

**AGREEMENT BETWEEN THE CITY OF SONORA
and
G. HEDGECOCK, INC.
for
CONSTRUCTION SERVICES**

City Project No. _____

THIS CONSTRUCTION SERVICES AGREEMENT (“Agreement”) is made and entered into this 7th day of October 2024, by and between the CITY OF SONORA, a California municipal corporation (“City”) and G. HEDGECOCK, INC. (“Contractor”) (each individually a “Party” and collectively the “Parties”). There are no other parties to this Agreement.

RECITALS

A. City seeks a duly qualified and licensed firm experienced in the rehabilitation of streets and highways to address needed improvement of Hospital Road as part of a larger repaving effort based on a January 2024 train derailment (the “Project”).

B. The Project involves the expenditure of funds in excess of Two Hundred Twenty Thousand Dollars (\$220,000.00) and constitutes a “public project” pursuant to Public Contract Code section 22002.

C. Contractor has made a proposal to City to provide construction services which is attached hereto as **Exhibit A** and incorporated herein (“Services”).

D. City has determined it is necessary and desirable to employ the services of Contractor to perform repair work on the Project.

E. City has taken appropriate proceedings to authorize construction of the Project and execution of this contract pursuant to Public Contract Code section 20160 et seq., Public Contract Code section 22000 et seq., and Sonora Municipal Code 3.60.110; specifically, on October 7, 2024, at a duly noticed meeting of the City Council of the City of Sonora, City Council determined that a sole source exemption was justified for this Contractor because their proposal decreased cost and liability to the City. Furthermore, compliance with typical procedures would not in the best interest of the City.

NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Parties agree as follows:

AGREEMENT

Section 1. Recitals. The recitals set forth above (“Recitals”) are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Sections 1 through 18 of this Agreement, Sections 1 through 18 shall prevail.

Section 2. Effective Date. This Agreement shall only become effective once all of the Parties have executed the Agreement (the “Effective Date”). Contractor, however, shall not commence the performance of the Services until it has been given notice by City (“Notice to Proceed”).

Section 3. Term. This Agreement shall commence on the Effective Date and terminate one (1) year after Contractor completes performance of the Services (“Term”), unless the Parties mutually agree in writing to terminate the Agreement earlier or extend the Term pursuant to this Agreement.

Section 4. Work.

(a) *Services.* Subject to the terms and conditions set forth in this Agreement, Contractor shall perform the Services described in **Exhibit A**. Contractor shall not receive additional compensation for the performance of any Services unless they are included in **Exhibit A**, or the Parties agree otherwise in writing.

(b) *Modification of Services.* Only the City Administrator may authorize extra or changed work. Failure of Contractor to secure such a written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and, thereafter, Contractor shall be entitled to no compensation whatsoever for the performance of such work. Contractor further waives any and all right or remedy by way of restitution or quantum meruit for any and all extra work performed without such express and prior written authorization of the City Administrator.

Section 5. Time of Performance. Contractor warrants that it will commence performance of the Services within thirty (30) calendar days of the Notice to Proceed and shall conform to the Completion Schedule. The time of performance is a material term of this Agreement relied on by City in entering into this Agreement.

Section 6. Disputes Pertaining to Payment for Work. Should any dispute arise respecting the true value of any work performed, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of the Agreement, such dispute shall be decided by the City Engineer, and the decision of the latter shall be final and conclusive. The Parties agree to comply with the claims resolution procedures set forth in Public Contract Code section 9204 when applicable.

Section 7. Representations of Contractor. City relies upon the following representations by Contractor in entering into this Agreement:

(a) *Standard of Care.* City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that it is qualified to perform the Services provided in **Exhibit A** and that all of its work will be performed in accordance with the generally accepted construction practices and standards, in compliance with all applicable federal, state and local laws.

(b) *Independent Contractor.* In performing the Services hereinafter specified, Contractor shall act as an independent contractor and shall have control of the work and the manner in which it is performed. Contractor is not to be considered an agent or employee of City and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits City provides its employees. In the event City exercises its right to terminate this Agreement, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees. Nothing contained herein shall be construed as creating an employment, agency, or partnership relationship between City and Contractor.

(c) *Authority.* Contractor represents that it possesses the necessary licenses, permits, and approvals required to perform the Services or will obtain such licenses, permits, or approvals prior to the time such licenses, permits, or approvals are required. Contractor shall also ensure that all subcontractors are similarly licensed and qualified. Contractor represents and warrants to City that Contractor shall, at Contractor's 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 practice Contractor's profession at the time the Services are rendered, including registration for public works projects with the Department of Industrial Relations.

(d) *Warranty.* Contractor warrants that the work performed shall be free of defects for a period of one (1) year from Project completion. If any installation fails as the result of the workmanship of Contractor, Contractor shall repair or replace the defective installation at no cost to City. Warranty work shall be performed within three (3) business days of notice by City that such work is required.

(e) *No Conflict of Interest.* Contractor represents that no conflict of interest will be created under state or federal law by entering into or in carrying out this Agreement. Contractor further promises that in the performance of this Agreement, no person having such interest will be knowingly employed. If requested to do so by City, Contractor shall complete and file, and shall cause any person doing work under this Agreement to complete and file, a "Statement of Economic Interest" with the Stanislaus County Clerk disclosing their financial interests.

(f) *Prevailing Wage.* Contractor agrees to pay all craftsmen and laborers working on this Project at least the minimum prevailing wage required by the Department of Industrial Relations of the State of California. Contractor understands and agrees that it is Contractor's responsibility to determine the minimum prevailing wage and to report compliance as required under California law.

Section 8. Conformity with Law and Safety. Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of Services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, the California Building Code, the Americans with Disabilities Act, and all other applicable federal, state, municipal, and local safety regulations, appropriate trade association safety standards, and appropriate equipment manufacturer instructions. Contractor's failure to comply with any laws, ordinances, codes, or regulations applicable to the performance of the Services hereunder shall constitute a breach of contract. In cases where standards conflict, the standard providing the highest degree of protection shall prevail.

If a death, serious personal injury, or substantial property damage occurs in connection with the performance of this Agreement, Contractor shall immediately notify the City's risk manager by telephone. If any accident occurs in connection with this Agreement, Contractor shall

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promptly submit a written report to City, in such form as the City may require. This report shall include the following information: (a) name and address of the injured or deceased persons; (b) name and address of Contractor's subcontractor, if any; (c) name and address of Contractor's liability insurance carrier; and (d) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

If a release of a hazardous material, substance, or waste occurs in connection with the performance of this Agreement, Contractor shall immediately notify City. Contractor shall not store hazardous materials or hazardous waste within the City limits without a proper permit from City.

Section 9. Excusable Delays. Contractor shall not be in breach of this Agreement in the event that performance of Services is temporarily interrupted or discontinued due to a "Force Majeure" event which is defined as: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, fires, strikes, lockouts and other labor disturbances or other catastrophic events, which are beyond the reasonable control of Contractor. Force Majeure does not include: (a) Contractor's financial inability to perform; (b) Contractor's failure to obtain any necessary permits or licenses from other governmental agencies; or (c) Contractor's failure to obtain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Contractor.

Section 10. Inspection and Testing by City. Contractor shall at all times maintain proper facilities and provide safe access for inspection by City to all parts of the work performed on the Project and to the shops wherein the work is in preparation. Where work is required to be specially tested or approved, it shall not be tested or covered up without timely written notice to City of its readiness for inspection and without the approval thereof or consent thereto by the latter. Should any such work be covered up without such notice, approval, or consent, it must, if required by City, be uncovered for examination at Contractor's expense.

Section 11. Assignment Prohibited. No Party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempt or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

Section 12. Ownership and Disclosure of Work Product. City shall be the owner of and shall be entitled to immediate possession of accurate reproducible copies of any design computations, plans, specifications, copies of correspondence, maps, or other pertinent data and information gathered or computed by Contractor ("Work Product") in the performance of and prior to termination of this Agreement by City or upon completion of the work pursuant to this Agreement. Contractor may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of City, during the Term of this Agreement and for a period of one hundred eighty (180) days following expiration of the Term of the Agreement.

When this Agreement is terminated, Contractor agrees to return to City all documents, drawings, photographs, and other written or graphic material, however produced, that it received from City, its contractors or agents, in connection with the performance of its Services under this Agreement. All materials shall be returned in the same condition as received.

Section 13. Termination by Default. If a Party should fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violates any of the terms of this Agreement (the "Defaulting Party"), the other Party shall give notice to the Defaulting Party and allow such Party ten (10) days to correct such deficiency. If the Defaulting Party does not correct such deficiency, the other Party may immediately terminate this Agreement by giving

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written notice of such termination, stating the reason for such termination. In such event, Contractor shall be entitled to receive payment for all Services satisfactorily rendered, provided, however, there shall be deducted from such amount the amount of damage, if any, sustained by virtue of any breach of this Agreement by Contractor. If payment under this Agreement is based upon a lump sum in total or by individual task, payment for Services satisfactorily rendered shall be an amount which bears the same ratio to the total fees specified in the Agreement as the Services satisfactorily rendered hereunder by Contractor, and bears to the total Services otherwise required to be performed for such total fee, provided, however, that there shall be deducted from such amount the amount of damage, if any, sustained by City by virtue of any breach of this Agreement by Contractor.

(a) Contractor shall deliver copies of all Work Products prepared by it pursuant to this Agreement.

(b) If City terminates this Agreement before City issues the Notice to Proceed to Contractor or before Contractor commences any Services hereunder, whichever last occurs, City shall not be obligated to make any payment to Contractor. If City terminates this Agreement after City has issued the Notice to Proceed to Contractor and after Contractor has commenced performance under this Agreement, City shall pay Contractor the reasonable value of the Services rendered by Contractor pursuant to this Agreement prior to termination of this Agreement. City shall not in any manner be liable for Contractor's actual or projected lost profits had Contractor completed the Services. Contractor shall furnish to City such financial information, as in the judgment of the City Administrator, is necessary to determine the reasonable value of the Services rendered by Contractor prior to termination.

(c) Except as provided in this Agreement, in no event shall City be liable for costs incurred by or on behalf of Contractor after the date of the notice of termination.

Section 14. Liability for Breach. Neither Party waives the right to recover damages against the other for breach of this Agreement including any amount necessary to compensate City for all detriment proximately caused by Contractor's failure to perform its obligations hereunder or which in the ordinary course of things would be likely to result therefrom. City reserves the right to offset such damages against any payments owed to Contractor. City shall not in any manner be liable for Contractor's actual or projected lost profits had Contractor completed the Services required by this Agreement. In the event of Termination by either Party, copies of all finished or unfinished Work Product shall become the property of City. Notwithstanding the above, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

Section 15. Insurance Coverage. During the Term, the Contractor shall maintain in full force and effect policies of insurance set forth herein, which shall be placed with insurers with a current A M Best's rating of no less than A VII and Contractor will provide the City with written proof of said insurance. Contractor shall maintain coverage as follows:

(a) *General Liability.* Contractor shall carry commercial general liability insurance in an amount no less than Two Million Dollars (\$2,000,000.00) combined single limit for each occurrence, covering bodily injury and property damage. If commercial general liability insurance or another form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate shall be no less than Two Million Dollars

(\$2,000,000.00).

(b) *Workers' Compensation Insurance and Employer's Liability.* Contractor shall carry workers' compensation insurance as required by the California Labor Code.

(c) *Automobile Liability Insurance.* Contractor shall carry Automobile Liability Insurance covering bodily injury and property damage in an amount no less than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

(d) *Policy Obligations.* Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

(e) *Material Breach.* If Contractor, for any reason, fails to maintain insurance coverage that is required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement. City, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, City may purchase such required insurance coverage and, without further notice to Contractor, City may deduct from sums due to Contractor any premium costs advanced by City for such insurance. These remedies shall be in addition to any other remedies available to City.

Section 16. Indemnification. To the fullest extent permitted by law (including, without limitation, California Civil Code sections 2782 and 2782.8), Contractor shall defend, indemnify hold harmless and release City, and City's elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("City's Agents") from and against any and all actions, claims, loss, cost, damage, injury (including, without limitation, disability, injury or death of an employee of Contractor or its subcontractors), expense and liability of every kind, nature and description that arise out of, pertain to or relate to acts or omissions of Contractor, or any direct or indirect subcontractor, employee, contractor, representative or agent of Contractor, or anyone that Contractor controls (collectively "Liabilities"). Such obligations to defend, hold harmless, and indemnify City and City's Agents shall not apply to the extent that such Liabilities are caused in whole by the sole negligence, active negligence, or willful misconduct of City or City's Agents but shall apply to all other Liabilities. With respect to third party claims against the Contractor, the Contractor waives any and all rights of any type of express or implied indemnity against City and City's Agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under Workers' Compensation acts, disability benefits acts or other employee benefit acts.

Section 17. Notices. Any notice or communication required hereunder between City and Contractor must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice or communication shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express, or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

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If to City: City of Sonora
Attn: City Administrator
94 North Washington Street
Sonora, CA 95370

With courtesy copies to: White Brenner LLP
Attn: Nubia Goldstein, City Attorney
1608 T Street
Sacramento, CA 95811

If to Contractor: G. Hedgecock, Inc.
2737 Nathan Ave., Suite A
Modesto, CA 95354

Section 18. General Provisions.

(a) *Modification.* No alteration, amendment, modification, or termination of this Agreement shall be valid unless made in writing and executed by all of the Parties to this Agreement.

(b) *Waiver.* No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

(c) *Severability.* If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date of this Agreement, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

(d) *Counterparts.* This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

(e) *Audit.* City shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Contractor's charges to City under this Agreement.

(f) *Entire Agreement.* This Agreement, together with its specific references, attachments and exhibits, constitutes the entire agreement of the Parties with respect to the subject matters hereof, and supersedes any and all prior negotiations, understanding, and agreements with respect hereto, whether oral or written.

(g) *Attorney's Fees and Costs.* If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing
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Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

(h) *Time is of the Essence.* Time is of the essence in this Agreement for each covenant and term of a condition herein.

(i) *Authority.* All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, person, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

(j) *Governing Law.* This Agreement shall be governed and construed in accordance with the laws of the state of California.

(k) *Venue.* Venue for all legal proceedings shall be in the Superior Court of the State of California in and for the County of Stanislaus.

(l) *Headings.* Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

(m) *Necessary Acts and Further Assurances.* The Parties shall, at their own cost and expense, execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by and through their respective officers thereunto duly authorized.

**CITY OF SONORA, a California
municipal corporation**

By: _____

By: _____
Melissa Eads, City Administrator

Print Name _____

Date: _____

Title: _____

Date: _____

Federal Tax ID or Social Security No:

APPROVED AS TO FORM:

DIR Registration Number:

Nubia Goldstein, City Attorney

Attach Contractor's Seal Here:

EXHIBIT A
Services