

**CONSTRUCTION CONTRACT FOR
(Citywide Concrete Sidewalk, Curb and Driveway Apron Repairs)
IFB #24-116**

THIS CONSTRUCTION CONTRACT for Citywide Concrete Sidewalk, Curb and Driveway Apron Repairs (“Contract”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **M&M Asphalt Maintenance Inc. d/b/a All County Paving**, a corporation authorized to do business in the State of Florida with its principal office located at 1180 SW 10th Street, Delray Beach, FL 33444. (“Contractor”)

WHEREAS, the City is a Municipality organized and existing pursuant to the Charter and the Constitution of the State of Florida; and

WHEREAS, the City issued Invitation for Bids #24-116 (“IFB”) to perform construction and maintenance services including concrete sidewalk, curbing, driveway aprons and associated restoration work for the City’s Public Works Department on as needed basis; and

WHEREAS, the Contractor submitted a unit price bid to perform the work generally described and set out in response to the IFB; and

WHEREAS, the City desires to accept Contractor’s bid in order for Contractor to render the services to the City as provided herein; and

WHEREAS, the Contractor further warrants that it is experienced and capable of performing the Task hereunder in a professional and competent manner; and

WHEREAS, this Agreement may be funded, in whole or in part, by the Federal agencies, in which case, the Contractor agrees that any services performed pursuant to the IFB and this Agreement will comply with all applicable Federal law, Federal regulations, executive orders, Federal policies, procedures, and directives and special clauses as provided for in **Exhibit “D”**;

WHEREAS, the City finds awarding the IFB to the Contractor as described herein serves a valid public purpose.

NOW THEREFORE, the City hereby engages the services of the Contractor, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

Article 1. GENERAL INFORMATION.

1.1 The foregoing recitals are incorporated into this Contract as true and correct statements.

1.2 **Scope of Services/Work.** The Contractor shall provide the services described in IFB and detailed scope of services attached hereto as Exhibit “A” and work requested by the City and required under a City approved work order as described herein. The general nature of the services and work to be provided by the Contractor under this Contract are the construction and maintenance services for the City’s Public Works Department for the citywide concrete sidewalk, curb and driveway aprons repairs. It is the intention of the City to award the work in the multiple smaller projects between \$20,000 and \$ 100,000. Some projects may be of different sizes and value.

1.3 **Contract Documents.** The Contract Documents are incorporated herein by reference as if set forth

in this Contract and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the IFB (including, but not limited to, the documents issued with the IFB as the scope and specifications, Detailed Scope of Work; addendum, attachments and exhibits); and, any duly executed and issued work orders, change orders and Contract amendments relating thereto. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, within five (5) business days and before proceeding shall obtain a written interpretation or clarification. Failure to obtain a written interpretation or clarification will be deemed a waiver of the ambiguity, error or discrepancy by the Contractor. The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

First Priority:	Fully executed Change Orders or Contract amendments
Second Priority:	This Contract
Third Priority:	Fully executed Work Orders
Fourth Priority:	IFB

1.4 **Contract Administrator.** Whenever the term Contract Administrator is used herein, it is intended to mean **the City Manager or designee, City of Lake Worth Beach, Florida**. In the administration of this Contract, all parties may rely upon instructions or determinations made by the Contract Administrator except that all requests and/or determinations that result in an increase in change in time of completion and/or an increase in the contract price shall require a formal change order or contract amendment executed by the City Manager or the City Commission (depending on the authority set forth in the City's Procurement Code).

1.5 **Work Orders.** This Contract does not guarantee that the City will utilize the Contractor in any capacity or for any services hereunder. When the City identifies a need for the Contractor's services, the City will request a proposal from the Contractor to provide the services requested. The City will provide the Contractor with plans and/or specifications in order for the Contractor to develop its proposal. The Contractor's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit "C"** along with a copy of the Contractor's proposal and shall be based on the Unit Prices attached hereto and incorporated herein as **Exhibit "B"**. Upon receipt of the Contractor's proposed work order and proposal, the City shall decide in its sole discretion whether to award the work order to the Contractor. Depending on the lump sum amount of each work order, the work order may be awarded by the City Manager (if within City Manager's purchasing authority (currently not to exceed \$50,000)) or the City Commission. If the work order is approved by the City, the Contractor shall commence the identified services upon the City's approval of the work order for the services and issuance of a notice to proceed. The City reserves the right to reject any and all proposals submitted by the Contractor. A City-approved work order shall include (by reference) the plans and/or specifications provided by the City to the Contractor.

1.6 **Term.** The term of this Agreement shall be for an initial period of (3) years with the possibility of two (2) one (1) year renewals options. The option(s) to renew may be exercised by the City Manager. Notwithstanding the term, the parties may terminate this Agreement as stated herein.

1.7 **Unit Prices.** The Unit Prices set forth as **Exhibit "B"** shall remain fixed for the first three (3) years of this Contract. If due to applicable price escalations and/or reductions which impact the Contractor's Unit Prices, the City and Contractor may execute a written amendment to this Contract to establish new Unit Prices for the renewal term(s). The City Manager may approve changes in the Unit Prices based on the recommendation of the City's Public Works Director or designee.

Article 2. CONTRACT TIME.

2.1 Contract Time. Final completion of the work and all punch-list items (if any) shall be within the time frame as set forth in each Work Order for each project.

2.2 The Contractor shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the Contractor or its subcontractors (if authorized) and without the Contractor's or subcontractor's fault or negligence. Upon the Contractor's request, the City shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the Contractor and, if the Contractor's delay and failure to timely perform was without it or its subcontractors' fault or negligence, as reasonably determined by the City, the time of completion shall be extended for any reasonable time that the City may reasonably decide; subject to the City's rights to change, terminate, or stop any or all of the work at any time. If the Contractor is delayed at any time in the progress of the work by any act or neglect of the City or its employees, by an approved written change in the scope from the original Contract Documents, or by any other contractor employed by the City, or by changes ordered by the City or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's reasonable control, or by delay authorized by the City pending negotiation or by any cause which the City shall reasonably decide justifies the delay, then the time of completion shall be extended for any reasonable time the City may reasonably decide. The Contractor must provide the City with written notice of any delay claims and no extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) claim is necessary. With the exception of an approved written change in the scope from the original Contract Documents, the Contractor's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and Contractor specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by Contractor due to a delay in completion of the work. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the City. Otherwise, the Contractor shall be entitled only to extensions of the Contract Times as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

Article 3. PAYMENT PROCEDURES

3.1 Generally. The Contractor shall submit invoices on a monthly basis detailing all work accomplished in the prior month and all materials installed and used in the work pursuant to City approved work order. Contractor's invoices shall be submitted to:

City of Lake Worth Beach
Attn: Finance Department/Procurement Division
7 N. Dixie Highway
Lake Worth Beach, FL 33460

The City's Contract Administrator or designee will review each invoice submitted by the Contractor. If approved, the City will make payment in accordance with the Contract Documents. If not approved, the City will notify the Contractor within twenty (20) business days of the City's receipt and identify the action necessary to correct the invoice or a deficiency.

3.2 Payment to the Contractor shall be made pursuant Florida's Local Government Prompt Payment Act (for construction services), section 218.735, Florida Statutes, except as provided herein. Specifically, the

City will withhold five percent (5%) of each payment from a work order to the Contractor as retainage. Retainage shall be released to the Contractor in accordance with Section 218.735, Florida Statutes, and as set forth in this Contract.

3.3 Upon substantial completion, the Contractor shall notify the City's Contract Administrator that the work is substantially complete and request an inspection. Within five (5) business days thereafter, the Contractor and City's Contract Administrator or designee shall make an inspection of the work and begin the development of a draft punch-list of items that must be completed by the Contractor prior to the Contractor submitting its final payment request (Punch List Walkthrough). The City shall submit the punch list to the Contractor within fifteen (15) days of the Punch List Walkthrough and the Contractor shall have ten (10) days to agree to the same. If the Contractor wishes to revise the punch list, it must send the revised punch list to the City's Contract Administrator no later than twenty-five (25) days after reaching substantial completion. Thereafter the parties shall agree on the final punch list no later than thirty (30) days after substantial completion. The punch list shall include every remaining item required to render complete, satisfactory, and acceptable services to the City and the estimated cost to complete each remaining item. The final agreed upon punch list shall be sent to the Contractor five (5) days after the punch list is finalized. In no event may the Contractor request payment of final retainage until the Contractor has completed all items on the punch list. All items that require correction under the Contract which are identified after the preparation and delivery of the punch list remain the obligation of the Contractor. The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of the Contractor to complete all the construction services purchased pursuant to the Contract.

3.4 Final Payment. Upon final completion and acceptance of the work in accordance with the Contract Documents (including all punch-list items) and final inspection by the appropriate agency with jurisdiction over the project (if other than the City), the Contractor shall submit a "final invoice" to the City. In order for both parties to close their books and records, the Contractor will clearly state "FINAL" on the Contractor's final invoice. This certifies that all work under the applicable work order has been properly completed and all charges have been invoiced to the City. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the Contractor. If the Contractor's Final Invoice is approved as set forth above, the City shall pay the remainder of the work order price including any amount held as retainage.

3.5 Notwithstanding the foregoing, the City shall not be required to pay or release any amount of retainage that is subject of a good faith dispute, the subject of a claim brought pursuant to section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the City.

3.6 Final payment shall not become due until the Contractor and all of its subcontractors submit to the City releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract Documents or otherwise related to the Work.

3.7 Acceptance of final payment by the Contractor or a subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final invoice.

Article 4. SUBCONTRACTS

The Contractor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if

required, authorized or permitted under state and local law to perform such services. The Contractor shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. The Contractor shall comply with all applicable laws in the provision of services under this Contract. The Contractor agrees that it is fully responsible to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City. All of the Contractor's personnel (and all subcontractors) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of subcontractor or subcontractor's personnel furnished by the Contractor upon written notice by City to Contractor of the cause for such replacement. All work performed by a subcontractor will be at cost to the City without any mark-up by the Contractor. All subcontractors must provide the same level and type of insurance as required of the Contractor under this Contract prior to commencing any services. The Contractor shall submit the subcontractors' proof of insurance upon receipt of a notice to proceed.

Article 5. INDEMNITY AND INSURANCE.

The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the City and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third-party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. The Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification or any other provision in the Contract Documents shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes, which the parties agree apply to all claims whether in tort or in contract.

INSURANCE: Prior to commencing any work, the Contractor shall provide proof of insurance coverage as required in the IFB. All such insurance policies may not be modified or terminated without the express written authorization of the City. Failure to comply with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this Contract. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the Contract Documents and/or performance of the work. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

Article 6. REIMBURSEMENT OF ENGINEER EXPENSES.

Should the completion of a work order be delayed beyond the specified or adjusted time limit, Contractor shall reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor and be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for in an applicable Work Order.

Article 7. TERMINATION.

7.1 **TERMINATION BY CITY:** The City may terminate any work order, the Contract and/or the Contract Documents if the Contractor is in default as follows:

- (a) refuses or fails to supply enough properly skilled workers or proper materials to timely and competently complete the work;
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- (c) disregards or takes action contrary to any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- (d) takes action, short of declaring bankruptcy, evidencing insolvency;
- (e) fails to prosecute the services or work in a timely manner and reasonably be unable to reach substantial completion and/or final completion within the timeframe(s) required;
- (f) fails or refuses to provide and/or maintain insurance or proof of insurance as required by the Contract Documents; **or,**
- (g) otherwise is in breach of a provision of the Contract Documents.

When any of the above reasons exist, the City, may without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety (if applicable), written notice and five (5) days to cure, terminate the work order, Contract and/or Contract Documents and may:

- (a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by or paid for by the City; and,
- (b) finish the work by whatever reasonable method the City may deem expedient.

The Contractor and its surety (if any) shall be liable for any damage to the City, including additional attorney and engineering/architectural fees, resulting from the Contractor's termination under this provision by the City, including but not limited to, and any increased costs incurred by the City in completing the work.

When the City terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment, if any, until the work is finished.

Should it be determined by a mediator or a court of competent jurisdiction that the City wrongfully terminated the Contract, then the Contractor agrees to treat such termination as a termination for convenience.

7.2 **TERMINATION BY THE CITY FOR CONVENIENCE**

The City may, at any time, terminate the Contract and Contract Documents for the City's convenience and without cause. Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

- (a) cease operations as directed by the City in the notice;
- (b) take actions necessary, or that the City may direct, for the protection and preservation of the work; and
- (c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the City's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination including termination payments to subcontractors and demobilization costs.

Article 8. TAXES AND DIRECT PURCHASES.

8.1 **TAXES:** The City is exempt from payment of Florida State Sales and Use Tax. The Contractor is not authorized to use the City's Tax Exemption Number unless approved in writing.

8.2 **DIRECT PURCHASES:** For certain projects, the City may seek to make direct purchases of equipment or materials to be used by the Contractor. Pursuant to Section 212.08(6), Florida Statutes, and the Fla. Admin. Code Ann. R. 12A-1.094 and 12A-1.038, the Parties agree to the following procedure regarding the City's direct-purchase from vendors of certain equipment and materials to be used in specific projects:

8.2.1 The City reserves the right, at the City's option, to direct purchase equipment and materials involved in a specific project, including subcontracts, if any so as to save the sales tax which would otherwise have been due with regard to the same. The Contractor and its subcontractors shall comply with the City's direct purchase procedures, including but not limited to those listed below.

8.2.2 As specifically set forth in a City issued work order, within 30 days (or other time as specified in the work order), the Contractor will present a list of direct purchase equipment and materials for the City's consideration which will include the recommended vendors' name; the price quotes from all vendors provided to the Contractor; and, any terms and conditions the Contractor has negotiated with the recommended vendors. The City will then inform the Contractor as to which equipment and materials it will direct purchase. In the event the City fails to exercise its option to direct purchase equipment and materials and identify which equipment and materials are to be purchased by the City within thirty (30) calendar days of receipt of the list from the Contractor, the City shall waive its right to direct purchase any and all equipment and materials to be used in completion of the work under the applicable work order.

8.2.3 The Contractor is responsible for selecting each direct purchase vendor, subject to City approval. The Contractor is responsible for specifications, equipment and materials receipt,

inspecting shipments, and assuring that the equipment and materials are in accordance with the work order and the Contractor's specifications. The Contractor is also responsible for providing the City with enough advance notice of when the direct purchase equipment and materials will need to be ordered and delivered. In absence of the Contractor's receipt of a written notice of City's disapproval of a vendor within thirty (30) calendar days of City's receipt of the equipment/material list referenced in 9.2.2, the City shall be deemed to have waived any and all objections thereto.

8.2.4 The Contractor shall retain all responsibility for installing all equipment and materials relating to the work and for maintaining the construction schedule so long as the City timely orders and pays for the correct direct purchase equipment and materials. The City's direct purchase mechanism to effectuate tax savings in no way effects the obligation of the Contractor to meet all of the terms and conditions and all provisions and technical specifications of the Contract Documents. The Contractor shall be responsible for insuring all equipment once the equipment is in its care, custody and control, regardless of whether directly purchased by City.

8.2.5 The City will issue a direct purchase order to the vendor of the direct purchase equipment and materials at the price proposed in the Contractor's or its subcontractor's bid, less sales tax. The City will promptly send a copy of the issued purchase order to the Contractor.

8.2.6 It will be the Contractor's primary responsibility to properly expedite and follow up on direct purchase orders, thereby assuring delivery of the equipment and materials as ordered and at the time and place needed by the Contractor to complete the work in accordance with the work order and construction schedule. To the extent required by the Contractor, the City shall cooperate with all requests of the Contractor related to the expedition of and follow up on direct purchase orders.

8.2.7 The Contractor shall take delivery, unload, and install the equipment and materials purchased on the direct purchase order in accordance with the work order and the Contract Documents with the vendor to repair, replace, and make good any defect without cost to the City, until such time as the work has been completed and accepted by City in accordance with the Contract Documents. The City, with assistance from the Contractor, will be responsible for undertaking and completing any returns of direct purchase equipment and materials as requested by the Contractor and working with the vendor to effectuate any credits or warranties for the returned equipment and materials (if applicable). Any returns not replaced shall be credited to City and acknowledged by a supplement to the direct purchase order and, if applicable, amendment to the Contract Sum. The Contractor shall not be responsible for warranting the direct purchase equipment and materials to the City; however, the Contractor shall be responsible for facilitating the vendor's warranty of the direct purchase equipment and materials and the Contractor shall be responsible for warranting the work to install and/or incorporate the equipment and materials. The Contractor shall maintain records of all direct purchases received and incorporated into the work and provide the City with a monthly accounting until all direct purchase items that are received and accepted for inclusion in the specific project.

8.2.8 When delivery of a direct purchase order is complete, or a payment is to be made on a partial shipment, the Contractor will timely submit to City the documentation supporting the equipment and materials received. Invoices for direct purchase orders will be sent by the direct purchase vendor directly to City's Finance Department, with all such invoices addressed to and in the name of the City. The City's Finance Department will forward invoices to the City's Contract Administrator. The City's Contract Administrator will forward the invoices to the Contractor to verify delivery and sign the invoice and associated documentation supporting the amount of the payment. The City will make timely payment to all vendors in compliance with each vendor's payment procedures. The City will take title to all equipment ordered through direct purchase upon or at the time of purchase. The Contractor will assist City in assuring prompt payment by supplying the vendor's FEI numbers,

addresses, phone numbers, etc. All payments will be made in accordance with the Local Government Prompt Payment Act.

Article 9. CONTRACTOR'S REPRESENTATIONS AND AGREEMENTS.

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

9.1 Contractor has or will familiarize itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work prior to commencing the work under an applicable Work Order. All work shall be performed consistent with all applicable laws and regulations.

9.2 Contractor agrees to be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with the regulations and to reimburse the City for any loss incurred in connection therewith. This compliance provision specifically includes the Contractor's compliance with all applicable standards, orders or regulations including, without limitation, those issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

9.3 The Contractor represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the work required under the Contract Documents. Proof of such licenses and approvals shall be submitted to the City upon request.

Article 10. INFRINGEMENT INDEMNITY.

10.1 The Contractor will defend or settle at its expense a claim or suit brought by a third party against the City arising out of a claim asserting that the services, work, repair, materials or other deliverables ("deliverables" hereafter) provided by the Contractor under the Contract Documents (if any) infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. The Contractor will indemnify and hold harmless the City against and from damages, costs, and attorneys' fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) the Contractor is promptly notified in writing of such claim or suit, (ii) the Contractor will have the sole control of the defense and settlement thereof, and (iii) City furnishes the Contractor, on reasonable request, information available to City for such defense. The City will not admit any such claim without prior consent of the Contractor.

a. In the event of a claim of infringement, the Contractor shall, at its option:

1. procure for City the right to continue using the deliverables provided under the Contract Documents; or
2. replace or modify the deliverables so that the same becomes non-infringing but substantially equivalent in functionality and performance.
3. If neither of the above actions is reasonably feasible, the Contractor will refund to City the fee actually paid by City under the Contract Documents (as amortized on a straight-line basis over the time in which the City was able to use the deliverables).

b. The Contractor will have no obligation under this section for infringement if and to the extent that such claim arises from:

1. modification of the deliverables other than by the Contractor or by its recommendation; or

2. combination of the deliverables with products other than those supplied by the Contractor; and,

3. the alleged infringement or misappropriation relates to such modification or combination.

c. The Contractor will also not have any indemnification obligation with respect to a claim: (i) if it has provided City with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by City within a reasonable time or (ii) arising out use of the deliverables not in accordance with the Contract Documents.

d. The Contractor's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the Contractor whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of the Contract Documents.

Article 11. MISCELLANEOUS.

11.1 The City and Contractor each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

11.2 Additional work and/or changes to a work order's price and/or time, is subject to the City's prior written approval. Only the City Manager and City Commission (based on the procurement code) have the authority to approve such additional work and changes.

11.3 The headings contained in this Contract are inserted for convenience of reference only and shall not be a part or control or affect the meaning hereof.

11.4 This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

11.5 This Contract (together with the other Contract Documents) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Contract.

11.6 This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

11.7 This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for federal actions, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit,

action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and (c) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

11.8 This Contract shall create no rights or claims whatsoever in any third party.

11.9 If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

11.10 The effective date of this Contract is the date the Contract is approved by the City Commission.

11.11 Public Records: The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the City.
- (d) Upon completion of this Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION CITY CLERK, (561) 586-1660 OR CITYCLERK@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

11.12 This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

11.13 In accordance with Palm Beach County ordinance number 2011-009, the Contractor acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

11.14 If any legal action or other proceeding is brought for the enforcement of this Contract or the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract or the Contract Documents, each party shall be responsible for their own attorney's fees at all levels. EACH PARTY ALSO AGREES AND VOLUNTARILY WAIVES ANY RIGHT TO A JURY TRIAL ARISING OUT OF ALLEGED DISPUTE, BREACH, DEFAULT, MISREPRESENTATION OR ANY OTHER CLAIM IN CONNECTION WITH OR ARISING FROM ANY PROVISION OF THIS CONTRACT OR THE CONTRACT DOCUMENTS.

11.15 Each of the parties agrees to perform its obligations under the Contract Documents in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of the work and under the Contract Documents.

11.16 All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the Contractor or its subcontractors under this Contract shall be considered a "Work for Hire" and the exclusive property of the City. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, Contractor and Contractor's Subcontractors will assign to the City all right, title and interest in and to Contractor and/or Contractor's Subcontractors' copyright(s) for such Documents. Contractor shall execute and deliver to City such instruments of transfer and take such other action that City may reasonably request, including, without limitation, executing and filing, at City's expense, copyright applications, assignments and other documents required for the protection of City's right to such Documents. The Contractor shall retain copies of the Documents for a period of three (3) years from the date of completion of the Work. The City grants to the Contractor and Contractor's subcontractors the right and/or limited license to use a portion of the Documents prepared by the Contractor or the Contractor's subcontractors in future projects of the Contractor or Contractor's subcontractors with said right and/or limited license to use a portion at Contractor's or Contractor's subcontractor's own risk and without any liability to City. Any modifications made by the City to any of the Contractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the Contractor will be at the City's sole risk and without liability to the Contractor.

11.17 Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

11.18 Any notice required to be given under the Contract Documents shall be sent by certified mail (return receipt requested) or by nationally recognized overnight courier as follows to the City:

City of Lake Worth Beach
Attn: City Manager/Finance Department/Procurement Division
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and to the Contractor as follows:

M&M Asphalt Maintenance Inc. d/b/a All County Paving
Attn: Kenneth Goldberg
1180 SW 10th Street
Delray Beach, FL 33444

Either party may amend this provision by written notice to the other party.

11.19 The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The Contractor further represents that no person having any such conflicting interest shall be employed for said performance. The Contractor shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Contractor. The City agrees to notify the Contractor of its opinion within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the City shall so state in the notification and the Contractor shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Contractor under the terms of this Contract.

11.20 The Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, Contractor shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

11.21 This Contract is not intended to be and shall not be construed as an exclusive agreement, and the City may employ additional or other contractors to perform services contemplated by this Contract without liability to the City.

11.22 PUBLIC ENTITY CRIMES. The Contractor acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The Contractor will promptly advise the City if it becomes aware of any violation of this statute.

11.23 PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

11.24 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of all services and work. This includes being responsible

for all precautions for safety of, and reasonable protection to prevent damage, injury or loss to employees performing the services and work and other persons who may be affected thereby; the work, materials and equipment incorporated therein; and other property, equipment or materials at the site or adjacent thereto including, without limitation, trees, shrubs, lawns, sidewalks, pavements, roadways or structures and utilities not designated for removal, relocation or replacement in the course of the work. The Contractor shall comply with and give all notices required by applicable laws, statutes, ordinances, rules and regulations bearing on safety of persons or property, or their protection from damage, injury or loss. The Contractor shall implement, erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards reasonably related to the work or which could arise therefrom. The Contractor shall promptly remedy damage and loss (other than covered by applicable insurance) caused in whole or in part by the Contractor or anyone directly or indirectly employed by or utilized by the Contractor in the performance of the work, which is not attributable to the City's negligence.

11.25 The Contractor agrees that, in all matters relating to this Contract, it will be acting as an independent contractor with exclusive control of the manner and means of performing the work, its obligations and tasks in accordance with the requirements of this Contract and the Contract Documents. The Contractor has no authority to act or make any agreements or representations on behalf of the City. This Contract is not intended, and shall not be construed to create, between the City and the Contractor, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of City.

Article 12. SCRUTINIZED COMPANIES

1. Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Contract at its sole option if the Contractor or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Contract.
2. If this Contract is for one million dollars or more, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Contract at its sole option if the Contractor, or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or are or have been engaged with business operations in Cuba or Syria during the term of this Contract.
3. The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.
4. The Contractor agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Contract, including any and all renewals.
5. The Contractor agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the Contractor shall immediately notify the City of the same.

6. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

Article 13. E-VERIFY

Pursuant to Section 448.095(5), Florida Statutes, the Contractor shall:

13.1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Contract) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

13.2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Contract) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(f), Florida Statutes;

13.3. Maintain copies of all subcontractor affidavits for the duration of this Contract and provide the same to the CITY upon request;

13.4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;

13.5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Contract; and,

13.6. Be aware that if the City terminates this Contract under Section 448.095(5)(c), Florida Statutes, Contractor may not be awarded a public contract for at least 1 year after the date on which the Contract is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Contract.

Article 14. COMPLIANCE WITH SECTION 787.06, FLORIDA STATUTES (2024)

By signing this Contract before a notary public and taking an oath under the penalty of perjury, the Contractor attests and warrants that the Contractor does not use coercion for labor or services as defined in section 787.06, Florida Statutes (2024).

Remainder of this page intentionally left blank
Signature page follows

IN WITNESS WHEREOF, the City and Contractor have caused this Construction Contract for Citywide concrete sidewalk, curb and driveway aprons repairs to be executed the day and year shown below.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, MMC, City Clerk

By: _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: **M&M Asphalt Maintenance Inc. d/b/a All County Paving**

By: _____

[Corporate Seal]

Print Name: Kenneth Goldberg

Title: President

STATE OF FLORIDA)
COUNTY OF PAUL BEACH)

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 3rd day of OCTOBER 2024, by KENNETH GOLDBERG, as the PRESIDENT [title] of **M&M Asphalt Maintenance Inc. d/b/a All County Paving**, a corporation authorized to do business in the State of Florida, who is personally known to me or who has produced _____ as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and bind **M&M Asphalt Maintenance Inc. d/b/a All County Paving** to the same.

Notary Public Signature

Notary Seal:

My Commission expires: 01/08/2028

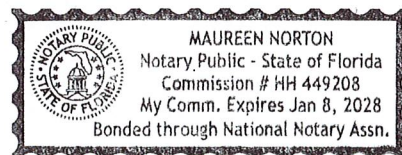


EXHIBIT "A"

Detailed Scope of Work

The objective of this Contract is to repair concrete curbing, sidewalk and aprons throughout the city limits that are in poor condition and could be tripping hazards. The City will identify locations for repair, measure and provide information to subcontractor selected through the bid process.

Work covered with this Contract will address the removal and replacement of concrete curb, gutter, sidewalk, driveway aprons and other miscellaneous concrete work.

The maintenance and construction work is generally described as follows:

- Concrete sidewalk and driveway apron removal and installation
- ADA concrete ramps
- Concrete curbing removal and replacement (Type D or F)
- Green area grading and sodding as needed
- Asphalt repairs as needed
- Associated Misc. Restoration Work

All works shall be constructed in accordance with the City's design specifications and standards. It is the intention of the City to award Work Orders in the multiple smaller projects between \$20,000 and \$100,000. Some projects may be of the different sizes or higher or lower value. Contractor must have equipment and sufficient number of employees to manage the Contract. Equipment shall include at minimum backhoe or excavator, dump truck, skid steer with bucket and forks, jack hammer etc.

Detailed Contractor Responsibility:

1. The Contractor shall furnish all necessary labor, material, equipment, and supervision to repair & replace existing concrete within the city limits of Lake Worth Beach.
2. The contractor shall confirm measurements by visiting the repair locations.
3. The contractor shall provide proper MOT needed. i.e. cones, barricades, sidewalk closed signs
4. A schedule will be provided to the Public Works Project Manager with two (2) week lead time to allow proper notification to residents.
5. All locations prepped for concrete will be poured on the same day unless prior approval from the Public Works Assistant Director or Project Manager.
6. Contractor will use concrete with a 3,000 PSI
7. Saw cut concrete
8. Break-up, remove and dispose of existing concrete
9. Reconstruct new concrete curb, gutter, sidewalk, other miscellaneous work, and if necessary replace or install valve and manhole risers.
10. Remove and dispose of tree roots, debris, asphalt, and inferior road base to prepare proper foundation.
11. Add and compact proper road base following City standards
12. Keep work area neat, tidy and passable conditions. Secure work area with MOT during construction.
13. Contractor will park vehicles with accordance to City laws and ordinances to not impede traffic flow unless necessary. Proper MOT will be used.
14. Contractor shall respond to City staff within two business days of a request for work.
15. Contractor will be responsible for billing and accounting, project management and administration.
16. Contractor will provide one point of contact for all locations.

City of Lake Worth Beach Public Works Project Manager Responsibility:

1. Identify locations for repair.
2. Marking of locations
3. Notify residents of upcoming work.
4. Inspections of the work being completed

The City may consider doing works on a case-by-case basis for the following:

1. Broken Irrigation Lines and Sprinkler Heads
2. Broken asphalt from removal of concrete

EXHIBIT "B"
SCHEDULE OF UNIT PRICES

(B4)

IFB #24-116 Citywide Concrete Sidewalk, Curb and Driveway Apron Repairs

SCHEDULE OF UNIT PRICES

In order to evaluate the bids, each Bidder must identify the unit prices for the work set forth in the Scope of Work and to be used for individual Work Orders. In the event additional work is added to this contract by Change Order, the following unit prices will be utilized (as applicable).

<u>ITEM #</u>	<u>DESCRIPTION</u>	<u>QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>
CONCRETE				
1	MOBILIZATION (LESS THAN 100 LF)	1	LS	\$ 3,000.00
2	MOBILIZATION (OVER 100 LF)	1	LS	\$ 2,000.00
3	REMOVE EX. 4" CONCRETE	1	SF	\$ 3.00
4	REMOVE EX. 6" CONCRETE	1	SF	\$ 4.50
5	4" CONCRETE SIDEWALK (3,000 PSI)	1	SF	\$ 8.50
6	6" CONCRETE SIDEWALK / DRIVEWAY (3,000 PSI)	1	SF	\$ 2.25
7	MONOLITHIC CURB AND SIDEWALK	1	SF	\$ 20.00
8	REMOVE EX. CONCRETE CURBING (ALL TYPES)	1	LF	\$ 15.00
9	TYPE F CURB AND GUTTER	1	LF	\$ 38.00
10	VALLEY GUTTER	1	LF	\$ 35.00
11	TYPE D CURBING	1	LF	\$ 30.00
12	ADA TACTILE DOME SURFACE (YELLOW) CAST-IN-PLACE	1	SF	\$ 55.00
MISC. WORK				
13	MISC. ASPHALT REPAIR	1	SF	\$ 9.00
14	BAHIA SODDING (INCL. GRADING WORK)	1	SY	\$ 20.00
15	FLORATAM SODDING (INCL. GRADING WORK)	1	SY	\$ 20.00
16	ADJUST EX. MANHOLE RING AND COVER	1	EA	\$ 350.00
17	ADJUST EX. VALVE BOX	1	EA	\$ 200.00
18	ADJUST EX. CURB INLET / DRAINAGE INLET	1	EA	\$ 1,500.00
19	PAVER BRICK REPAIR (EXIST. BRICKS)	1	SF	\$ 12.00
20	MOBILIZATION (LESS THAN 100 SF)	1	EA	\$ 2,000.00
21	MOBILIZATION (OVER 100 SF)	1	EA	\$ 1,500.00
22	MOT CONES	1	EA	\$ 12.00
23	MOT TYPE II BARRICADES	1	EA	\$ 50.00

Name of Bidder: M&M ASPHALT MAINTENANCE INC., D/B/A ALL COUNTY PAVING

Print Name: KENNETH GOLDBERG Title: PRESIDENT

SIGNATURE:  Date: 08/28/24

EXHIBIT "C"

SAMPLE WORK ORDER

**CONSTRUCTION CONTRACT FOR CITYWIDE CONCRETE SIDEWALK, CURB,
DRIVEWAY APRON REPAIRS
IFB#24-116**

WORK ORDER NO. _____

THIS WORK ORDER for the Construction Contract for Citywide concrete sidewalk, curb, driveway aprons repairs ("Work Order" hereafter) is made on the _____, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 ("City" hereafter) and **M&M Asphalt Maintenance Inc. d/b/a All County Paving** a corporation authorized to do business in State of Florida ("Contractor" hereafter).

1.0 Project Description:

The City desires the Contractor to provide all goods, services, materials and equipment as identified herein related to the Construction Contract for Citywide concrete sidewalk, curb, driveway aprons repairs described as: _____ (the "Project"). The Project is more specifically described in the plans prepared by _____, dated _____, and which are incorporated herein by reference.

2.0 Scope

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with construction services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 Schedule and Liquidated Damages

Substantial completion of all services and work under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix

the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City _____ hundred dollars (\$ _____ .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation and Direct Purchases

This Work Order is issued for a lump sum, not to exceed amount of \$ _____ (_____). The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

_____.

5.0 Project Manager

The Project Manager for the Contractor is _____, phone: _____; email: _____; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the

Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is issued pursuant to the Construction Contract for Citywide concrete sidewalk, curb, and driveway aprons repairs Contract IFB#24-116 between the City of Lake Worth Beach and the Contractor, dated _____, ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order No. as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, MMC, City Clerk

By: DO NOT SIGN – SAMPLE ONLY _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

M&M Asphalt Maintenance Inc. d/b/a All County Paving

By: DO NOT SIGN – SAMPLE ONLY _____

[Corporate Seal]

Print Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this ____ day of _____ 2024, by _____, as the _____ [title] of **M&M Asphalt Maintenance Inc. d/b/a All County Paving**, a corporation authorized to do business in the State of Florida, who is personally known to me or who has produced _____ as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and bind **M&M Asphalt Maintenance Inc. d/b/a All County Paving** to the same.

Notary Public Signature

Notary Seal:

My Commission expires: _____

Exhibit "D"

Federal Contract Provisions

The Contractor hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from the IFB, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules,

regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of

such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Clean Air Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Federal Water Pollution Control Act

(1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Suspension and Debarment.

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment.

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Procurement of Recovered materials.

- (i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
- (ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Access to Records.

- (1) The Contractor agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

DHS Seal, Logo, and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Contractor acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

Affirmative Steps. Required Affirmative Steps

If the Contractor intends to subcontract any portion of the work covered by this Contract, the Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Domestic preferences for procurements.

- (1) As appropriate and to the extent consistent with law, the Contractor should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- (2) For purposes of this section:
 - (a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Prohibition on certain telecommunications and video surveillance services or equipment.

- (1) The Contractor is prohibited from obligating or expending loan or grant funds to:
 - (a) Procure or obtain;
 - (b) Extend or renew a contract to procure or obtain; or
 - (c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS

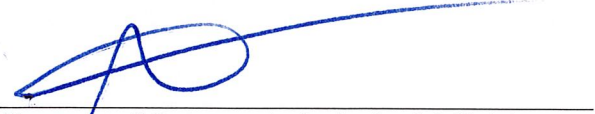
This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Contractor is required to confirm that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Certification, the Contractor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Contractor to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the

certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.



Signature of Contractor's Authorized Official

Renett Goldberg / President
Name and Title of Contractor's Authorized Official

10/02/24
Date

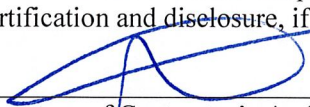
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor _____ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Kenneth Goldberg / President
Name and Title of Contractor's Authorized Official

10/02/24
Date