

**AGREEMENT TO PROVIDE CONSTRUCTION OF CONCRETE PADS FOR
PURPOSE OF FITNESS EQUIPMENT INSTALLATION
BY BAY AREA PAVING CO., INC.
TO THE CITY OF BURLINGAME**

THIS AGREEMENT is made and entered into in the City of Burlingame, County of San Mateo, State of California, by and between the **City of Burlingame**, a municipal corporation [hereinafter City], and **BAY AREA PAVING CO., INC.** [hereinafter Contractor], as of the ____ day of September 2019.

RECITALS

(A) City wishes to establish a contractual relationship with Contractor to provide services and materials; and

(B) City has determined the exact nature, scope, or budget for these services and materials at this time; and

(C) City has qualified Contractor for providing these services and materials as to insurance and other provisions as specified in this Agreement; and

(D) Contractor represents that it is a qualified and competent supplier of the services and items to be purchased under this Agreement.

IT IS AGREED AS FOLLOWS:

1. Scope of Services. The Contractor shall provide the following services:

(A) As requested by the City of Burlingame Parks Division, Contractor to excavate, grade and install four concrete pads as offered in the attached Exhibit A.

2. Time of Performance. The services of the Contractor are to be available upon the execution of this Agreement until December 31, 2019.

3. Request for Services. City will request services pursuant to this Agreement and the Contractor and the City shall execute a purchase order specifying the nature and cost of the services to be provided for that specific request. Contractor shall acknowledge receipt and acceptance of the requested materials and/or services by signing a copy of the purchase order and returning it to the City within ten (10) days unless directed to reply sooner.

4. Nonexclusivity. Nothing contained in this Agreement shall be construed or interpreted as giving the Contractor any exclusive right or priority to provide any or all of the services described in this Agreement, and the City shall remain free to use its own forces or any other person to provide some or all of those services as the City may in its sole discretion determine best meets the City's needs and wishes.

5. Compliance with Laws. The Contractor shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Contractor represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatsoever nature, which are legally required for Contractor to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Contractor to perform the services requested under this Agreement. If providing services in the City, **Contractor shall maintain a City business license pursuant to the City Municipal Code.**

6. Sole Responsibility. Contractor shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.

7. Cost of Services and Materials. Pricing for those services shall be in conformance with the price listing contained in Exhibit A attached hereto [or shall be specified in the purchase order and attachments to the purchase order for the specific services and materials requested by the City]. In no event shall purchases under this Agreement exceed a total of Seventy Three Thousand Five Hundred dollars and no cents \$73,500.

8. Information/Report Handling. All documents furnished to Contractor by the City and all reports and supportive data prepared by the Contractor under this Agreement are the City's property and shall be delivered to the City upon the completion of Contractor's services or at the City's written request. All reports, information, data, and exhibits prepared or assembled by Contractor in connection with the performance of its services pursuant to this Agreement are confidential until released by the City to the public, and the Contractor shall not make any of the documents or information available to any individual or organization not employed by the Contractor or the City without the written consent of the City before such release.

9. Availability of Records. Contractor shall maintain the records supporting this billing for not less than three (3) years following completion of the work under this Agreement. Contractor shall make these records available to authorized personnel of the City at the Contractor's offices during business hours upon written request of the City.

10. Project Manager. The designated Project Manager for the City is Richard Holtz who shall represent the City on all matters hereunder.

11. Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

To City:	Attn: Richard Holtz
	City of Burlingame Parks Division
	850 Burlingame Avenue
	Burlingame, CA 94010
	(650) 558-7330/rholtz@burlingame.org

To Contractor: Bay Area Paving
Chris Quinn
1950 Carmelita Drive
San Carlos, CA 94070
650-787-7453/bayareapaving@comcast.net

or personally delivered to Contractor to such address or such other address as Contractor designates in writing to City.

12. Independent Contractor. It is understood that the Contractor, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the City. As an independent contractor, neither Contractor nor any of its officers or employees shall obtain any rights to retirement benefits or other benefits which accrue to City employee(s). With prior written consent, the Contractor may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement.

13. Nondiscrimination. Contractor warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Contractor does not and shall not discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act. In performing services under this Agreement, Contractor shall not discriminate against any applicant or designer on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition.

14. Insurance. Contractor shall procure and maintain for the duration of the Agreement insurance against 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, Contractor's agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's pricing.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- i. Insurance Services Office form number GL 0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form GC 0001).
- ii. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.

- iii. Worker's Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- i. General Liability: \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.
- ii. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- iii. Workers' Compensation and Employers Liability: Worker's compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. Other Insurance Provision

The policies are to contain, or be endorsed to contain the following provisions:

- i. General Liability and Automobile Liability Coverages
 - a. The City of Burlingame, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Contractor, products and completed operations of the Contractor, premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Burlingame, its officers, officials, employees, or volunteers. The endorsement providing this additional insured coverage shall be equal to or broader than ISO Form CG 20 10 11 85 and must cover joint negligence, completed operations, and the acts of subcontractors.

b. The Contractor's insurance coverage shall be primary insurance as respects the City of Burlingame, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Burlingame, its officers, officials, employees, or volunteers shall be excess of the Contractor's Insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City of Burlingame, its officers, officials, employees, or volunteers.

d. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

ii. **Workers' Compensation and Employers Liability Coverage**

The insurer shall agree to waive all rights of subrogation against the City of Burlingame, its officers, officials, employees, or volunteers for losses arising from work performed by the Contractor for the City of Burlingame.

iii. **All Coverages**

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt required, has been given to the City of Burlingame.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers with a Best's rating of no less than A-:VII and authorized to do business in the State of California.

F. **Verification of Coverage**

Upon execution of this Agreement, Contractor shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by the City. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

G. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

15. Indemnification. To the fullest extent permitted by law, the Contractor shall save, keep and hold harmless indemnify and defend the City its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity, including but not limited to attorneys' fees, that may at any time arise, result from, relate to, or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by the work performed by the Contractor, or by any of the Contractor's officers, employees, or agents or any subcontractor, under this Agreement, or by the presence or activities conducted at the site of the work to be performed under this Agreement of the Contractor or any of Contractor's officers, employees, or agents or any subcontractor. The duty to defend under this paragraph is wholly independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Contractor. The duty to defend arises immediately upon presentation of a claim by any party and written notice of the claim being provided to the Contractor. This paragraph shall not apply if the damage or injury is proximately caused by the sole negligence or willful misconduct of the City, its officers, agents, employees, or volunteers.

16. Prevailing Wages. Unless otherwise authorized in writing by the City, Contractor shall comply with Labor Code Sections 1774 and 1775. The current schedule of prevailing wage rates supplied by the State Department of Industrial Relations can be found at www.dir.ca.gov/OPRL/PWD/index.htm. The City shall not supply copies of this schedule for posting on the job site unless specifically requested to do so by the Contractor. If the Contractor intends to use a craft or classification not shown on the general prevailing wage determinations, it may be required to pay the wage rate of the craft or classification most closely related to it as shown in the general determinations effective at the time of the purchase order. If the Contractor intends to use a craft or classification not shown, it shall notify the City at least five (5) working days before the execution of the purchase order. It is the Contractor's obligation to ensure that prevailing wages are paid on this project in conformance with State law and regulations.

17. Time of the Essence. Prompt delivery of the services and materials is essential to this Agreement.

18. Termination. This Agreement may be terminated at any time by giving sixty (60) days written notice to the other party. Any work, services, or materials being performed or delivered at the time notice of termination of this Agreement is given shall be completed and paid for pursuant to this Agreement and California law.

19. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of the Agreement.

20. Modifications. No modification, waiver, termination, or amendment to this Agreement is effective unless made in writing signed by the City and the Contractor.

21. Severability. If any term of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in effect.

22. License. The undersigned is licensed in accordance with State Law providing for the registration of Contractors. No payment for work or material under this Contract will be made by City unless and until the City receives verification from the State Registrar of Contractors that the records of the Contractor's State License Board indicate the Contractor was properly licensed at the time the Contract was awarded.

Any Contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, an appropriate disciplinary action by the Contractor's State License Board.

In addition, failure of the Contractor to obtain and maintain proper and adequate licensing for the term of the Contract shall constitute a failure to execute or perform this Contract and shall result in the forfeiture of the security of the bidder. The representations made by Contractor regarding the license are under penalty of perjury.

24. Entire Agreement. This Agreement sets forth the entire understanding between the parties.

Department of Industrial Relations (DIR) Public Works Contractor Registration Program:

All contractors and subcontractors who bid or work on a public works project will be required to register and pay an annual fee to DIR. The phase-in timetable is as follows:

March 1, 2015: No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with DIR.

April 1, 2015: No contractor or subcontractor may work on a public works project unless registered with DIR.

All contractors and subcontractors will be required to furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement). The phase-in timetable for this requirement is as follows:

April 1, 2015: for all new projects awarded on or after this date, the contractors and subcontractors must furnish electronic certified payroll records to the Labor Commissioner.

Anytime: for projects besides those listed above, the Labor Commissioner may at any time require the contractors and subcontractors to furnish electronic certified payroll records.

January 1, 2016: the requirement to furnish electronic certified payroll records to the Labor Commissioner will apply to all public works projects, whether new or ongoing.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement on the date of_____.

City of Burlingame
501 Primrose Road
Burlingame, CA 94010

Bay Area Paving
1950 Carmelita Drive
San Carlos, CA 94070

Print Name

Signature

Title

Recommended:

Lisa K. Goldman, City Manager

ATTEST:

Approved as to form:

Meaghan Hassel-Shearer, City Clerk

Kathleen Kane, City Attorney