

**YAMHILL COUNTY 2023 CHIP SEAL PROJECT  
(Yamhill County and Sierra Sante Fe Corporation)**

THIS AGREEMENT is made effective the last date set forth adjacent to the signatures of the parties below between **Yamhill County**, a political subdivision of the State of Oregon (referred to as Owner in this Agreement) and **Sierra Sante Fe Corporation**, Federal Tax Identification Number 91-1736450 referred to as Contractor in this Agreement) for the project known as Yamhill County 2023 Chip Seal Project for which bids were opened April 18<sup>th</sup>, 2023 (referred to in this Agreement as the "Project").

**STATEMENT OF PURPOSE AND IDENTIFICATION OF CONTRACT DOCUMENTS**

A. Owner has budgeted funds to perform the Project. Owner conducted a competitive bidding process to select the lowest responsible bidder to complete the Project. Contractor was the lowest responsible bidder. This Agreement is made to specify the mutual obligations of Owner and Contractor for completion of the Project.

B. This Agreement includes by reference the following Contract Documents that are part of the Project:

- (A) Specifications and Call for Bids, April 4th, 2023
- (B) Special Provisions and Supplemental Standard Specifications for County Road Construction, including Standard and Supplemental General Conditions in form of Oregon Standard Specifications for Construction 2021 published by ODOT
- (C) Bid Schedules and Signature Page
- (D) First-tier subcontractor disclosure form, if any
- (E) Bid Bond
- (F) Prevailing Wage Rates effective most current at bid opening, 2023
- (G) Addenda (if any)
- (H) Performance and Payment Bond
- (I) Notice of Intent to Award
- (J) This Agreement
- (K) Agreement Amendments (if any)
- (L) Insurance Certificates
- (M) Notice to Proceed
- (N) Change Orders (if any)
- (O) Notice of Substantial Completion or Project Acceptance
- (P) Warranty Period

**AGREEMENT:** In consideration of the mutual covenants contained below, Owner and Contractor hereby agree as follows:

1. **Scope of work and services; filing of payment and performance bond.** The Contractor will commence and complete the construction of the Project in strict accordance with the Contract Documents identified above. The Contractor acknowledges receipt of all Contract Documents in existence at the date it executed this Agreement. Contractor represents to Owner that Contractor has made a reasonable inspection of the Project site(s) and is reasonably familiar with the Project site(s) conditions that might affect Contractor's performance if the Project pursuant to this Agreement. Services provided by Contractor under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar conditions. The Contractor will file a suitable payment and performance bond before it commences Project work and services.

2. **Agreement performed at Contractor's expense as Independent Contractor.** The Contractor will furnish all of the materials, supplies, tools, equipment, labor, and other services necessary for the construction and completion of the Project as described in the Contract Documents. The Contractor is an independent contractor under this Agreement.
3. **Commencement and completion date.** The Contractor will commence the work and services required by the Contract Documents upon Owner's issuance of a Notice to Proceed (NTP). NTP is anticipated to be no sooner than July 31st, 2023 and will complete the same by no later than September 16th, 2023 unless the Contract Period is extended or otherwise modified by written notice or executed Change Order.
4. **Termination.** Owner may terminate this Agreement if the Contractor fails to comply with a material term of this Agreement or for any other reason considered to be in the public interest. If this Agreement is terminated, the Owner will pay for all work and services accepted by the Supervisor, as defined in Section 16, prior to termination.
5. **Penalty for failure to meet deadline.** The parties agree that Owner has a substantial interest in the timely completion of the Project and all work and services to be performed under this Agreement in accordance with the agreed upon schedule. However, the parties agree that the damages to be anticipated from the failure of Contractor to complete this Agreement in the specified time are uncertain and difficult to establish. The parties therefore desire to liquidate Owner's damages for Contractor's failure to complete the Project and all work and services on time. The parties therefore agree that the Contractor is liable for and shall pay as liquidated damages to Owner the sum of \$500.00 per day for each calendar day to commence on the first calendar day after the required completion date under this Agreement and to continue after each and every calendar day until all work is satisfactorily completed as specified in the Contract Documents.
6. **Compensation.** The Contractor agrees to perform all of the work and services described in the Contract Documents and comply with the terms therein at the rates set forth in Contractor's responsive bid schedule for the unit price sum of \$819,777.00 unless the Contract Price is modified by executed Change Order. Payment shall be made by Owner either in a single payment following final approval of the project by the Yamhill County Director of Public Works, or as otherwise provided in the General Conditions, **subject to a 2.5% retainage**. Upon satisfactory completion of Project tasks, the Contractor shall notify the Project Manager in writing that Contractor has completed performance under this Agreement and shall request payment of applicable retained amounts. Upon receipt of written notice, Project Manager will review the Project work and services completed to date and if acceptable, Project Manager shall authorize payment of applicable retained amounts.
7. **Prevailing wages; certified statement.** The Contractor hereby certifies, and it shall be a condition of the Payment and Performance Bond, as provided by ORS 279C.800 through 279C.870, that in performing this Agreement the Contractor will pay and cause to be paid and all subcontractors will pay and cause to be paid not less than the prevailing rate of wages as of the date of the Call for Bids, per hour, per day, and per week for and to each and every worker who may be employed in and about the performance of this Agreement. In the event the Contractor is obligated to abide by prevailing wage requirements imposed by federal law, the Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141 et seq). The Contractor shall file with the Owner certified statements as required under ORS279C.845 with regard to payment of prevailing wages. Pursuant to ORS 279C.845(7) until Owner receives the certified statements, Owner shall retain 25% of any amount earned by the Contractor as required by law. Owner shall pay Contractor any retained amounts under this Section within 14 days of receipt of certified statements.

8. **Incorporation of statutory provisions required for public contracts.** The Contractor certifies it shall comply with all applicable Public Contract Laws to include ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and 279C.580 (3) and (4). ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and ORS 279C.580(3) and (4) are incorporated into this Agreement by reference. These include but are not limited to the following:

- A. Contractor agrees to promptly pay, as due, all persons supplying labor and services furnished to the contractor or a subcontractor by any person in connection with this contract as the claim becomes due.
- B. Contractor agrees that if Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the County or Contractor, then Contractor or its first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580(4) and that end upon final payment, unless the payment is subject to a good faith dispute as defined in ORS 279C.580, ORS 279C.515(2).
- C. Contractor agrees that if the contractor fails to pay any such claim, the County may pay the claim and charge the payment against the funds due or to become due the contractor by reason of the contract, pursuant to ORS 279C.515(1).
- D. Contractor certifies that that an employee drug testing program is in place (ORS 279C.505(2)).
- E. If Contractor fails to pay any such claim, Contractor agrees the County may pay the claim and charge the payment against the funds due or to become due the contractor by reason of the contract, pursuant to ORS 279C.515(1). (ORS 279C.515(1)).
- F. Contractor agrees if the contractor or a subcontractor fails, neglects, or refuses to pay a person that provides labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board. ORS 279C.515(3).
- G. Contractor agrees no person may be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100. The employee shall be paid at least time and a half pay as provided for in ORS 279C.520.
- H. Contractor agrees to comply with all applicable provisions of federal, state or local statutes, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the work under the contract. ORS 279C.525.
- I. Contractor agrees to pay promptly, as due, any payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or the needed care and attention, incident to sickness or injury, to the employees of the contract, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the

wages of employees under any law, contract or agreement for the purpose of providing or paying for the services, pursuant to ORS 279C.530(1).

- J. Contractor agrees to pay promptly, as due, any payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or the needed care and attention, incident to sickness or injury, to the employees of the contract, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services, pursuant to ORS 279C.530(1).
- K. Contractor agrees any employer, including Contractor, that employs subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor agrees to ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2).
- L. Contractor agrees it will comply with maximum hours of work, holidays and overtime per ORS 279C.540 and time limit on claims for overtime per ORS 279C.545.
- M. Contractor agrees it will comply with ORS 279C.570 regarding prompt payment, progress payments and rate of interest.
- N. Contractor agrees to include in each subcontract for property or services entered into by Contractor and a first-tier subcontractor, including a material supplier, for the purposed of performing a construction contract: a payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to Contractor by County under the contract; and an interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from County, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract. A payment clause and an interest penalty clause that conforms to the standards of ORS 279.580(3) must also be included in each of Contractor's subcontracts and in each of the first-tier subcontractor's subcontracts and each of the first-tier subcontractor's subcontractors shall include these clauses in their subcontracts with each lower-tier subcontractor or supplier. ORS 279C.580.
- O. Contractor agrees it will comply with ORS 279C.605 regarding Notice of Claim
- P. Contractor certifies that all subcontractors performing work described in ORS 701.005(2) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract.

9. **Workers' compensation.** The Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

10. **BOLI fee.** In accordance with ORS 279C.825, as amended in 2009, the Owner shall pay a fee to the Bureau of Labor and Industries (BOLI), Wage and Hour Division, Rom 1160, Prevailing Wage Unit, 800 NE Oregon Street, #32, Portland, Oregon 97232. The fee is an

amount equal to one-tenth of one percent (0.1 percent) of the Contract Price, with a minimum fee of \$250.00 and a maximum fee of \$7,500.00. The fee shall be paid at the time Owner enters into this Agreement. The fee shall be paid in accordance with the administrative rules of BOLI.

11. **Certification of compliance with laws.** The Contractor certifies, under penalty of perjury, that Contractor is not in violation of any federal, state or local tax laws, rules or regulations or any federal, state or local laws, rules, codes or regulations applicable to the Project and that Contractor shall remain in compliance with all such laws, codes, rules and regulations during the entire term of this Agreement. In addition, Contractor agrees that it has complied with the tax laws of the State of Oregon or a political subdivision of the State of Oregon, including ORS 305.620 and ORS Chapters 316, 317 and 318.

12. **Certification of reading and understanding of documents.** The Contractor certifies it has read and fully understands all Contract Documents including Solicitation Documents and terms and conditions. The Contractor understands and acknowledges that in signing this Agreement the Contractor waives all rights to plead any misunderstandings regarding the same.

13. **Payment.** The Owner agrees to pay the Contractor in the manner and at such times as set forth in the General Conditions such amounts as required by the Agreement, unless otherwise modified by written notice or executed Change Order.

14. **Warranty Period.** Where the warranty period is not otherwise stated in the General Conditions, the warranty period is 365 days commencing upon the date Project Acceptance is issued by Owner.

15. **Public Works Bond.** Before commencing work, the Contractor shall have a public works bond as described in ORS 279C.836 filed with the Construction Contractors Board. Contractor shall include a provision in any subcontract for the Project that the subcontractor shall have a public works bond filed with the Construction Contractors Board before commencing work.

16. **Status of the Project Supervisor.** Greg Haffner, Yamhill County Engineering Manager, is the Project Manager. The Project Manager or his designee shall perform technical inspections of work and services and shall have authority to stop the work or services whenever such stoppage shall be necessary to insure proper execution of the Agreement. The Project Manager or his designee may reject all work and materials that do not conform to the Agreement and shall decide questions that arise in the execution of the Project work or services. The Supervisor has authority to reject or accept the Project work or services.

17. **Prohibition of Discrimination.** In hiring employees for performance of work under this Agreement neither Contractor, any subcontractor nor any other person acting on their behalf shall by reason of race, religion, age, color, creed, physical handicap or sex discriminate against a person who is qualified and available to perform work or services to which employment relates.

18. **Risk of Loss.** The risk of loss or damage to the subject matter of this Agreement arising from any cause whatsoever, including acts of God, shall be upon the Contractor until such time as the Owner has accepted the work and services as provided in this Agreement.

19. **Indemnification.** Contractor shall indemnify, defend and save harmless Owner from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and attorney fees, in any way connected with any injury

**to any person or damage to any property occasioned in any way by Contractor's or Contractor's subcontractors' prosecution of work or services under this Agreement.**

20. **Insurance.** Contractor, at its expense, shall obtain the following insurance coverage and keep them in effect during the entire term of this Agreement:

1. Workers Compensation Insurance in compliance with statutory requirements.
2. Comprehensive General Liability Insurance (including contractual liability and completed operations coverage) on an occurrence basis, with not less than \$2,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$3,000,000;
3. Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$1,000,000 per occurrence, for bodily injury and property damage with respect to Contractor's vehicles, whether owned, hired, or non-owned, assigned to, or used by Contractor in connection with the services provided under the Agreement;

The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) acceptable to Owner. Evidence of such insurance will be furnished to Owner before commencing Project work or services. The certificates of insurance shall indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to Owner.

The Commercial General Liability and Commercial Automobile Liability shall (i) name Owner, its directors, officers, and employees, as additional insureds, (ii) provide that it is primary insurance with respect to the interests of Owner and that any insurance maintained by Owner is excess and not contributory, and (iii) include a cross-liability and severability of interest clause and a waiver of subrogation clause.

21. **Nonwaiver.** No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of Owner to enforce at any time any of the terms of this Agreement, or to exercise any option which is provided, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of any part of this Agreement, or the right of Owner to thereafter enforce each and every provision.

22. **Contractor's Representation.** Contractor, by entering into this Agreement, represents that its bid for this Project is made without connection with any person, firm or corporation making or refraining from making a bid for the same or similar project and was in all respects fair and without collusion or fraud.

23. **Severability.** Should any clause or section of this Agreement be declared by court to be void or voidable, the remainder of this Agreement shall remain in full force and effect.

24. **Dispute resolution through mediation and arbitration.** Any dispute between the parties to this Agreement shall be resolved according to the following process:

(a) The parties first shall submit to mediation of the dispute to be conducted by a mutually acceptable mediator. If the parties cannot agree on a mediator, they shall request a mediator to be appointed by the U.S. Mediation and Arbitration service or a similar mediation and arbitration service located in Portland, Oregon. The mediator's charges and expenses shall be borne equally by the parties. All other expenses, including attorney fees and costs, shall be borne exclusively by the party requiring the service or for which payment is to be made.

(b) If the dispute is not resolved in mediation, the parties shall then submit the dispute to binding arbitration. Arbitration shall be conducted in accordance with the rules set forth in the Oregon International Commercial Arbitration and Conciliation Act, ORS 36.450 to 36.558, 2007 replacement part. The decision of the arbitrator shall be final and binding on the parties. The party that does not prevail, as determined by the arbitrator, shall pay the arbitrator's fees and expenses in arbitration. All other expenses, including attorney fees and costs, shall be borne exclusively by the party requiring the service or for which payment is to be made.

25. **Attorney fees and costs.** Except as provided in Section 24(b), in the event that either party to this Agreement shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Agreement, each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any nonjudicial action.

26. **Applicable laws.** This Agreement is executed in the State of Oregon and is subject to Oregon law and jurisdiction in Yamhill County.

27. **Subcontractors bound.** Contractor covenants and agrees to bind any and all Subcontractor(s) for performance of work under this Agreement. Any reference to Contractor shall include any and all Subcontractor(s) ad infinitum.

28. **Written changes required.** The rights and duties under this Agreement shall not be modified, delegated, transferred, or assigned, except upon written signed consent of both parties.

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

THIS AGREEMENT AND THE CONTRACT DOCUMENTS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE IN TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY FOR THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THE CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed on the date indicated by their duly authorized officials, this Agreement in duplicate, each of which shall be deemed an original on the date executed by all parties.

[Name of Contractor]

YAMHILL COUNTY, OREGON

By:   
\_\_\_\_\_  
(Signature)

  
\_\_\_\_\_  
Lindsay Berschauer, Chair  
County Commissioner

Date: 5/9/2023

Date: 5/18/23

David Zimmerly  
\_\_\_\_\_  
(Printed Name)

  
\_\_\_\_\_

Mark Lago, Director  
Department of Public Works

Title: President

Date: 5/9/23

Fed. Tax I.D. No: 91-1736450

APPROVED AS TO FORM

Contractor  
Registration No: 144238

By:   
\_\_\_\_\_  
CHRISTIAN BOENISCH.  
County Counsel

Accepted by Yamhill County  
Board of Commissioners on  
5.18.23 by Board Order  
# B.O. 23-184



**Yamhill County**  
**Public Works Department**  
2060 NE Lafayette Avenue, McMinnville, OR 97128  
Ph. 503.434.7515 Fax 503.472.4068 E-mail: [pubwork@co.yamhill.or.us](mailto:pubwork@co.yamhill.or.us)

---

April 25th, 2023

To:

Sierra Sante Fe  
Dave Zimmerly  
6110 N 20<sup>th</sup> St.  
Ridgefield, Wa 98642  
[DZ@SierraSanteFe.com](mailto:DZ@SierraSanteFe.com)

One Way Trigger LLC  
Jason Lampley  
5452 Parish Ct.  
Sacramento, Ca 95822  
[Jason@OWTSolutions.com](mailto:Jason@OWTSolutions.com)

Doolittle Construction LLC  
Aaron Kindt  
9350 Stone Quarry Rd  
Snoqualmie, Wa 98065  
[Aaron@doolittlellc.com](mailto:Aaron@doolittlellc.com)

**NE: NOTICE OF INTENT TO AWARD FOR THE YAMHILL COUNTY 2023 CHIPSEAL PROJECT**

Yamhill County Public Works received four (3) bids for work associated with the Yamhill County 2023 Chipseal Project. The bids were publicly opened at the Yamhill County Public Works Department on Tuesday, April 18th, 2023 at 2:00 PM. The lowest responsive bidder was Sierra Sante Fe with a bid of \$819,777.00.

Public Works Department has recommended to the Yamhill County Board of Commissioners that the award of the contract for the 2023 Chipseal Project go to Sierra Sante Fe. The board approved Intent of award per BO 23-156 (4-27-23).

Notice of Intent to Award is required to be sent to all proposers pursuant to OAR 137-049-0395(1).

Any protest of an award of this project must be filed with the Yamhill County Board of Commissioners at 434 NE Evans St, McMinnville, Oregon 97128 not later than **4 pm on Thursday, May 4th, 2023**. Any protest of the award will be managed by the Board of Commissioners or its designee. If no protests are filed by the time stated, the Board will proceed to execute the contract for this project any time thereafter.

Greg Haffner  
Public Works  
Engineering Manager

B.O. 23-184  
Exhibit "A"



# Yamhill County Public Works Department

2060 NE Lafayette Avenue, McMinnville, OR 97128  
Ph. 503.434.7515 Fax 503.472.4068 E-mail: pubwork@co.yamhill.or.us

## YAMHILL COUNTY BOARD OF COMMISSIONERS COVERSHEET

**DATE:** April 27, 2023  
**TO:** Board of Commissioners  
**FROM:** Mark Lago, Public Works Director  
**RE:** Intent to Award for Yamhill County 2023 Chip Seal Project

### **BACKGROUND:**

This is a request for approval for Intent to Award for the "Yamhill County 2023 Chip Seal Project". This project scope includes Chip Sealing .12 roads throughout the County. It is estimated to be 20.4 centerline miles of Chip Sealing. These roads with the exception of one were on the Capital Improvement Project (CIP) list approved by the Board of Commissioners on February 2nd, 2023 (B.O. 23-29). Baker Creek Road from McMinnville city limits to High Heaven was added due to favorable oil pricing.

Bids were opened at 2:00 pm on April 18<sup>th</sup>, 2023 at the Public Works Department. Three bids were received. The apparent low bidder is Sierra Sante Fe Corporation for \$819,777. This bid is considerably under the engineering estimate, but over budget approval of \$703,000.

### **STAFF RECOMMENDATION:**

Staff is requesting the Board provide intent to award approval for the Yamhill County 2023 Chip Seal Project in the amount of \$819,777.

### **FISCAL IMPACT:**

Funds will come out of the Road Fund - Capital Outlay (This project is in the proposed FY 2023-24 budget).

**ATTACHMENTS:** Bid Opening Summary sheet from April 18, 2023



## Yamhill County Chip Seal Project 2023 Bid Results Summary

Date: April 18<sup>th</sup>, 2023

Bid Opening at 2:00pm

Name	Bld Bond	ORS 279 A,B,C Signature	First Tier Disclosure		Bld Results
Sierra Sante Fe	X	X	X		\$819,777.00
Dolittle Construction LLC	X	X	X		\$977,139.10
One Way Trigger	X	X	X		\$939,418.50

Greg Haffner, Engineering Project Manager

Mark Lago, Director

Accepted by Yamhill County  
Board of Commissioners on  
4.27.23 by Board Order  
# BO 23-156

B.O. 23-184  
Exhibit "A"