

CONTRACT

CITY OF MANHATTAN BEACH CONTRACT FOR SLURRY SEAL AND ARAM PROJECT – AREAS 4, 5, & 6

THIS CONTRACT ("Contract") is made and entered this 5th day of February, 2019 ("Effective Date"), by and between the CITY OF MANHATTAN BEACH, a California municipal corporation ("City") and American Asphalt South, Inc., a California Corporation ("Contractor"). The Contractor's California State Contractor's license number is 784969 A.

In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Contract Documents. The Contract Documents consist of this Contract, the Notice Inviting Bids, Instructions to Bidders, Bid (including documentation accompanying the Bid and any post-Bid documentation submitted before the Notice of Award), the Bonds, permits from regulatory agencies with jurisdiction, General Provisions, Special Provisions, Plans, Standard Plans, Standard Specifications, Reference Specifications, Addenda, Change Orders, and Supplemental Agreements. The Contract Documents are attached hereto and incorporated herein by reference.

2. Scope of Services. The Contractor shall perform and provide all materials, tools, equipment, labor, and services necessary to complete the Work in a good and workmanlike manner for the project identified as Slurry Seal And ARAM Project – Areas 4, 5, & 6 ("Project"), as described in the Contract Documents.

3. Compensation.

3.1 Contract Price and Basis for Payment. In consideration for the Contractor's full, complete, and timely performance of the Work required by the Contract Documents, the City shall pay the Contractor for the actual quantity of Work required under the Bid Items awarded by the City performed in accordance with the lump sum prices and unit prices for Bid Items, set forth in the Bidder's Proposal submitted with the Bid. The sum of the unit prices and lump sum prices for the Bid Items, awarded by the City is \$ 1,069,543.80 ("Contract Price"). It is understood and agreed that the quantities set forth in the Bidder's Proposal for which unit prices are fixed are estimates only and that the City will pay and the Contractor will accept, as full payment for these items of work, the unit prices set forth in the Bidder's Proposal multiplied by the actual number of units performed, constructed, or completed as directed by the Engineer.

3.2 Payment Procedures. Based upon applications for payment submitted by the Contractor to the City, the City shall make payments to the Contractor in accordance with Section 9 of the Standard Specifications, as modified by Section 9 of the General Provisions.

4. Contract Time.

4.1 Initial Notice to Proceed. The City shall issue the "Notice to Proceed to Fulfill Preconstruction Requirements and Order Materials." The date specified in the Notice to Proceed to Fulfill Preconstruction Requirements and Order Materials constitutes the date of commencement of the Contract Time of 60 **Working Days**. The Contract Time includes the time necessary to fulfill preconstruction requirements, place the order for materials, and to complete construction of the Project (except as adjusted by subsequent Change Orders).

The Notice to Proceed to Fulfill Preconstruction Requirements and Order Materials shall further specify that the Contractor must complete the preconstruction requirements and order materials within 10 **Working Days** after the date of commencement of the Contract Time; this duration is part of the Contract Time.

Preconstruction requirements include, but are not limited to, the following:

- Submitting and obtaining approval of Traffic Control Plans
- Submitting and obtaining approval of the Stormwater Pollution Prevention Plan (SWPPP)/Water Pollution Control Plan (WPCP)
- Submitting and obtaining approval of critical required submittals
- Installation of the approved Project Identification Signs
- Obtaining an approved no fee Encroachment Permit
- Obtaining a Temporary Use Permit for a construction yard
- Notifying all agencies, utilities, residents, etc., as outlined in the Contract Documents

4.2 Notice to Proceed with Construction. After all preconstruction requirements are met and materials have been ordered in accordance with the Notice to Proceed to Fulfill Preconstruction Requirements and Order Materials, the City shall issue the "Notice to Proceed with Construction," at which time the Contractor shall diligently prosecute the Work, including corrective items of Work, day to day thereafter, within the remaining Contract Time.

5. Liquidated Damages for Delay and Control of Work.

5.1 Liquidated Damages. The Contractor and the City have agreed to liquidate damages pursuant to Section 6-9 of the General Provisions.

6. Early Completion.

6.1 City Not Liable for Contractor Failure to Achieve Early Completion. While the Contractor may schedule completion of all of the Work, or portions thereof, earlier than the Contract Time, the City is exempt from liability for and the Contractor will not be entitled to an adjustment of the Contract Sum or to any additional costs, damages, including, but not limited to, claims for extended general conditions costs, home office overhead, jobsite overhead, and management or administrative costs, or compensation whatsoever, for use of float time or for the Contractor's inability to complete the Work earlier than the Contract Time for any reason whatsoever.

7. Work after Stop Work Notice. Any work completed by the Contractor after the issuance of a Stop Work Notice by the City shall be rejected and/or removed and replaced as specified in the applicable Section of the Special Provisions.

8. Antitrust Claims. In entering into this Contract, the Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. § 15) or under the Cartwright Act (Business and Professions

Code Section 16700 *et seq.*) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor without further acknowledgment by the parties.

9. Prevailing Wages. The City and the Contractor acknowledge that the Project is a public work to which prevailing wages apply.

10. Workers' Compensation. Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of Labor Code Section 1861, by signing this Contract, the Contractor certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this Contract."

11. Titles. The titles used in this Contract are for convenience only and shall in no way define, limit or describe the scope or intent of this Contract or any part of it.

12. Authority. Any person executing this Contract on behalf of the Contractor warrants and represents that he or she has the authority to execute this Contract on behalf of the Contractor and has the authority to bind the Contractor to the performance of its obligations hereunder.

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

14. Counterparts. This Contract may be executed in counterpart originals, duplicate originals, or both, each of which is deemed to be an original for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

CITY OF MANHATTAN BEACH

By: _____
City Manager

ATTEST:

APPROVED AS TO FORM:

By: _____
City Clerk

By: _____
City Attorney

Dated: _____

American Asphalt South, Inc.
("CONTRACTOR")

By: [Signature]
NAME Jeff Petty, Vice President TITLE

By: [Signature]
NAME Lyle Stone, Secretary TITLE

PROOF OF AUTHORITY TO BIND
CONTRACTING PARTY REQUIRED

**MINUTES OF THE 2019 ANNUAL MEETING
OF THE BOARD OF DIRECTORS OF
AMERICAN ASPHALT SOUTH, INC.**

The 2019 annual meeting of the Board of Directors of American Asphalt South, Inc., a California corporation (hereinafter referred to as the "Corporation"), was held in Fontana, California, on January 4, 2019, commencing immediately after the 2018 annual meeting of the shareholders of the Corporation. Said 2019 annual meeting of the Board of Directors was held for the purpose of electing officers of the Corporation, considering reports of the affairs of the Corporation, and transacting other business within the powers of the Board of Directors.

1. CALL TO ORDER-CHAIRMAN AND SECRETARY

The meeting was called to order by Allan A. Henderson, Chairman of the Board of Directors of the Corporation. Lyle Stone, the Corporate Secretary, acted as secretary of the meeting and recorded the minutes. Mr. Henderson then noted that at the 2018 annual meeting of the shareholders of the Corporation, which annual meeting had just concluded, that Allan A. Henderson, Kimberly L. Henderson and Jeffery R. Petty had been re-elected as members of the Corporation's Board of Directors, all to serve as such until the 2018 annual meeting of the shareholders of this Corporation.

2. VALIDITY OF MEETING

Notice of the date of this meeting is stated in the By-laws of this Corporation, specifically Section 3.6. All Directors present agreed that this is a valid meeting of the Board of Directors.

3. DIRECTORS PRESENT

The following Directors were present: Allan A. Henderson, Kimberly L. Henderson and Jeffrey R. Petty. The following Director(s) were absent: None.

4. ELECTION OF CHAIRMAN

Allan A. Henderson was then unanimously re-elected to serve as the Chairman of the Board of Directors until the 2020 annual meeting.

5. APPROVAL OF PRIOR MINUTES

The Chairman then presented to the meeting the minutes of the January 6, 2018 annual meeting of the Board of Directors of this Corporation, which are in the form of a written action. Said minutes were unanimously approved and all actions taken therein unanimously ratified.

6. NOMINATION AND ELECTION OF OFFICERS

The Chairman then called for nominations for the officers of the Corporation to serve for one year until the next annual Board of Directors meeting and until their successors are elected and qualified. The following persons were nominated for the offices designated beside his or her name:

Allan A. Henderson	- President
Jeff Petty	- Vice President
Lyle Stone	- Secretary
Allan A. Henderson	- Chief Executive Officer

The Chairman called for further nominations but none was made. The above persons were unanimously elected to the offices to which he had been nominated. Furthermore, all elected officers are duly authorized to sign documents on behalf of the corporation.

6. ADJOURNMENT

There being no further business, the meeting was adjourned.



Lyle Stone
Corporate Secretary