

**DIABLO COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTORS
SPECIAL MEETING AGENDA
TELECONFERENCE VIA THE APPLICATION ZOOM
FRIDAY, AUGUST 28, 2020 5:00 p.m.**

CORONAVIRUS DISEASE (COVID-19) ADVISORY AND MEETING PROCEDURE

On March 19, 2020 the Governor issued Executive Order N-33-20, ordering all residents in the State of California to shelter at their place of residence, with the exception of those who may leave to provide or receive critical services, as defined in Order N-33-20.

Under the Governor's Executive Order N-29-20, Diablo Community Services District may utilize teleconferencing for their meetings, as a precaution to protect the health and safety of staff, officials, and the general public. Board members will be participating via teleconference. As such, there will be no physical location for members of the public to participate in this meeting.

All members of the public seeking to observe and/or address the Board may participate in the meeting in the manner described below.

This meeting can be viewed on the web-video communication platform Zoom.

ZOOM WEBSITE: <https://zoom.us/j/4680449859>
MEETING ID: **468 044 9859**

Listen to the meeting live by calling Zoom.

CALL IN (AUDIO) PHONE NUMBER: Call **(346) 248-7799** or **(669) 900-9128** and enter the Meeting ID# 468 044 9859 followed by the pound (#) key. More numbers can be found at <https://zoom.us/uabb4GNs5xM> if the line is busy.

To submit public comments on an agenda item before the meeting, please email your comments to generalmanager@diablocsd.org. In the body of the email, include the agenda item number and title as well as your comments. All comments must be received before 12:00 PM the day of the meeting to be included. If you would like your emailed comment to be read aloud at the meeting (not to exceed 3 minutes at staff's cadence) prominently write "Read Aloud at Meeting" at the top of the email. During the meeting, the Board President or designee will announce the opportunity to make public comments and the procedure for doing so. Emailed comments received after the close of the public comment period will be added to the record after the meeting.

CALL TO ORDER: **President: Ray Brant**
ROLL CALL: **Secretary: Jeff Eorio**
Brant, Urbelis, Becker, Eorio, Isom

- PUBLIC COMMENTS:** *Public comments will be taken only on items listed on the special meeting agenda. Public comments on non-agendized items should be raised at a regular board meeting. Public comments are limited to 3 minutes per person when speaking in English, and 6 minutes per person when using a translator. Comments by the audience are not intended to result in a dialogue between members of the audience or between the audience and the Board. Please note that under Brown Act regulations, no member of the Board may engage in any discussion, other than a brief comment or request for clarification, of any item raised by any member of the audience unless that item is included as an agenda item.*

2. ACTION ITEM:

- a. Award the DCSD 2020 Pavement Maintenance Contract No. 1 to Dryco Construction Inc. and authorize the General Manager to issue a “Notice to Proceed” to Dryco Construction Inc. A draft of the Notice to Proceed and Contract are attached.

3. CALL OF NEXT MEETING/ADJOURNMENT: The next DCSD Regular Board meeting is scheduled for September 8, 2020 at 7:30 p.m. via Zoom.

Diablo Community Services District by

Kathy Torru, General Manager
generalmanager@diablocsd.org

DCSD Board Meetings are accessible to people with disabilities and others who need assistance. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to observe and/or participate in this meeting; or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet, or other writings that may be distributed at the meeting should contact the General Manager at least one working day before the meeting at (925) 683-4956 or generalmanager@diablocsd.org. Notification in advance of the meeting will enable the District to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it. Public records that relate to any item on the open session agenda are available for public inspection by contacting the General Manager and on the District’s website <http://diablocsd.org>.

DIABLO COMMUNITY SERVICES DISTRICT
DIABLO MUNICIPAL ADVISORY COUNCIL

P.O. Box 321
Diablo CA 94528

Sent via email

August 28, 2020

Steve Stellini
Dryco Construction Inc.
42745 Boscell Road Fremont, CA 94538
steves@dryco.com

DRAFT

Re: **NOTICE TO PROCEED**
DCSD 2020 Pavement Maintenance Project

Dear Steve:

By this letter Dryco Construction Inc. ("Contractor") is notified to proceed with its Work for the above-referenced Project ("Project"), as required by the Contract Documents. Contractor should start the Work on or before September 15, 2020 ("Start Date"), and must achieve Final Completion within 30 calendar days from the Start Date.

A copy of the fully executed Contract is enclosed for your files.

Please acknowledge receipt of this Notice to Proceed by signing the attached Acknowledgement of Notice to Proceed, as indicated, and transmitting the Acknowledgement to my office via email at: generalmanager@diablocsd.org. Do not hesitate to contact me if you have any questions in this regard.

Sincerely,

Kathy Torru
General manager

Enclosure

DIABLO COMMUNITY SERVICES DISTRICT
DIABLO MUNICIPAL ADVISORY COUNCIL

P.O. Box 321
Diablo CA 94528

Acknowledgement of Notice to Proceed

On behalf of Dryco Construction Inc. ("Contractor"), I acknowledge receipt of the Notice to Proceed for the DCSD 2020 Pavement Maintenance Project:

s/ _____

Name: _____

Title: _____

Date: _____

This public works contract (“Contract”) is entered into by and between Diablo Community Services District (“District”) and Dryco Construction Inc. (“Contractor”), for work on the 2020 Pavement Maintenance Project (“Project”).

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On August 28, 2020, District authorized award of this Contract to Contractor for the amount set forth in Section 4, below.

2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.
 - 2.1 Notice Inviting Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Plans and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Potential Award; and
 - 2.12 Notice to Proceed.

3. **Contractor’s Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor’s timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, District will pay Contractor \$613,641 (“Contract Price”) for all of Contractor’s direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.

5. **Time for Completion.** Contractor will fully complete the Work for the Project within 30 calendar days from the commencement date given in the Notice to Proceed (“Contract Time”). By signing below, Contractor expressly waives any claim for delayed early completion.

6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, District will assess liquidated damages in the amount of \$500.00 per day for each day of

unexcused delay in completion, and such liquidated damages may be deducted from District's payments due or to become due to Contractor under this Contract.

7. Labor Code Compliance.

7.1 General. This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

7.2 Prevailing Wages. This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.

7.3 DIR Registration. District may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.

8. Workers' Compensation Certification. Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. Conflicts of Interest. Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any District policy or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

10. Independent Contractor. Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of District and are not entitled to participate in any health, retirement, or any other employee benefits from District.

11. Notice. Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

District:

Diablo Community Services District
PO Box 321
Diablo, CA 94528
Attn: Kathy Torru, General Manager
generalmanager@diablocsd.org

Copy to: Christie Crowl, General Counsel
ccrowl@jarvisfay.com

Contractor:

Name: Dryco Construction Inc.
Address: 42745 Boscell Road
City/State/Zip: Fremont, CA 94538
Phone: 510 438-6500
Attn: Steve Stellini
Email: steves@dryco.com
Copy to: _____

12. General Provisions.

- 12.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without District's written consent. This Contract is binding on Contractor's and District's lawful heirs, successors and permitted assigns.
- 12.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Contra Costa County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Contra Costa County, California.
- 12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between District and Contractor.
- 12.6 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.
- 12.8 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code § 313.

The parties agree to this Contract as witnessed by the signatures below:

DISTRICT:

Approved as to form:

s/ _____

s/ _____

Name, Title

Name, Title

Date: _____

Date: _____

Attest:

s/ _____

Name, Title

Date: _____

CONTRACTOR:

_____ Business Name

s/ _____

Seal:

Name, Title

Date: _____

Second Signature (See Section 12.8):

s/ _____

Name, Title

Date: _____

Contractor's California License Number(s) and Expiration Date(s)

END OF CONTRACT

Payment Bond

DRAFT

Diablo Community Services District ("District") and Dryco Construction Inc. ("Contractor") have entered into a contract, dated _____, 20__ ("Contract") for work on the 2020 Pavement Maintenance Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

- 1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to District as obligee in an amount not less than \$613,641, under California Civil Code § 9550 et seq., to ensure payment to authorized claimants. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
- 2. **Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay a person authorized in California Civil Code § 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors under California Unemployment Insurance Code § 13020 with respect to the work and labor, then Surety will pay the obligation.
- 3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code § 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
- 4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
- 5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845. District waives the requirement of a new bond for any supplemental contract under Civil Code § 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____
 Email: _____

- 6. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Contra Costa County Superior Court, and no other place. Surety will be responsible for District's attorneys' fees and costs in any action to enforce the provisions of this Bond.

[Signatures are on the following page.]

7. **Effective Date; Execution.** This Bond is entered into and is effective on _____, 20__.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

APPROVED BY DISTRICT:

s/ _____

Date

Name, Title

END OF PAYMENT BOND

Diablo Community Services District (“District”) and Dryco Construction Inc. (“Contractor”) have entered into a contract, dated _____, 20____ (“Contract”) for work on the 2020 Pavement Maintenance Project (“Project”). The Contract is incorporated by reference into this Performance Bond (“Bond”).

1. **General.** Under this Bond, Contractor as Principal and _____, its surety (“Surety”), are bound to District as obligee for an amount not less than \$613,641 to ensure Contractor’s faithful performance of its obligations under the Contract. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
2. **Surety’s Obligations.** Surety’s obligations are co-extensive with Contractor’s obligations under the Contract. If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety’s obligations under this Bond will become null and void. Otherwise, Surety’s obligations will remain in full force and effect.
3. **Waiver.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845.
4. **Application of Contract Balance.** Upon making a demand on this Bond for completion of the Work prior to acceptance of the Project, District will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by District to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which District is entitled under the terms of the Contract.
5. **Contractor Default.** Upon written notification from District of Contractor’s termination for default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
 - 5.1 Arrange for completion of the Work under the Contract by Contractor, with District’s consent, but only if Contractor is in default solely due to its financial inability to complete the Work;
 - 5.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to District, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety’s expense; or
 - 5.3 Waive its right to complete the Work under the Contract and reimburse District the amount of District’s costs to have the remaining Work completed.
6. **Surety Default.** If Surety defaults on its obligations under the Bond, District will be entitled to recover all costs it incurs due to Surety’s default, including legal, design professional, or delay costs.
7. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

8. Law and Venue. This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Contra Costa County Superior Court, and no other place. Surety will be responsible for District's attorneys' fees and costs in any action to enforce the provisions of this Bond.

9. Effective Date; Execution. This Bond is entered into and effective on _____, 20____.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

APPROVED BY DISTRICT:

s/ _____

Date

Name, Title

END OF PERFORMANCE BOND