

**PUBLIC WORKS AGREEMENT  
FY 2017 & FY 2018 ANNUAL SLURRY SEAL  
PROGRAM  
PROJECT NO. ST1701 & ST1801**

between



City of Seal Beach  
211 - 8th Street  
Seal Beach, CA 90740

&

Mission Paving and Sealing, Inc.  
12747 Schabarum Avenue  
Irwindale, CA 91706  
(626) 452-8200  
(626) 452-9200 - FAX

THIS AGREEMENT is made as of July 23, 2018, by and between the City of Seal Beach, a California charter city ("City"), and Mission Paving and Sealing, Inc., a California Corporation and General Contractor ("Contractor").

## RECITALS

A. WHEREAS, the City Council has approved the plans and specifications for the FY 2017 & FY 2018 Annual Slurry Seal Program Project No. ST1701 & ST1801 (“Project”) with respect to design criteria;

B. WHEREAS, Contractor has submitted a bid to City for the Project dated July 5, 2018 in the amount of \$226,500 (“Accepted Proposal” hereinafter). The Accepted Proposal is attached hereto as Exhibit G and contains, among other things, provisions defining the Project scope; and

C. WHEREAS, Contractor’s California State Contractor’s license number is 624257; Class A; and Contractor’s DIR registration number is 1000002697.

NOW, THEREFORE, in consideration of performance by the parties of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

## AGREEMENT

### 1. Contractor’s Services.

1.1 Scope and Level of Services. For and in consideration of the mutual promises set forth herein, and subject to the terms and conditions set forth in this Agreement, Contractor shall perform and complete in good and workmanlike manner all work (“Work”) required by this Agreement and the documents listed in Subsection 1.2 for the Project.

1.2 Contract Documents. The “Contract Documents” that comprise the agreement between the City and the Contractor are the: Notice Inviting Bids, Instructions to Bidders, Accepted Proposal, Non-Collusion Declaration, Bid Schedule(s), List of Subcontractors, Contractor’s Industrial Safety Record, Contractor’s Qualification Statement, Bid Security Forms for Check or Bond, Specifications, General and Special Provisions and documents referenced therein, all addenda as prepared prior to the date of bid opening setting forth any modifications or interpretations of any of said documents, this Agreement, Exhibits attached to this Agreement, including but not limited to the Performance Bond (Exhibit A), Payment Bond (Exhibit B), Workers’ Compensation Insurance Certificate (Exhibit C), Insurance Endorsements (Exhibit D), Acknowledgment of Penal and Civil Penalties Concerning Contractor Licensing Laws (Exhibit E), Labor Law Requirements (Exhibit F), Accepted Proposal (Exhibit G) and any and all supplemental agreements executed amending or extending the Work contemplated and that may be required to complete the Work in a substantial and acceptable manner. These Contract Documents are hereby incorporated into this Agreement.

1.3 The Work shall be performed in accordance with the Plans, Specifications and other Contract Documents. Contractor shall furnish at its own

expense all labor, materials, equipment and services necessary therefor, except such labor, materials, equipment and services as are specified in the Contract Documents to be furnished by City.

1.4 In the event of any material discrepancy between the express provisions of this Agreement and the provisions of the other Contract Documents, the provisions of this Agreement shall prevail.

2. Effective Date. This Agreement is effective as of July 5, 2018 (the "Effective Date"), and shall remain in full force and effect until Contractor has rendered the services required by this Agreement.

3. Payment. For performing and completing the Work in accordance with the Contract Documents, City shall pay Contractor, in full compensation therefor, the amount of \$226,500, subject to any additions and deletions pursuant to the terms of the Contract Documents. Said sum shall constitute payment in full for all work performed hereunder, including, without limitation, all labor, materials, equipment, tools and services used or incorporated in the Work, supervision, administration, overhead, expenses and any and all other things required, furnished or incurred for completion of the Work as specified in the Contract Documents. City shall make payments to Contractor on account of the contract sum at the time, in the manner, and upon the conditions specified in the Contract Documents. The City Manager may authorize extra work to fund unforeseen conditions up to the amount approved at the time of award by the City Council. Payment for additional work in excess of this amount requires prior City Council authorization.

4. Contractor's Personnel.

4.1 All Work shall be performed by Contractor or under Contractor's direct supervision, and all personnel shall possess the qualifications, permits, and licenses required by state and local law and by the Notice Inviting Bids/Instructions to Bidders to perform such Services, including, without limitation, a City of Seal Beach business license as required by the Seal Beach Municipal Code.

4.2 Contractor shall be responsible for payment of all employees' wages and benefits, and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees.

4.3 Contractor shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of city officials, from any and all liabilities, damages, claims, costs and expenses of any nature to the extent arising from Contractor's alleged violations of personnel practices.

4.4 Contractor is, and shall at all times remain as to City, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act as an agent of City. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its officers, agents, or employees are in any manner employees of City. Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the work performed pursuant to this Agreement.

4.5 City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Section 4.

## 5. Indemnification.

5.1 Contractor's Duty. Contractor shall defend, indemnify, and hold the City, its elected officials, officers, employees, volunteers, agents, and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees") free and harmless from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, bid protests, stop notices, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a "Claim," collectively, "Claims"), in any manner arising out of or incident to the performance of the Agreement, including without limitation, the payment of all consequential damages and attorneys' fees and other related costs and expenses. Further, Contractor shall appoint competent defense counsel, at Contractor's own cost, expense and risk, to defend any and all such suits, actions or other legal proceedings of every kind arising out of or incident to the performance of the Agreement that may be brought or instituted against Indemnitees. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or the other Indemnitees in any such suit, action, or other legal proceeding arising out of or incident to the performance of the Agreement. Contractor shall reimburse the City and the other Indemnitees, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor or Indemnitees. This indemnity shall apply to all Claims and liability regardless of whether any insurance policies are applicable.

5.2 Bid Protests. In addition to its obligations pursuant to Section 5.1, Contractor shall reimburse the City for all attorneys' fees and costs incurred by City in connection with, arising out of or incident to any bid protest.

5.3 City's Sole Negligence. Nothing in Section 5.1 shall be construed to require Contractor to indemnify Indemnitees for that portion of any Claim to the extent arising from the sole negligence or willful misconduct of the Indemnitees.

5.4 Nonwaiver of Rights. Indemnitees do not, and shall not, waive any rights that they may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement.

5.5 Waiver of Right of Subrogation. Contractor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation against the Indemnitees, while acting within the scope of their duties, from all claims, losses, and liabilities arising out of or incident to activities or operations performed by or on behalf of the Indemnitor.

5.6 Survival. The provisions of this Section 5 shall survive the termination of the Agreement and are in addition to any other rights or remedies that Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against a Contractor shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision.

## 6. Insurance.

6.1 Liability Insurance. Contractor shall procure and maintain in full force and effect for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by Contractor, and its agents, representatives, employees and subcontractors. The policy limits set forth below do not act as a limitation upon the amount of indemnification to be provided by Contractor. Contractor shall complete and execute the following documents attached as Exhibits hereto and incorporated herein by this reference:

6.1.1 Exhibit D-1: Additional Insured Endorsement - Commercial General Liability.

6.1.2 Exhibit D-2: Additional Insured Endorsement - Automobile Liability.

6.1.3 Exhibit D-3: Additional Insured Endorsement.

6.2 Minimum Scope of Insurance. Unless otherwise approved by City, coverage shall be at least as broad as:

6.2.1 Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

6.2.2 Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

6.2.3 Insurance Services Office form number CG 20 10 11 85 (Ed. 11/85) covering Additional Insured—Owners, Lessees or Contactors (Form B).

6.2.4 Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

6.2.5 Professional Liability insurance. Unless the City waives in the requirement for professional liability insurance, Contractor shall provide to City the standard form issued by the carrier.

6.3 Minimum Limits of Insurance. Contractor shall maintain limits no less than:

6.3.1 General Liability: \$2,000,000 per occurrence and in the aggregate for bodily injury, personal injury and property damage. Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this Agreement or the general limit shall be twice the required occurrence limit.

6.3.2 Automobile Liability: \$2,000,000 per occurrence for bodily injury and property damage.

6.3.3 Employer's Liability: \$1,000,000 per occurrence and in the aggregate for bodily injury or disease and Workers' Compensation Insurance in the amount required by law.

6.4 Deductibles and Self-Insured Retentions. Contractor shall inform City of any deductibles or self-insured retentions except with respect to any professional liability insurance.

6.5 Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

6.5.1 City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials, are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed

operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no limitations on the scope of protection afforded to City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City officials which are not also limitations applicable to the named insured.

6.5.2 For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials. Any insurance or self-insurance maintained by City, their officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City officials shall be excess of Contractor's insurance and shall not contribute with it.

6.5.3 Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.5.4 Each insurance policy required by this Section 6 shall be endorsed to state that coverage shall not be canceled or materially modified except after 30 days prior written notice by first class mail has been given to City.

6.5.5 Each insurance policy, except for any professional liability policy, required by this Section 6 shall expressly waive the insurer's right of subrogation against City and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of city or agency officials.

6.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VIII unless waived in writing by City's Risk Manager.

6.7 Verification of Coverage. All insurance coverages shall be confirmed by execution of endorsements on forms approved by the City. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before services commence. As an alternative to City forms, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

7. Liquidated Damages. Should the Contractor fail to complete the project, or any part thereof, in the time agreed upon in the Contract, the Contractor shall reimburse the City for the additional expense and damage for each calendar day that the Contract remains uncompleted after the Contract completion date. It is agreed that the amount of such additional expense and

damage incurred by reason of failure to complete the Contract is the per diem rate of **\$1,200.00** per calendar day. Such amount is hereby agreed upon as liquidated damages for the loss to the City resulting from the failure of the Contractor to complete the project within the allotted time and to the value of the operation of the works dependent thereon. It is expressly understood and agreed that this amount is a reasonable amount and is established in lieu of damages that are incapable of calculation at the inception hereof; and this amount is not to be considered in the nature of a penalty. The City shall have the right to deduct such damages from any amount due, or that may become due to the Contractor, or the amount of such damages shall be due and collectible from the Contractor or the Contractor's Surety. Progress payments made after the scheduled completion date shall not constitute a waiver of liquidated damages.

8. Suspension. City may, in writing, order Contractor to suspend all or any part of the Contractor's Services for the convenience of City or for work stoppages beyond the control of City or Contractor. A suspension of the Services does not void this Agreement.

9. Notices. Any notices, bills, invoices, or reports authorized or required by this Agreement shall be in writing and shall be deemed received on (a) the day of delivery if delivered by hand or overnight courier service during Contractor's and City's regular business hours or by facsimile before or during Contractor's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore set forth in the Agreement, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this Section. All notices shall be addressed as follows:

If to City:                      City Clerk  
    City of Seal Beach  
    211-8th Street  
    Seal Beach, California 90740  
    Telephone: (562) 431-2527  
    Fax: (562) 493-9857

With a copy to:  
Public Works Director  
City of Seal Beach  
211-8th Street  
Seal Beach, California 90740

If to Contractor:              Mission Paving and Slurry, Inc.  
    12747 Schabarum Avenue  
    Irwindale, California 91706  
    Telephone: (626) 452-8200  
    Fax: (626) 452-9200  
    Attn: Mike Miller

10. Non-Assignability; Subcontracting. Contractor shall not assign, transfer, or subcontract any interest in this Agreement or the performance of any of Contractor's obligations hereunder. Any attempt by Contractor to so assign, transfer, or subcontract any rights, duties, or obligations arising hereunder shall be null, void and of no effect.

11. Claim Dispute Resolution.

11.1 In the event of any dispute or controversy with the City over any matter whatsoever, the Contractor shall not cause any delay or cessation in or of Work, but shall proceed with the performance of the Work in dispute. Contractor shall retain any and all rights provided that pertain to the resolution of disputes and protests between the parties. The Disputed Work will be characterized as an "unresolved dispute" and payment, if any, shall be as later determined by mutual agreement or a court of law. Contractor shall keep accurate, detailed records of all Disputed Work, claims and other disputed matters.

11.2 All claims arising out of or related to the Contract Documents or this Project, and the consideration and payment of such claims, are subject to the Government Claims Act (Government Code Section 810 et seq.) with regard to filing claims. All such claims are also subject to Public Contract Code Section 9204 and Public Contract Code Section 20104 et seq. (Article 1.5), where applicable. This Contract hereby incorporates those provisions as though fully set forth herein. Thus, Contractor or any Subcontractor must file a claim in accordance with the Government Claims Act as a prerequisite to filing a construction claim in compliance with Section 9204 and Article 1.5 (if applicable), and must then adhere to Article 1.5 and Section 9204, as applicable, pursuant to the definition of "claim" as individually defined therein.

12. Compliance with Laws. Contractor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations in force at the time Contractor performs the Services.

13. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Contractor constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Contractor, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

14. Attorneys' Fees. In the event that either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding

shall be entitled to recover its costs of suit, including all attorneys' fees incurred in connection therewith.

15. Construction. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted the Agreement or who drafted that portion of the Agreement.

16. Entire Agreement. This Agreement, including any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Contractor and City. This Agreement supersedes all prior oral or written negotiations, representations, or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

17. Severability. The invalidity in whole or in part of any provisions of this Agreement shall not void or affect the validity of the other provisions of this Agreement.

IN WITNESS WHEREOF, the parties, through their respective authorized representatives, have executed this Agreement as of the date first written above.

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CITY OF SEAL BEACH

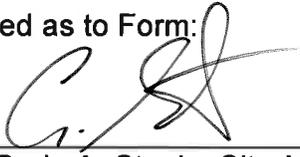
CONTRACTOR: Mission Paving and Sealing, Inc., a California corporation

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

By:   
Name: MIKE MILLER  
Title: VICE PRESIDENT

Attest:  
By: \_\_\_\_\_  
Robin Roberts, City Clerk

By:   
Name: DOUG SWEENEY  
Title: PRESIDENT

Approved as to Form:  
By:   
Craig A. Steele, City Attorney

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