18. SEVERABILITY.

If any provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions nevertheless will continue in full force and effect without being impaired or invalidated in any way.

21. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Plumas. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Northern District of California.

20. ENTIRE AGREEMENT.

This AGREEMENT, together with Exhibits "A," "B," and "C" supersede any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this AGREEMENT acknowledges that no representation by any party, which is not embodied herein, nor any other agreement; statement or promise not contained in this AGREEMENT shall be valid and binding. Any modification of the AGREEMENT shall be effective only if it is in writing and signed by all Parties.

[END OF AGREEMENT. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF this Agreement is entered into by the Parties hereto on the dates set forth below.

ATTEST:

THE CITY OF PORTOLA

City Clerk

By: _____
Lauren Knox, City Manager

Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney

CONTRACTOR

Signature

Print Name

Title: _____

Date: _____

Approved by City Council on 6/9/2021

SAMPLE EXHIBIT “C”

The CONTRACTOR shall maintain throughout the duration of the term of the Agreement, liability insurance covering the CONTRACTOR and designating CITY including its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultants, contractors or Contractors, as additional insured against any and all claims resulting in injury or damage to persons or property (both real and personal) caused by any aspect of the CONTRACTOR’s work, in amounts no less than the following and with such deductibles as are ordinary and reasonable in keeping with industry standards. It shall be stated, in the Additional Insured Endorsement, that the CONTRACTOR’S insurance policies shall be primary as respects any claims related to or as the result of the CONTRACTOR’s work. Any insurance, pooled coverage, or self-insurance maintained by the CITY, its elected or appointed officials, directors, officers, agents, employees, volunteers, or CONTRACTORS shall be non-contributory.

General Liability:

a. General Aggregate	\$2,000,000
b. Products Comp/Op Aggregate	\$2,000,000
c. Personal & Advertising Injury	\$1,000,000
d. Each Occurrence	\$1,000,000
e. Fire Damage (any one fire)	\$ 50,000
f. Medical Expense (any one person)	\$ 5,000

Workers' Compensation:

a. Workers' Compensation	Statutory Limits
b. Each Accident	\$1,000,000
c. Disease - Policy Limit	\$1,000,000
d. Disease - Each Employee	\$1,000,000

Automobile Liability

- a. Any vehicle, combined single limit \$1,000,000

The CONTRACTOR shall provide thirty (30) days advance notice to CITY in the event of material changes or cancellation of any coverage. Certificates of insurance and additional insured endorsements shall be furnished to CITY thirty (30) days prior to the effective date of this Agreement. Refusal to submit such certificates shall constitute a material breach of this Agreement entitling CITY to any and all remedies at law or in equity, including termination of this Agreement. If proof of insurance required under this Agreement is not delivered as required or if such insurance is canceled and not adequately replaced, CITY shall have the right but not the duty to obtain replacement insurance and to charge the CONTRACTOR for any premium due for such coverage. CITY has the option to deduct any such premium from the sums due to the CONTRACTOR.

Insurance is to be placed with insurers authorized and admitted to write insurance in California and with a current A.M. Best's rating of A-:VII or better. Acceptance of insurance from a carrier with a rating lower than A-:VII is subject to approval by CITY's Risk Manager. CONTRACTOR shall immediately advise CITY of any litigation that may affect these insurance policies.

**THE FOLLOWING FORMS
ARE REQUIRED TO BE
SUBMITTED WITH BID,
ACCEPT AS OTHERWISE
NOTED**

14. COMPANY SUMMARY SHEET

Company Name: _____

Company Address: _____

Company Telephone Number: _____ Fax Number: _____

Bid Contact (person responsible for answering questions related to the Bid response):

Name: _____ Title: _____

Telephone Number: _____ Fax: _____

Email: _____

Management Contact (person responsible for making decisions related to the Contract):

Name: _____ Title: _____

Telephone Number: _____ Fax: _____

Email: _____

Contract/Account Manager (Person responsible for day-to-day servicing of the Contract/account):

Name: _____ Title: _____

Telephone Number: _____ Fax: _____

Email: _____

15. BID SHEET

**ASPHALT CONCRETE & PAVING
DELIVERED BID No: 2021-001**

Specification	Write "As Specified" or describe any exceptions to these specifications space provided. Failure to complete this column may result in a non-responsive bid.
HMA Delivered. The grade of asphalt binder mixed with aggregate for HMA Type A must be PG 64-28 PM and shall conform to Section 39 of the Standard Specifications or Acceptable Alternate	

Price shall be inclusive of all costs (labor [prevailing wage], equipment, materials, training, travel, overhead, insurance, taxes, employee benefits, ancillary personnel, sales tax, etc.) expected to be incurred by the CONTRACTOR to fulfill the requirements of this Contract. Unit prices will prevail. The quantities estimated and are not guaranteed.

16. REFERENCES (MAY BE SUBMITTED PRIOR TO NOTICE OF AWARD)

Provide three (3) current or previous, municipal or government entity references that are comparable to the size of the City of Portola, for which services are currently, or were performed. Services performed must be like the scope of services/specifications published herein. References should be for services performed within the past five (5) years.

1. Company Name _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Email _____

Number of years services were provided or are currently provided: _____

2. Company Name _____

Address _____

City _____ State _____ Zip _____

Contact Name and Title: _____

Telephone _____ Email _____

Number of years services were provided or are currently provided: _____

3. Company Name _____

Address _____

City _____ State _____ Zip _____

Contact Name and Title: _____

Telephone _____ Email _____

Number of years services were provided or are currently provided: _____

17. ACKNOWLEDGEMENT AND SIGNATURE OF AUTHORIZATION

I _____, _____ have read and understand the
(Full Printed Name) (Title)
the bid document, and I am duly authorized to commit my company to sell/perform the products/services described herein. I understand by signing this bid I am not obligating the City to make this procurement, nor am I signing a contract to sell/perform this product/service. **By signing this document I agree to comply with all specifications, scope of services, requirements, terms and conditions described herein, unless specifically noted.** This bid is firm for 90 days from the due date identified on the cover page of this Bid.

Authorized Representative:

Signature

Date

18. CITY OF PORTOLA STATEMENT OF NON-COLLUSION BY CONTRACTOR

Failure to complete and submit this Worksheet with the Bid response will render the Bid non-responsive and will not be considered for award.

The undersigned who submits herewith to the City of Portola Bid or proposal does hereby certify that:

- a. All statements of fact in such bid or proposal are true;
- b. Such bid or proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation;
- c. Such bid or proposal is genuine and not collusive or sham;
- d. Bidder has not, directly or indirectly by agreement, communication or conference with anyone, attempted to induce action prejudicial to the interest of the City of Portola or of any other bidder or anyone else interested in the proposed procurement;
- e. Bidder did not, directly or indirectly, collude, conspire, connive or agree with anyone else that said bidder or anyone else would submit a false or sham bid or proposal, or that anyone should refrain from bidding or withdraw his bid or proposal;
- f. Bidder did not, in any manner, directly or indirectly seek by agreement, communication or conference with anyone to raise or fix the bid or proposal price of said bidder or of anyone else, or to raise or fix any overhead, profit or cost element of his bid or proposal price, or that of anyone else;
- g. Bidder did not, directly or indirectly, submit his bid or proposal price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member agent thereof, or to any individual or group of individuals, except to the City of Portola, or to any person or persons who have a partnership or other financial interest with said bidder in his business.
- h. Bidder did not provide, directly or indirectly to any officer or employee of the City of Portola any gratuity, entertainment, meals, or anything of value, whatsoever, which could be construed as intending to invoke any form of reciprocation or favorable treatment.
- i. No officer or principal of the undersigned firm is employed or has been employed, either full or part time, by the City of Portola, either currently or within the last two (2) years or is related to any officer or employee of the City by blood or marriage within the third degree. An exception to this section may be granted by approval of the City Council prior to contract award.
- j. No officer or principal of the undersigned firm nor any subcontractor to be engaged by the principal has been convicted by a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy or any other act in violation of any state or federal antitrust law in connection with the bidding on, award of, or performance of, any public work contract, with any public entity, within the last three years.

I certify, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this certification was executed on

_____ at _____
_____ California. (Date)
(Location)

Business: By: _____
(Signature)

Address: _____
(Print Name & Title)

21. CITY OF PORTOLA AGREEMENT FOR INDEMNIFICATION BY CONTRACTOR/CONTRACTOR AND ACCEPTANCE AND ACKNOWLEDGMENT OF PROCUREMENT PRACTICES OF THE CITY OF PORTOLA

Failure to complete and submit this Worksheet with the Bid response will render the Bid non-responsive and will not be considered for award.

The City of Portola requires contractors and suppliers of services to the City to agree to indemnify and hold the City of Portola harmless for claims or losses arising from, or in connection with, the contracting party's work for the City of Portola before a Purchase Order is issued.

To reduce the possibility of misunderstanding between contracting parties and the City in case of a claim or lawsuit, the City of Portola is requiring that contracting parties who perform services for the City sign this letter. This letter will act as and become a part of each Contract/Purchase Order between the City of Portola and the contracting parties signing the letter for the duration of the contract term and any extensions thereto.

In consideration of the opportunity of doing work for the City of Portola and benefits to be received thereby, the contracting party to this agreement agrees as follows:

1. That where a contract, purchase order or confirming order is issued by the City of Portola awarding a contract, this Letter Agreement is to be considered part of that contract.
2. Contractor agrees to indemnify the City of Portola, and any officer, employee or agent, and hold the City of Portola, and any officer, employee or agent, thereof harmless from any and all claims, liabilities, obligations and causes of action, of whatsoever kind or nature, for injury to, or death of, any person (including officers, employees and agents of the City of Portola), and for injury or damage to or destruction of property (including property of the City of Portola), resulting from any and all actions or omissions of contractor or contractor's employees, agents or invitees, or any subcontractor of contractor or any of such subcontractor's employees, agents or invitees.
3. That the contracting party specifically waives the benefits and protection of Labor Code Section 3864 which provides: "If an action, as provided in this chapter, is prosecuted by the employee, the employer, or both jointly against the third person results in judgment against such third person or settlement by such third person, the employer shall have no liability to reimburse or hold such third person harmless on such judgment or settlement in the absence of a written agreement so to be executed prior to the injury." This waiver will apply to the contracting party to this letter to any contracts awarded by the City of Portola during the term of this Agreement and any extensions thereto.
4. That this Agreement has been signed by an authorized representative of the contracting party, and such representative has the authority to bind the contractor/Contractor to all terms and conditions of this Agreement.
5. That this Agreement shall be binding upon the successors and assignees of the contracting party to any contract with the City of Portola. As a condition precedent to acceptance, any contacts from the City of Portola and contracting party agree to advise its successors or assignees of this Agreement and to obtain their consent to it in writing before the work of the representative successor or assignees begins. Such assignment shall not be effective without the prior written consent of the City of Portola.
6. To promptly notify the City of Portola of any change in ownership of the contracting party while this Agreement is in force.

This letter Agreement cannot be modified or changed without the express written consent of the City of Attorney of the City of Portola.

I agree to the terms of this Letter Agreement on behalf of:

Business: _____ By: _____

(Signature)

Address: _____

(Print Name & Title)

Date: _____