

## PUBLIC IMPROVEMENT AGREEMENT

THIS AGREEMENT made at the City of Reedley, by and between AJ Excavation Inc.,  
HEREINAFTER CALLED the Contractor and the CITY OF REEDLEY, hereinafter called the  
OWNER.

WITNESSETH: That the Contractor and the Owner, for the consideration hereinafter named, agree  
as follows:

### SECTION A

The Contractor agrees to furnish all labor and materials, including tools, implements, and  
appurtenances required, and to perform all work in a good and workmanlike manner, free from any  
and all liens and claims of mechanics, materialmen, Subcontractors, artisans, machinists, teamsters,  
draymen, and laborers, required for: **Reedley City Street Improvements (Phase VIII),  
Reconstruction on Dinuba Avenue from Southern Pacific Railroad to East Avenue and East  
Avenue from Dinuba to Lincoln Avenue, CDBG Project No. 17571**, in the City of Reedley,  
including all appurtenances thereto, in strict compliance with the Construction Documents dated  
November 2018.

### SECTION B

The Contractor and the Owner agree that the Bid and Contract Documents, as completed by the  
Contractor and including, but not limited to, the Notice to Bidders, Bid Form, Bid Bond, Bidder's  
Statement (Worker's Compensation Insurance), the Prevailing Wage Rate Determination as  
determined by the State Director of Industrial Relations, or Federal Wage Rate Determination as  
determined by the Secretary of Labor (Davis-Bacon Determination No. CA180029, Modification No.  
23, incorporated herein by reference), whichever is higher, the Standard Specifications dated 2010, of  
the State of California, Department of Transportation, and any supplementary specifications  
referenced therein, the Standard Plans dated 2010 and any supplementary details referenced therein,  
the Special Provisions (Sections 1 through 15 inclusive), as completed by the Contractor and  
including, but not limited to, Performance Bond, Payment Bond, Certificates of Insurance and  
Endorsements (Worker's Compensation [Employer's Liability], Comprehensive General Liability,  
and Automobile Liability), the Federal-aid Construction Contract Provisions (Form 1273)  
incorporated herein by reference, the Plans and Drawings, Exhibits, Appendices, and also addenda  
thereto and supplemental agreements, together with this Agreement, form the contract, and they are  
as fully a part of this contract as if herein repeated. No part of said Specifications which is in conflict  
with any portion of this agreement shall be considered as any part of this agreement, but shall be  
utterly null and void.

### SECTION C

The Owner agrees to pay the Contractor in current funds for the Performance of the contract,  
Eight hundred seventy thousand two hundred twenty-two dollars (\$870,226.00), it being  
understood that said price is based upon the estimated quantities of materials to be used as set forth in  
the Proposal, and upon completion of the project the final contract price shall be revised, if  
necessary, to reflect the true quantities used at the stated unit price thereof as contained in the  
Contractor's Proposal hereto attached.

## **SECTION D**

If the Contractor shall be adjudged as bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he or any of his Subcontractors should persistently or repeatedly refuse or should fail, except in cases of materials, or if he should fail to make prompt payment to Subcontractors or for material or labor, or persistently disregard laws, ordinances, or the instructions of the City Engineer of the City of Reedley, hereinafter referred to as Director, then the Owner may upon certificate of the Director when sufficient cause exists to justify such action, serve written notice upon the Contractor and his surety of its intention to terminate the contract, and unless within five (5) days after service of such notice, such violations shall cease and satisfactory arrangement for correction thereof be made, the contract shall, upon the expiration of said five (5) days, cease and terminate.

In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the contract, provided, however, that if the surety within ten (10) days after the serving upon it of notice of termination does not give Owner written notice of its intention to take over and perform the contract or does not commence performance thereof within the ten (10) days stated above from the date of the serving of such notice, the Owner may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and his surety will be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner, may without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant and other property belonging to the Contractor as may be on the site of the work and necessary therefore.

In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expenses of finishing the work, including compensation for additional managerial and administration services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner, as herein provided, and damage incurred through the Contractor's default, shall be certified by the Engineer.

## **SECTION E**

With respect to any work required to be done under this contract, the Contractor shall indemnify and hold harmless the Owner (City of Reedley), the County of Fresno, HUD, the State of California, the United States of America, and all other participating public agencies whether or not said agencies are named herein who have jurisdiction within the areas under which the work is to be performed and all officers, officials, volunteers and employees of the Owner, the County of Fresno, HUD, the State of California, the United States of America and said other participating agencies against any and all claims, demands, causes of action, damages, (including damages to the Owner's property or property of any participating agencies) costs, or liabilities (including costs, or liabilities of the Owner, the County of Fresno, HUD, or the participating agencies with respect to its employees) in law or in equity of every kind and nature whatsoever, directly or proximately resulting from or caused by the performance of the contract whether such performance by the Contractor, his Subcontractor, or anyone directly or indirectly employed by him; and the Contractor shall, at his sole risk and expense, defend any and all suits, actions, or other legal proceedings, which may be brought or instituted by third persons against the Owner, the County of Fresno, HUD, their participating agencies, their officers and employees on any such claim, demand, or cause of action and the Contractor shall pay and satisfy any judgment or decree which may be rendered against the Owner, the County of Fresno,

HUD, their participating agencies, their officers and employees and any such suit, action, or other legal proceedings. In no event shall the Contractor indemnity obligation extend to the active negligence, sole negligence, or willful misconduct of an indemnified party in compliance with CA Civil Code §2782.

The Contractor shall furnish the Owner with a Certificate of Insurance, indicating insurance coverage with respect to the liability assumed by the Contractor under the provisions of this article, and shall further indicate insurance coverage with minimum limits as shown in the project specifications.

The Certificate of Insurance shall further provide that a minimum thirty (30) days notice of cancellation or reduction in coverage shall be given the Owner.

An Additional Insured Endorsement to the Contractor's Liability Insurance policy naming the City of Reedley, the County of Fresno, HUD, its officers, officials, employees and volunteers, and other participating public agencies (if applicable) and all officers and employees of the above shall also be furnished.

## **SECTION F**

Contractor represents that he has secured the payment of Worker's Compensation in compliance with the provisions of the Labor Code of the State of California and during performance of the work contemplated herein will continue so to comply with said provisions of said Code. Contractor shall supply the Owner with the insurance data and certificates as set forth in the specifications. The Certificates of Insurance evidence that Worker's Compensation Insurance is in effect as well as employer's liability insurance with limits of \$2,000,000 per accident and providing that the Owner will receive thirty (30) days notice of cancellation. If the Contractor self-insures Worker's Compensation, Certificate of Consent to Self-insure shall be provided the Owner.

## **SECTION G**

Contractor shall forthwith furnish in triplicate a faithful performance bond in an amount equal to One-Hundred (100%) percent of the contract price and a payment (labor and materials) bond in an amount equal to One-Hundred (100%) percent of the contract price, both bonds to be written by a surety company acceptable to the Owner and in the form prescribed by law.

The payment bond shall include a provision that if the Contractor or his Subcontractors shall fail to pay (a) amounts due under the Unemployment Insurance Code with respect to work performed under the contract or (b) any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of the employees of the Contractor and Subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, then the surety will pay these amounts. In case suit is brought upon the payment bond, the surety will pay a reasonable attorney's fee to be fixed by the court.

## **SECTION H**

This work for this project shall be diligently prosecuted to completion before the expiration of Seventy (70) CONSECUTIVE WORKING DAYS beginning on the day specified in the Notice to Proceed.

Contractor shall pay to the City of Reedley in the sum of **\$1,000** per day, for each and every calendar day(s) delay in finishing the work in excess of the number of consecutive calendar days prescribed above. Liquidated damage provisions shall be in accordance with Public Contract Code Section 7203 as amended by Assembly Bill 552.

#### **SECTION I**

Should either party to the contract bring an arbitration or mediation proceeding or other action to enforce any provisions of the contract, including an action pursuant to Public Contract Code Section 20104.4, the prevailing party shall be entitled to recover reasonable attorney's fees and all costs in connection therewith. The term "prevail" as used in this section shall include any action at law, in equity, or pursuant to arbitration in which either party has been successful.

#### **SECTION J**

The improvement contemplated in the performance of this contract is a U.S. Department of Housing and Urban Development, Community Development Block Grant improvement over which the County of Fresno shall exercise general supervision. The County of Fresno therefore, shall have the right to assume full and direct control over this contract whenever the County of Fresno, at its sole discretion, shall determine that its responsibility to the United States so requires.

#### **SECTION K**

Time is of the essence. The improvement and work contemplated in the performance of this contract is predicated on suitable weather conditions as determined by the City Engineer. In the event the City Engineer determines that suitable conditions are not experienced during the contract period (after the notice to proceed) it is agreed that the contract may be delayed by weather and will be credited additional days as provided in the specifications, but no additional monetary compensation. Any such delay shall be documented and processed on the standard change order form.

IN WITNESS WHERE OF, they have executed this agreement the 14<sup>th</sup> day  
of January, 2019.

CONTRACTOR,

CITY,

BY: 

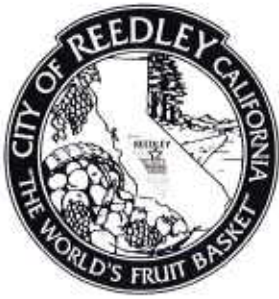
BY: 

Nicole R. Zieba  
City Manager

RECOMMEND FOR APPROVAL,

BY: 

John S. Robertson, P.E.  
City Engineer



## REEDLEY CITY COUNCIL

- ☒ Consent
- ☐ Regular Item
- ☐ Workshop
- ☐ Closed Session
- ☐ Public Hearing

ITEM NO: 6

**DATE:** January 08, 2019

**TITLE:** CONSIDERATION OF ITEMS PERTAINING TO THE CDBG 17571 DINUBA AVENUE IMPROVEMENTS:

(A) ADOPT BUDGET RESOLUTION NO. 2019-006 AMENDING THE FISCAL YEAR 2018-2019 BUDGET TO APPROPRIATE ADDITIONAL FUNDS IN THE AMOUNT OF \$646,612 FOR CDBG 17571 DINUBA AVENUE IMPROVEMENTS

(B) ADOPT RESOLUTION NO. 2019-007 AWARDED A CONSTRUCTION CONTRACT TO AJ EXCAVATION INC. FOR THE RECONSTRUCTION ON DINUBA AVENUE FROM SOUTHERN PACIFIC RAILROAD TO EAST AVENUE AND EAST AVENUE FROM DINUBA TO LINCOLN AVENUE, CDBG PROJECT NO. 17571, IN THE AMOUNT OF \$870,226.00 CONTINGENT UPON APPROVAL OF THE CONTRACT BY THE COUNTY OF FRESNO AND AUTHORIZE THE CITY MANAGER TO APPROVE UP TO 10% OF THE TOTAL BID IN CONTRACT CHANGE ORDERS

**PREPARED:** Linda Thao *LT*  
Senior Engineering Assistant

**SUBMITTED:** John S. Robertson, P.E. *JSR*  
City Engineer

**APPROVED:** Nicole Zieba *NZ*  
City Manager

### RECOMMENDATION

Staff recommends that the City Council through Resolution Nos. 2019-006 and 2019-007, take the following actions:



1. Adopt Budget Resolution No. 2019-006 amending the Fiscal Year 2018-2019 Budget appropriating additional funds in the amount \$636,612 for CDBG 17571 Dinuba Avenue Improvements
2. Adopt Resolution No. 2019-007, awarding a construction contract to AJ Excavation Inc. for the Reconstruction on Dinuba Avenue from Southern Pacific Railroad to East Avenue and East Avenue from Dinuba to Lincoln Avenue, Community Development Block Grant (CDBG) Project No. 17571, in the amount of \$870,226.00 contingent upon approval of the contract by the County of Fresno and authorize the City Manager to approve up to 10% of the total bid in contract change orders

## **EXECUTIVE SUMMARY**

Staff is requesting that the City Council adopt Budget Resolution No. 2019-006 to fully fund all construction related costs for the Reconstruction on Dinuba Avenue from Southern Pacific Railroad to East Avenue and East Avenue from Dinuba to Lincoln Avenue, CDBG Project No. 17571 (Project). Additionally, staff is requesting that the City Council adopt Resolution No. 2019-007 awarding the Project to AJ Excavation Inc. and authorize the City Manager to execute the Public Improvement Agreement for the Project with AJ Excavation Inc. Execution of the Agreement is subject to approval of the contract by the County of Fresno and the submittal of the necessary bonds, insurance certificates and other necessary documents as required by the specifications, special provisions for this project and State law.

The Project will reconstruct Dinuba Avenue roadway from Southern Pacific Railroad to East Avenue and grind/overlay East Avenue from Dinuba Avenue to G Street. Additional work includes the replacement of an 8-inch water main, storm drainage upsize to 30-inch per the City's Integrated Master Plan, improvements to wastewater pipelines and manholes and the installation of ADA curb ramps and sidewalk. Sidewalk will be installed from on East Avenue from Dinuba to Lincoln Avenue.

Staff is also requesting that the City Manager or her designee be authorized to execute change orders to the contract for the Project and shall not exceed 10% of the total bid or \$87,022 without prior approval of City Council.

## **PROJECT DESCRIPTION/BACKGROUND**

The City of Reedley and County of Fresno entered into Agreement 18-071 for the Project. The scope of work for the Project that consists in general of the demolition and removal of Dinuba Avenue roadway from Southern Pacific Railroad to East Avenue and a grind and overly of East Avenue from Dinuba Avenue to G Street. In addition to the roadway improvements the Project will: Abandon an existing 8-inch transite pipe and replace it with an 8-inch C900 pipe, perform minor improvements to the waste water system within the project limits, upsize the storm drainage to 30-inch per the City's Integrated Master Plan, install ADA curb ramps and sidewalk and replace the existing in-pavement cross walk lighting with a rectangular rapid flashing beacon system.

On December 5, 2018, a Notice to Bidders for the Project was advertised in the Business Journal for a period of approximately two (2) weeks. During the bidding period, twelve (12) contractors/subcontractors requested bid documents from the City for this project. Two (2) addenda were issued during the project bidding period to address the mandatory 10-day

federal wage check as required for Davis-Bacon Act prevailing wage compliance, and providing clarification to the plans and specifications.

On December 20, 2018, City staff conducted the bid opening for this project where eight (8) bids were received, opened, and read aloud. The bids received for the total Base Bid, Schedule A and Schedule B ranged from \$870,226 to \$1,313,588 as shown in the attached Bid Tabulation. The engineer's estimate of probable cost for the Base Bid, Schedule A and Schedule B was \$897,009.78.

### **PRIOR COUNCIL ACTIONS**

City Resolution No. 2018-003 granted the execution of City-County Agreement No. 18-071 and was fully executed on March 6, 2018 by the County.

City Resolution No. 2018-065 authorized the execution of Amendment No. 1 to the City-County Agreement No. 18-071 for CDBG Project No. 17571.

### **FISCAL IMPACT**

There is no impact to the General Fund as the project is funded with CDBG, Vehicle Impact Funds, water, and sewer capital funds. The Adopted 2018-2019 Budget appropriated \$434,000 for the Project. The following table comprises a summary of all Project funding sources:

<b>Funding Source</b>	<b>Amount</b>
Community Development Block Grant	\$235,000
Vehicle Impact Fee	\$140,000
Water Capital	\$144,000
Wastewater Capital	\$101,612
Measure C Flex Funding	\$231,000
Measure C Street Maintenance	\$225,000
<b>Total Construction Budget</b>	<b>\$1,076,612</b>

### **ATTACHMENTS**

1. Bid Tabulation for CDBG Project No. 17571, Reconstruction on Dinuba Avenue from Southern Pacific Railroad to East Avenue and East Avenue from Dinuba to Lincoln Avenue
2. Public Improvement Agreement for Reedley City Street Improvements, CDBG Project No. 17571
3. City-County Agreement No. 18-071 for CDBG Project No. 17571
4. Budget Resolution No. 2019-006
5. Resolution No. 2019-007, award a construction contract to AJ Excavation Inc. for the Reconstruction on Dinuba Avenue from Southern Pacific Railroad to East Avenue and East Avenue from Dinuba to Lincoln Avenue, CDBG Project No. 17571

Motion: \_\_\_\_\_

Second: \_\_\_\_\_

**BUDGET AMENDMENT  
RESOLUTION 2019-006**

The City Council of the City of Reedley does hereby amend the 2018-19 Budget as follows:

**Section I - Additions:**

FUND-DEPT.OBJECT	AMOUNT
055-4525.6249	\$140,000
051-4515.5822	\$46,612
014-4441.6249	\$231,000
016-4443.6249	\$225,000

**Purpose:** To cover all construction costs related to the CDBG 17517 Dinuba Avenue Improvement project it is necessary to appropriate funds from various sources related to the items of work to be performed with the project. The proposed project will improve the roadway between the RR and East Avenue on Dinuba Avenue as well as perform improvements to water and wastewater infrastructure.

**Section II – Source of Funding:**

FUND BALANCE	AMOUNT
055-2710	\$140,000
051-2710	\$46,612
014-2710	\$231,000
016-2710	\$225,000

**Impact:** There are sufficient funds in the funding source to cover the contractors and City forces costs related to the project. See the Staff Report for more detail

REVIEWED:

  
Assistant City Manager *1/02/2019*

RECOMMENDED:

  
City Manager

The foregoing resolution was approved by the City Council of the City of Reedley on January 08, 2019, by the following vote:

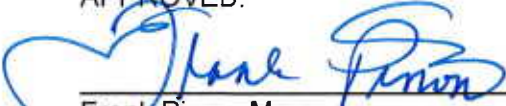
AYES: Beck, Soleno, Betancourt, Fast, Pinon.

NOES: None.

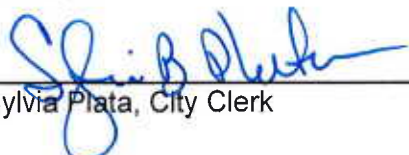
ABSENT: None.

ABSTAIN: None.

APPROVED:

  
Frank Pinon, Mayor

ATTEST:

  
Sylvia Plata, City Clerk





**RESOLUTION NO. 2019-007**  
**A RESOLUTION TO THE CITY COUNCIL OF THE CITY OF REEDLEY**  
**AWARDING A CONSTRUCTION CONTRACT TO AJ EXCAVATION INC.**  
**FOR THE RECONSTRUCTION ON DINUBA AVENUE FROM SOUTHERN**  
**PACIFIC RAILROAD TO EAST AVENUE AND EAST AVENUE FROM**  
**DINUBA TO LINCOLN AVENUE,**  
**CDBG PROJECT No. 17571**

**WHEREAS**, the City of Reedley issued a Notice to Bidders for the Reconstruction on Dinuba Avenue from Southern Pacific Railroad to East Avenue and East Avenue from Dinuba to Lincoln Avenue, CDBG Project No. 17571; and

**WHEREAS**, the City received, opened and read aloud eight (8) bids which the total Base Bid, Schedule A and Schedule B ranged from \$870,226 to \$1,313,588; and

**WHEREAS**, the lowest, most responsive and responsible bid was submitted by AJ Excavation Inc.; and

**WHEREAS**, the City Council, using their independent judgment desires to award a construction contract for the lowest responsible responsive bid for total Base Bid, Schedule A and Schedule B in the amount of \$870,226.00.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Reedley, using their independent judgment, hereby approves Resolution No. 2019-007 based on the following:

1. The above recitals are true and correct; and
2. That the contract for the Reconstruction on Dinuba Avenue from Southern Pacific Railroad to East Avenue and East Avenue from Dinuba to Lincoln Avenue, CDBG Project No. 17571 is awarded, contingent upon approval of the contract from the County of Fresno to award, to AJ Excavation Inc. for the unit and lump sum prices as bid, the total amount of the contract being \$870,226.00.
3. That the City Manager is authorized and directed to promptly execute the contract for the subject work with AJ Excavation Inc. subject to the submittal of the necessary bonds, insurance certificates and other necessary documents required by the specifications and special provisions for this project, all for the approval by and to the satisfaction of the Community Development, Administrative Services Directors and the City Attorney.
4. The City Manager or her designee, is hereby authorized to execute contract change orders to the contract for this project and shall not exceed 10% of the total bid or \$87,022 without prior approval of this City Council.
5. The total construction budget for this project, including the construction contract, contingency costs shall not exceed approximately \$1,076,905.00.

6. This resolution is effective immediately upon adoption.

This forgoing resolution is hereby approved at a regular meeting of the City Council of the City of Reedley held on the 8th day of January 2019, by the following vote:

AYES: Beck, Soleno, Betancourt, Fast, Pinon.

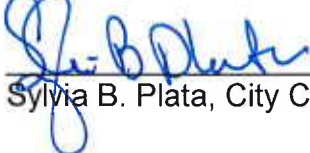
NOES: None.

ABSTAIN: None.

ABSENT: None.

  
Frank Pinon, Mayor

ATTEST:

  
Sylvia B. Plata, City Clerk

