

**CITY OF COSTA MESA
PUBLIC WORKS AGREEMENT FOR
CITY PROJECT NO. 19-12**

THIS PUBLIC WORKS AGREEMENT ("Agreement"), dated August 6, 2019 ("Effective Date"), is made by the CITY OF COSTA MESA, a political subdivision of the State of California ("CITY"), and AMERICAN ASPHALT SOUTH, INC., a California corporation ("CONTRACTOR").

CITY desires to construct the public work and improvements described below under Scope of Work, Paragraph 1 ("Work").

ACCORDINGLY, the parties hereto agree as follows:

1. SCOPE OF WORK.

The Work consists of slurry seal, traffic striping, traffic control, and mobilization in Zones 2 and 5 of the CITY, between Victoria Street and 19th Street, Placentia Avenue and Harbor Boulevard, Wilson Street and 19th Street, and Harbor Boulevard and Newport Boulevard, as more fully described in the specifications; and all other work necessary to complete the work in accordance with the specifications and Contract Documents.

The Work is further described in the "Contract Documents" referred to below.

The Project is known as Slurry Seal Project (Zones 2 and 5), City Project No. 19-12 ("Project").

2. CONTRACT DOCUMENTS.

The complete Agreement consists of the following documents relating to the Project:

- a. This Agreement;
- b. CONTRACTOR's bid;
- c. Notice inviting bids;

- d. Complete plans, profiles, detailed drawings and specifications, including general provisions and special provisions;
- e. Certificates of Insurance;
- f. Faithful Performance Bond and Labor and Material Bond, including agent's Power of Attorney for each bond;
- g. Supplements, attachments, and exhibits attached to the above items;
- h. Provisions of the most current edition of The Greenbook: Standard Specifications for Public Works Construction ("The Greenbook"); and
- i. All addenda setting forth any modifications or interpretations of the above documents.

The documents attached hereto are incorporated herein by this reference. The Greenbook is incorporated by reference as if fully set forth herein. The documents comprising the complete Agreement will be referred to as the "Contract Documents."

All of the Contract Documents are intended to complement one another, so that any Work called for in one and not mentioned in another is to be performed as if mentioned in all documents.

In the event of an inconsistency in the Contract Documents, the terms of this Agreement shall prevail over all other Contract Documents. The order of precedence between the remaining Contract Documents shall be as set forth in The Greenbook.

The Contract Documents constitute the entire agreement between the parties and supersede any and all other writings and oral negotiations.

3. CITY'S REPRESENTATIVE.

The CITY's Representative is Irina Gurovich, referred to herein as the Project Manager ("Project Manager").

4. CONTRACTOR'S PROJECT MANAGER; PERSONNEL.

(a) Project Manager. CONTRACTOR's Project Manager must be approved by City. Such approval shall be at CITY's sole discretion.

(b) Personnel. CITY has the right to review and approve any personnel who are assigned to perform work under this Agreement. CONTRACTOR shall remove personnel from performing work under this Agreement if requested to do so by CITY.

This Paragraph 4 is a material provision of the Agreement.

5. SCHEDULE.

All Work shall be performed in accordance with the schedule approved on behalf of CITY by the Project Manager, and in accordance with the time of performance set forth in Paragraph 8 (Time of Performance).

6. EQUIPMENT - PERFORMANCE OF WORK.

CONTRACTOR shall furnish all tools, equipment, apparatus, facilities, labor and materials necessary to perform and complete the Work of construction in a good and workmanlike manner in strict conformity with the Contract Documents.

The equipment, apparatus, facilities, labor and material shall be furnished and such Work performed and completed as required in the plans and specifications to the satisfaction of the Project Manager or his or her designee, and subject to his or her approval.

7. CONTRACT PRICE.

Four Hundred Twenty-Five Thousand Seven Hundred Forty-One Dollars (\$425,741.00).

8. TIME OF PERFORMANCE.

CONTRACTOR shall commence Work by the date specified in CITY's Notice to Proceed, unless a later date is agreed upon in writing by the parties. The Work shall be

completed within forty-five (45) working days from the first day of commencement of the Work.

9. TERMINATION.

(a) Termination for Convenience.

CITY may terminate this Agreement at any time, with or without cause, by providing thirty (30) days' written notice to CONTRACTOR.

(b) Termination for Breach of Contract.

(i) If CONTRACTOR refuses or fails to prosecute the Work or any severable part of it with such diligence as will ensure its timely completion, or if CONTRACTOR fails to complete the Work on time, or if CONTRACTOR, or any subcontractor, violates any of the provisions of the Contract Documents, the Project Manager may give written notice to CONTRACTOR and CONTRACTOR's sureties of the CITY's intention to terminate this Agreement; and, unless within five (5) days after the serving of that notice, such conduct shall cease and arrangements for the correction thereof be made to the satisfaction of the CITY, this Agreement may be terminated at the option of CITY effective upon CONTRACTOR's receipt of a second notice sent by the CITY indicating that the CITY has exercised its option to terminate.

(ii) If CONTRACTOR is adjudged bankrupt or files for any relief under the Federal Bankruptcy Code or State insolvency laws, this Agreement shall automatically terminate without any further action or notice by CITY.

(iii) If CONTRACTOR is in breach of any material provision of this Agreement, CITY may immediately terminate this Agreement by providing written notice to CONTRACTOR of same.

10. LIQUIDATED DAMAGES.

In the event the Work is not completed, for any reason, within the time required

including any approved extensions of time, and to the satisfaction of the Project Manager, CITY may, in addition to any other remedies, equitable and legal, including remedies authorized by Paragraph 9 (Termination) of this Agreement, charge to CONTRACTOR or its sureties, or deduct from payments or credits due CONTRACTOR, a sum equal to \$250.00 as liquidated damages for each day beyond the date provided for the completion of such Work.

The parties hereto agree that the amount set forth above, as liquidated damages constitutes a fair and reasonable estimate of the costs the CITY would suffer for each day that the CONTRACTOR fails to meet the performance schedule. The parties hereby agree and acknowledge that the delays in the performance schedule will cause CITY to incur costs and expenses not contemplated by this Agreement.

11. PERFORMANCE BY SURETIES.

In the event CONTRACTOR fails or refuses to perform the Work, CITY may provide CONTRACTOR with a notice of intent to terminate as provided in Paragraph 9 (Termination), of this Agreement. The CITY shall immediately give written notice of such intent to terminate to CONTRACTOR and CONTRACTOR's surety or sureties, and the sureties shall have the right to take over and perform this Agreement; provided, however, that the sureties must, within five (5) days after CITY's giving notice of termination, (a) give the CITY written notice of their intention to take over the performance of this Agreement; (b) provide adequate assurances, to the satisfaction of the CITY that the Work shall be performed diligently and in a timely manner; and (c) must commence performance thereof within five (5) days after providing notice to the CITY of their intention to take over the Work. Upon the failure of the sureties to comply with the provisions set forth above, CITY may take over the Work and complete it, at the expense of CONTRACTOR, and the CONTRACTOR and the sureties shall be liable to CITY for any

excess costs or damages including those referred to in Paragraph 10 (Liquidated Damages), incurred by CITY. In such event, CITY may, without liability for so doing, take possession of such materials, equipment, tools, appliances, Contract Documents and other property belonging to CONTRACTOR as may be on the site of the Work and reasonably necessary therefor and may use them to complete the Work.

12. DISPUTES PERTAINING TO PAYMENT FOR WORK.

Should any dispute arise respecting whether any delay is excusable, or its duration, or the value of the Work done, or of any Work omitted, or of any extra Work which CONTRACTOR may be required to do, or respecting any payment to CONTRACTOR during the performance of this Agreement, such dispute shall be decided by the Project Manager, and his or her decisions shall be final and binding upon CONTRACTOR and its sureties.

13. SUPERINTENDENCE BY CONTRACTOR.

At all times during performance of the Work, CONTRACTOR shall give personal superintendence or have a competent foreman or superintendent on the worksite, with authority to act for CONTRACTOR.

14. INSPECTION BY CITY.

CONTRACTOR shall at all times maintain proper facilities and provide safe access for inspection by CITY to all parts of the Work and to all shops on or off-site where the Work or portions of the Work, are in preparation. CITY shall have the right of access to the premises for inspection at all times. However, CITY shall, at all times, comply with CONTRACTOR's safety requirements on the job site.

15. CARE OF THE WORK AND OFF-SITE AUTHORIZATION.

CONTRACTOR warrants that it has examined the site of the Work and is familiar with its topography and condition, location of property lines, easements, building lines

and other physical factors and limitations affecting the performance of this Agreement. CONTRACTOR, at CONTRACTOR's sole cost and expense, shall obtain any permission, and all approvals, licenses, or easements necessary for any operations conducted off the premises owned or controlled by CITY. CONTRACTOR shall be responsible for the proper care and protection of all materials delivered to the site or stored off-site and for the Work performed until completion and final inspection and acceptance by CITY. The risk, damage or destruction of materials delivered to the site or to Work performed shall be borne by CONTRACTOR.

16. PAYMENTS TO CONTRACTOR.

On or before the last Monday of each and every month during the performance of the Work, CONTRACTOR shall meet with the Project Manager or his or her designee to determine the quantity of pay items incorporated into the improvement during that month. A "Progress Payment Order" will then be jointly prepared, approved, and signed by the Project Manager and the CONTRACTOR setting forth the amount to be paid and providing for a five percent (5%) retention. Upon approval of the progress payment order by the Project Manager, or his or her designee, it shall be submitted to CITY's Finance Department and processed for payment by obtaining approval from the City Council to issue a warrant.

Within three (3) days following City Council's approval to issue a warrant, CITY shall mail to CONTRACTOR a warrant for the amount specified in the progress payment order as the amount to be paid. The retained five percent (5%) shall be paid to CONTRACTOR thirty-five (35) days after the recording of the Notice of Completion of the Work by the COUNTY and after CONTRACTOR shall have furnished releases of all claims against CITY by persons who furnished labor or materials for the Work, if required by CITY.

Upon the request of CONTRACTOR and at its expense, securities equivalent to the amount withheld pursuant to the foregoing provisions may be presented to CITY for substitution for the retained funds. If CITY approves the form and amount of the offered securities it will release the retained funds and will hold the securities in lieu thereof. CONTRACTOR shall be entitled to any interest earned on the securities.

In the event that claims for property damage or bodily injury are presented to CITY arising out of CONTRACTOR's or any subcontractor's Work under this Agreement; CITY shall give notice thereof to CONTRACTOR, and CONTRACTOR shall have thirty-five (35) days from the mailing of any such notice to evaluate the claim and to settle it by whole or partial payment, or to reject it, and to give notice of settlement or rejection to CITY. If CITY does not receive notice within the above-mentioned 35-day period that the claim has been settled, and if the Project Manager, after consultation with the City Attorney, determines that the claim is meritorious, CITY may pay the claim or a portion of it in exchange for an appropriate release from the claimant, and may deduct the amount of the payment from the retained funds that would otherwise be paid to CONTRACTOR upon completion of the Work; provided, however, that the maximum amount paid for any one claim pursuant to this provision shall be One Thousand Dollars (\$1,000.00), and the maximum amount for all such claims in the aggregate paid pursuant to this provision shall be Five Thousand Dollars (\$5,000.00).

17. PROMPT PAYMENT OF SUBCONTRACTORS.

The CONTRACTOR agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the CONTRACTOR receives from CITY.

The CONTRACTOR agrees further to release retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily

completed.

Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the CITY.

18. CONTRACT SECURITY AND GUARANTEE.

Unless previously provided by CONTRACTOR to CITY, CONTRACTOR shall furnish, concurrently with the execution of this Agreement, the following: (1) a surety bond in an amount equal to one hundred percent (100%) of the contract price as security for the faithful performance of this Agreement, and (2) a separate surety bond in an amount equal to at least one hundred percent (100%) of the contract price as security for the payment of all persons furnishing labor or materials in connection with the Work under this Agreement. Sureties for each of the bonds and the forms thereof shall be satisfactory to CITY. In addition, such sureties must be authorized to issue bonds in California; sureties must be listed on the latest revision to the U.S. Department of the Treasury Circular 570; and must be shown to have sufficient bonding capacity to provide the bonds required by the Contract Documents.

CONTRACTOR shall provide a certified copy of the certificate of authority of the surety issued by the Insurance Commissioner; a certificate from the clerk of the county in which the court or officer is located that the certificate of authority of the surety has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted; and copies of the surety's most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

CONTRACTOR guarantees that all materials used in the Work and all labor performed shall be in conformity with the Contract Documents including, but not limited

to, the standards and specifications set forth in the most current edition of The Greenbook. CONTRACTOR shall, at its own expense, make any and all repairs and replacements that shall become necessary as the result of any failure of the Work to conform to the aforementioned Contract Documents, and standard specifications; provided, however, that CONTRACTOR shall be obligated under this provision only to the extent of those failures or defects of which he is given notice within a period of twelve (12) months from the date that the Notice of Completion is recorded.

The rights and remedies available to CITY pursuant to this provision shall be cumulative with all rights and remedies available to CITY pursuant to statutory and common law, which rights and remedies are hereby expressly reserved, and neither the foregoing guarantee by CONTRACTOR nor its furnishing of the Bonds, nor acceptance thereof by CITY, shall constitute a waiver of any rights or remedies available to CITY against CONTRACTOR.

19. INDEMNIFICATION.

CONTRACTOR agrees to protect, defend, indemnify and hold harmless CITY and its elected and appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorney fees, for injury to or death of any person, and for injury or damage to any property, including consequential damages of any nature resulting therefrom, arising out of or in any way connected with the performance of this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the CONTRACTOR, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the CONTRACTOR, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability

against the CITY, its elected officials, officers, agents and employees based upon the work performed by the CONTRACTOR, its employees, and/or authorized subcontractors under this Agreement, whether or not the CONTRACTOR, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the CONTRACTOR shall not be liable for the defense or indemnification of the CITY for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the CITY. This provision shall supersede and replace all other indemnity provisions contained either in the CITY's specifications or CONTRACTOR's proposal, which shall be of no force and effect.

CONTRACTOR shall comply with all of the provisions of the Workers' Compensation insurance laws and Safety in Employment laws of the State of California, including the applicable provisions of Divisions 4 and 5 of the California Labor Code and all amendments thereto and regulations promulgated pursuant thereto, and all similar State, Federal or local laws applicable; and CONTRACTOR shall indemnify and hold harmless CITY from and against all claims, liabilities, expenses, damages, suits, actions, proceedings and judgments, of every nature and description, including attorney fees, that may be presented, brought or recovered against CITY for or on account of any liability under or failure to comply with any of said laws which may be incurred by reason of any Work performed under this Agreement by CONTRACTOR or any subcontractor or others performing on behalf of CONTRACTOR.

CITY does not, and shall not, waive any rights against CONTRACTOR which it may have by reason of the above hold harmless agreements, because of the acceptance by CITY or the deposit with CITY by CONTRACTOR of any or all of the insurance policies described in Paragraph 20 (Insurance) of this Agreement.

The hold harmless agreements by CONTRACTOR shall apply to all liabilities,

expenses, claims, and damages of every kind (including but not limited to attorney fees) incurred or alleged to have been incurred, by reason of the operations of CONTRACTOR or any subcontractor or others performing on behalf of CONTRACTOR, whether or not such insurance policies are applicable. CONTRACTOR shall require any and all tiers of subcontractors to afford the same degree of indemnification to the CITY OF COSTA MESA and its elected and appointed boards, officers, agents, and employees that is required of CONTRACTOR and shall incorporate identical indemnity provisions in all contracts between CONTRACTOR and all tiers of its subcontractors.

In the event that CONTRACTOR and CITY are sued by a third party for damages caused or allegedly caused by negligent or other wrongful conduct of CONTRACTOR, or by a dangerous condition of CITY's property created by CONTRACTOR or existing while the property was under the control of CONTRACTOR, CONTRACTOR shall not be relieved of its indemnity obligation to CITY by any settlement with any such third party unless that settlement includes a full release and dismissal of all claims by the third party against the CITY.

20. INSURANCE.

CONTRACTOR shall not commence Work under this Agreement until it has obtained all insurance required under this section and CITY has approved the insurance as to form, amount, and carrier, nor shall CONTRACTOR allow any subcontractor to commence any Work until all similar insurance required of the subcontractor has been obtained and approved.

Neither the failure of CONTRACTOR to supply specified insurance policies and coverage, nor the failure of CITY to approve same shall alter or invalidate the provisions of Paragraph 19 (Indemnification) of this Agreement.

(a) Workers' Compensation Insurance.

CONTRACTOR shall obtain and maintain during the life of this Agreement workers' compensation insurance and, if any Work is sublet, CONTRACTOR shall require all tiers of subcontractors to obtain workers' compensation insurance.

All workers' compensation insurance policies shall provide that the insurance may not be canceled without thirty (30) days' advance written notice of such cancellation to CITY.

CONTRACTOR agrees to waive, and obtain endorsements from its workers' compensation insurer waiving, subrogation rights under its workers' compensation insurance policy against the CITY and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

(b) Liability Insurance Coverage.

CONTRACTOR shall obtain and maintain during the life of this Agreement the following insurance coverage:

(i) Commercial General Liability, including coverage for premises-operations, products/completed operations hazard, blanket contractual, broad form property damage, and independent contractors. In addition, CONTRACTOR shall obtain and maintain during the life of this Agreement each of the following insurance coverage which are not stricken out and initialed by the Project Manager: Explosion and collapse hazard, underground hazard, personal injury, and automobile liability, including owned, hired, and non-owned vehicles. All insurance coverage shall have limits of not less than \$1,000,000.00 combined single limits, per occurrence and aggregate.

(ii) Below are approved endorsements which satisfy the basic insurance requirements contained in contracts entered into by City of Costa Mesa. These have been approved by the City Attorney's Office. The terms of any specific contract with

the City are controlling. Prior to the commencement of any work, the City requires that the Engineer receive Certificates of Insurance in DUPLICATE for liability coverage of at least \$1,000,000.00 combined single limits, per occurrence and in the aggregate. Endorsements to the policies providing the above insurance shall be obtained by CONTRACTOR, adding the following three provisions:

(1) Additional Insured:

“The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to the subject project and agreement.”

(2) Notice:

“Said policy shall not terminate, nor shall it be canceled nor the coverage reduced, until thirty (30) days after written notice is given to CITY.”

(3) Other Insurance:

“Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy.”

If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by CITY. No policy of insurance issued as to which the CITY is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

21. PROOF OF INSURANCE.

Prior to commencement of the Work, CONTRACTOR shall furnish CITY, through the Project Manager, proof of compliance with the above insurance requirements in a form satisfactory to the Risk Management.

22. LEGAL WORK DAY - PENALTIES FOR VIOLATION.

Eight (8) hours of labor shall constitute a legal day's work during any one (1) calendar day. CONTRACTOR shall forfeit to CITY the sum of Twenty-Five Dollars (\$25.00) for each workman employed in the execution of this Agreement by CONTRACTOR or by any subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one calendar day and 40 hours in any one calendar week in violation of California Labor Code Sections 1810 through 1815, inclusive.

23. PREVAILING WAGE SCALE.

CONTRACTOR shall comply in all respects with the Davis-Bacon Act (40 U.S.C. section 276a) and with California Labor Code sections 1770 et seq., including the keeping of all records required by the provisions of Labor Code section 1776.

CONTRACTOR shall furnish each week to CITY's Project Administration Division a statement with respect to the wages of each of its employees during the preceding weekly payroll period.

24. COMPLIANCE WITH ALL LAWS.

CONTRACTOR shall, at its own cost and expense, comply with all applicable local, state, and federal laws, regulations, and requirements in the performance of this Agreement, including but not limited to laws regarding health and safety, labor and employment, and wage and hours.

25. DRUG-FREE WORKPLACE POLICY.

CONTRACTOR, upon notification of the award of this Agreement, shall establish a Drug-Free Awareness Program to inform employees of the dangers of drug abuse in the workplace, the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace, and the employee assistance programs available

to employees. Each employee engaged in the performance of a CITY contract must be notified of this Drug-Free Awareness Program, and must abide by its terms. CONTRACTOR shall conform to all the requirements of CITY's Policy No. 100-5, attached hereto as Attachment 1. Failure to establish a program, notify employees, or inform the CITY of a drug-related workplace conviction will constitute a material breach of contract and cause for immediate termination of the contract by the CITY.

26. NON-DISCRIMINATION.

In performing this Agreement, CONTRACTOR will not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status or sex, or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Section 1735 of the California Labor Code.

27. CONTRACT ASSURANCE.

The CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONTRACTOR shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as recipient deems appropriate.

The CONTRACTOR will require that the above provision is included in all subcontracts.

28. PROVISIONS CUMULATIVE.

The provisions of this Agreement are cumulative and in addition to, and not in limitation of, any other rights or remedies available to CITY.

29. NOTICES.

It shall be the duty and responsibility of CONTRACTOR to notify all tiers of subcontractors and material men of the following special notice provision; namely, all preliminary 20-day notices or stop notices shall be directed only to the City Clerk and to no other department, and shall be either personally delivered or sent by certified mail, postage prepaid.

All other notices shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices required to be given to CITY pursuant to this Agreement shall be addressed as follows:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Irina Gurovich

Notices required to be given to CONTRACTOR shall be addressed as follows:

American Asphalt South, Inc.
14436 Santa Ana Ave.
Fontana, CA 92337
Attn: Lyle Stone, Secretary

Notices required to be given to CONTRACTOR's sureties shall be addressed as follows:

Guarantee Company of North America USA
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
Attn: Vivian Imperial

30. INDEPENDENT CONTRACTOR.

The parties hereto acknowledge and agree that the relationship between CITY and CONTRACTOR is one of principal and independent contractor and no other. All personnel to be utilized by CONTRACTOR in the performance of this Agreement shall be employees of CONTRACTOR and not employees of the CITY. CONTRACTOR shall pay

all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes. Nothing contained in this Agreement shall create or be construed as creating a partnership, joint venture, employment relations, or any other relationship except as set forth between the parties. The parties specifically acknowledge and agree that CONTRACTOR is not a partner with CITY, whether general or limited, and no activities of CITY or CONTRACTOR or statements made by CITY or CONTRACTOR shall be interpreted by any of the parties hereto as establishing any type of business relationship other than an independent contractor relationship.

31. PERS ELIGIBILITY INDEMNIFICATION.

In the event that CONTRACTOR or any employee, agent, or subcontractor of CONTRACTOR providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees' Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the CITY, CONTRACTOR shall indemnify, defend, and hold harmless CITY for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONTRACTOR or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of CITY.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONTRACTOR and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by CITY, including but not limited to eligibility to enroll in PERS as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contribution and/or employee contributions for PERS benefits.

32. VALIDITY.

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

33. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal action relating to or arising out of this Agreement shall be subject to the jurisdiction of the County of Orange, California.

34. NO THIRD PARTY BENEFICIARY RIGHTS.

This Agreement is entered into for the sole benefit of the CITY and CONTRACTOR and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

35. ASSIGNABILITY.

This Agreement may not be sold, transferred or assigned by either party, or by operation of law, to any other person or persons or business entity, without the other party's written permission. Any such sale, transfer or assignment, or attempted sale, transfer or assignment without written permission, may be deemed by the other party to constitute a voluntary termination of this Agreement and this Agreement shall thereafter be deemed terminated and void.

36. WAIVER.

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought referring expressly to this Paragraph. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

37. HEADINGS.

Section and subsection headings are not to be considered part of this Agreement, are included solely for convenience, and are not intended to modify or explain or to be a full or accurate description of the content thereof.

38. COUNTERPARTS.

This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one Agreement.

39. CORPORATE AUTHORITY.

The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by doing so, the Parties hereto are formally bound to the provisions of this Agreement.

40. ADDITIONAL SERVICES.

CONTRACTOR shall not receive compensation for any services provided outside the scope of the Contract Documents unless such additional services, including change orders, are approved in writing by CITY prior to CONTRACTOR performing the additional services.

It is specifically understood that oral requests or approvals of such additional services, change orders or additional compensation and any approvals from CITY shall be barred and are unenforceable.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation

Justin Martin for
Lori Ann Farrell Harrison
City Manager

Date: 8/21/19

CONTRACTOR

JAP
Signature
Jeff Petty, Vice President
Name and Title

Date: July 22nd, 2019

Lyle Stone
Signature
Lyle Stone, Secretary
Name and Title

Date: July 22nd, 2019

Social Security or Taxpayer ID Number

ATTEST:

Brenda Green
Brenda Green
City Clerk



Date: 8/22/19

APPROVED AS TO FORM:

Kimberly Hall Barlow
Kimberly Hall Barlow
City Attorney

Date: 8/21/19

APPROVED AS TO INSURANCE:



Ruth Wang
Risk Management

Date: 8/20/19

APPROVED AS TO PURCHASING:



Kelly A. Telford
Finance Director

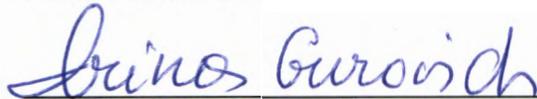
Date: 8/15/19

DEPARTMENTAL APPROVAL:



Raja Sethuraman
Public Services Director

Date: 8/21/19



Irina Gurovich
Project Manager

Date: 08/20/19

COUNCIL POLICY – DRUG FREE WORKPLACE

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8/08/89	1 OF 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a subgrantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This Policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or subgrantee hereby certifies that it will provide a drug-free workplace by:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possessing, or use of a controlled substance is prohibited in Contractor's and/or subgrantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will taken against the employees for violation of such prohibition;
 - B. Establishing a Drug-Free Awareness Program to inform employees about:
 1. The dangers of drug abuse in the workplace;

CITY OF COSTA MESA, CALIFORNIA
COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8/08/89	2 OF 3

- 2. Contractor's and/or subgrantee's policy of maintaining a drug-free workplace;
 - 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by Subparagraph A.
- D. Notifying the employee in the statement required by Subparagraph 1.A that, as a condition of employment under the contract, the employee will:
- 1. Abide by the terms of the statement; and
 - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such violation.
- E. Notifying the City of Costa Mesa within ten (10) days after receiving notice under Subparagraph 1.D.2 from an employee or otherwise receiving the actual notice of such conviction.
- F. Taking one of the following actions within thirty (30) days of receiving notice under Subparagraph 1.D.2 with respect to an employee who is so convicted:
- 1. Taking appropriate personnel action against such an employee, up to and including termination; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency.
- G. Making a good faith effort to maintain a drug-free workplace through implementation of Subparagraph 1.A through 1.F, inclusive.
2. Contractor and/or subgrantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
- A. Contractor and/or subgrantee has made a false certification under Paragraph 1 above.

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8/08/89	3 OF 3

B. Contractor and/or subgrantee has violated the certification by failing to carry out the requirements of Subparagraphs 1.A through 1.G above.

C. Such number of employees of Contractor and/or subgrantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the Contractor and/or subgrantee has failed to make a good faith effort to provide a drug-free workplace.

3. Should any Contractor and/or subgrantee be deemed to be in violation of this Policy pursuant to the provisions of 2.A, B and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, or local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a Contractor and/or subgrantee, the Contractor and/or subgrantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon Issuance of any final decision recommending against debarment of the Contractor and/or subgrantee, the Contractor and/or subgrantee shall be eligible for compensation as provided by law.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/30/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER InterWest Insurance Services License #0B01094 P.O. Box 255188 Sacramento CA 95865-5188	CONTACT NAME: Joanne Cadarette	
	PHONE (A/C, No, Ext): 916-609-8362	FAX (A/C, No): 916-979-7562
E-MAIL ADDRESS: jcadarette@iwins.com		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Financial Pacific Ins Company		31453
INSURER B: Arch Insurance Company		11150
INSURER C: Travelers Prop Cas Co of Amer		25674
INSURER D:		
INSURER E:		
INSURER F:		

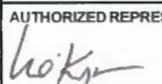
COVERAGES **CERTIFICATE NUMBER:** 407037767 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab <input checked="" type="checkbox"/> Ded. \$5,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	Y	60423382	12/31/2018	12/31/2019	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	60423382	12/31/2018	12/31/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			ZUP71M8933018	12/31/2018	12/31/2019	EACH OCCURRENCE \$ 6,000,000 AGGREGATE \$ 6,000,000 \$
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	ZAWCI9413902	4/1/2019	4/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input checked="" type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: City Project #19-12, Slurry Seal Project (Zone 2 & 5).
 Additional Insured status applies if required by written contract per endorsement attached. The City of Costa Mesa and their elected and appointed boards, officers, agents, employees, the State of California, the County of Orange, and the Orange County Flood Control District. Waiver of Subrogation applies to Workers Compensation per the attached endorsements. 30 Day notice of cancellation, except 10 day notice for non-payment of premium applies per policy provisions.

CERTIFICATE HOLDER City of Costa Mesa 77 Fair Drive Costa Mesa CA 92626	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Blanket as required by written contract. Effective during the policy period as stated in the policy declarations.	Blanket when required by written contract. When this insurance applies, and required by contract, such insurance is afforded by the General Liability policy is primary and any other insurance shall be excess and shall not contribute to the insurance afforded by this endorsement.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Blanket as required by written contract. Effective during the policy period as stated in the policy declarations.	Blanket when required by written contract. When this insurance applies, and required by contract, such insurance is afforded by the General Liability policy is primary and any other insurance shall be excess and shall not contribute to the insurance afforded by this endorsement.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products -completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on be half of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – VOLUNTEER WORKERS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

WHO IS AN INSURED (Section II) is amended to include as an insured any person(s) who are volunteer worker(s) for you, but only while acting at the direction of, and within the scope of their duties for you. However, none of these volunteer worker(s) are insureds for:

1. "Bodily injury" or "personal injury":
 - a. To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to your other volunteer worker(s) or to your "employees" arising out of and in the course of their duties for you;
 - b. To the spouse, child, parent, brother or sister of your volunteer worker(s) or your "employees" as a consequence of paragraph 1.a. above;
 - c. For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs 1.a. or b. above; or
 - d. Arising out of his or her providing or failing to provide professional health care services.
2. "Property damage" to property:
 - a. Owned, occupied, or used by,
 - b. Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your other volunteer workers, your "employees", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – ENGINEERS, ARCHITECTS OR SURVEYORS NOT ENGAGED BY THE NAMED INSURED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<p>Name Of Engineers, Architects Or Surveyors Not Engaged By The Named Insured:</p> <p>AS PER ACORD25 CERTIFICATE OF INSURANCE</p>

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. Section II – Who Is An Insured is amended to include as an insured the architects, engineers or surveyors shown in the Schedule, but only to the extent such architect, engineer, or surveyor is held liable for your ongoing operations performed by you or on your behalf. Such architects, engineers or surveyors, while not engaged by you, are contractually required to be added as an additional insured to your policy.

B. With respect to such architects, engineers or surveyors shown in the Schedule above, the following exclusion is added to Paragraph 2, **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** and **Section I – Coverage B – Personal And Advertising Injury Liability**:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services, including:

1. The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; and
2. Supervisory, inspection or engineering services.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Projects: ALL PROJECTS WITH THE POLICY PERIOD.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)**, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations
 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under **COVERAGE A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under **COVERAGE C** regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
 3. Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
- 4.** The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.
- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)**, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.

D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restated, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.

E. The provisions of Limits Of Insurance (SECTION III) not otherwise modified by this endorsement shall continue to apply as stipulated.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
CONTRACTUAL LIABILITY – RAILROADS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Scheduled Railroad:	Designated Job Site:
	ALL JOBSITES

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to operations performed for, or affecting, a Scheduled Railroad at a Designated Job Site, the definition of "insured contract" in the Definitions section is replaced by the following:

- 9. "Insured Contract" means:
 - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - b. A sidetrack agreement;
 - c. Any easement or license agreement;
 - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement;
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization.

Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (1) above and supervisory, inspection, architectural or engineering activities.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

SCHEDULE

NAMED INSURED: AMERICAN ASPHALT SOUTH, INC.

ADDITIONAL INSURED:

AS REQUIRED BY WRITTEN CONTRACT

WHO IS AN INSURED (SECTION II) is amended to include as an insured the organization shown in the Schedule above, but only with respect to the operation of vehicles owned by the named insured and operated on behalf of the named insured. This endorsement does not apply to any operations for other than the named insured.

Each person or organization named above is an insured for liability coverage, but only to the extent that person or organization qualifies as an insured under the Who Is An Insured provision of Section II Liability Coverage.

The additional insured is not required to pay for any premiums stated in the policy or earned from the policy. Any return premium, if applicable, declared by us shall be paid to you.

You are authorized to act for the additional insured in all matters pertaining to this insurance.

We will mail the additional insured notice of any cancellation of this policy. If the cancellation is by us, we will give thirty days notice to the additional insured.

The additional insured will retain any right of recovery as a claimant under this policy

When this endorsement applies, such insurance as is afforded by the Automobile Liability policy is primary and any other insurance shall be excess and shall not contribute to the insurance afforded by this endorsement.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

WC 04 03 06 (Ed. 4-84)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT — CALIFORNIA

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 5/30/2019 at 12:01 A.M. standard time, forms a part of
(DATE)

Policy No. ZAWCI9413902

Endorsement No.

of the Arch Insurance Company

(NAME OF INSURANCE COMPANY)

issued to American Asphalt South, Inc

Premium (if any) \$



Authorized Representative

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be *% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

Job Description

ALL PERSONS AND/OR ORGANIZATIONS THAT REQUIRE A WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION BE PROVIDED UNDER THIS POLICY FOR WORK PERFORMED BY YOU FOR THAT PERSON AND/OR ORGANIZATION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

Re: City Project #19-12, Slurry Seal Project (Zone 2 & 5).

Additional Insured status applies if required by written contract per endorsement attached. The City of Costa Mesa and their elected and appointed boards, officers, agents, employees, the State of California, the County of

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV – COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

SCHEDULE

Name of Person or Organization: City of Costa Mesa
77 Fair Drive
Costa Mesa CA 92626

The **TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US** Condition (Section IV BUSINESS AUTO CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for bodily injury or property damage arising out of losses or accidents which occur during the policy period. This waiver applies only to liability you assume pursuant to a contract with the person or organization shown in the schedule.

Bond Number 12175378
Premium \$2,980.00

**FAITHFUL PERFORMANCE BOND
PUBLIC WORK**

(The premium charge on this bond is \$ 2,980.00, being at
the rate of \$ 7.00 per thousand of the contract price)

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS the CITY OF COSTA MESA, 77 Fair Drive, Costa Mesa, California 92626, has
entered into a contract dated _____, 20 19, which is hereby incorporated by reference
herein, with _____ American Asphalt South, Inc.

hereinafter designated as the "Principal," for the work described as follows:

Slurry Seal Project (Zone 2 and 5) City Project No. 19-12

_____ ; and

WHEREAS, said Principal is required by the terms of said contract to furnish a bond for the
faithful performance of said contract.

NOW, THEREFORE, We the Principal, and The Guarantee Company of North America USA,
a corporation organized and existing under the laws of the State of Michigan
and duly authorized to transact business under the laws of the State of California, as Surety, are held and
firmly bound unto the CITY OF COSTA MESA in the penal sum of Four Hundred Twenty Five Thousand Seven Hundred Forty
One and No Cents Dollars (\$ 425,741.00), lawful money of the United States, for the payment of
which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and
successors, jointly and severally, firmly by these presents.

The Condition Of This Obligation Is Such, That, if the above bounden Principal, his or its heirs,
executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and
truly keep and perform the covenants, conditions and agreements in the said contract and any alteration
thereof made as therein provided, or his or their part, to be kept and performed at the time and in the
manner therein specified, and in all respects according to their true intent and meaning, and shall
indemnify and save harmless the CITY OF COSTA MESA, its officers and agents, as therein stipulated,
then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of
time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the
specifications accompanying the same shall in any wise affect its obligations on this bond, and it does
hereby waive notice of any such change, extension of time, alteration or addition to the terms of the
contract or the work or to the specifications.

IN WITNESS WHEREOF, We have hereunto set our hands and seals this _____ 29th
day of May, 20 19.

American Asphalt South, Inc.

Lyle Shaw, Secretary

The Guarantee Company of North America USA

Elizabeth Collodi

Elizabeth Collodi, Attorney-in-Fact

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Butte)

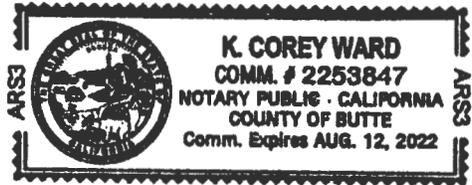
On May 29, 2019 before me, K. Corey Ward, Notary Public
(insert name and title of the officer)

personally appeared Elizabeth Collodi,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in
~~his/her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *K. Corey Ward* (Seal)





The Guarantee Company of North America USA
Southfield, Michigan

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS: That THE GUARANTEE COMPANY OF NORTH AMERICA USA, a corporation organized and existing under the laws of the State of Michigan, having its principal office in Southfield, Michigan, does hereby constitute and appoint

Renee Ramsey, John Hopkins, Elizabeth Collodi, Bobbie Beeny, Phillip O. Watkins, Mindy Whitehouse, Jennifer Lakmann, Sara Walliser, John J. Weber, Stephanie Agapoff, Katherine Gordon, Jessica Monlux, Breanna Bofman, Vicky Troyan
Interwest Insurance Services, LLC

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise.

The execution of such instrument(s) in pursuance of these presents, shall be as binding upon THE GUARANTEE COMPANY OF NORTH AMERICA USA as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at the principal office.

The Power of Attorney is executed and may be certified so, and may be revoked, pursuant to and by authority of Article IX, Section 9.03 of the By-Laws adopted by the Board of Directors of THE GUARANTEE COMPANY OF NORTH AMERICA USA at a meeting held on the 31st day of December, 2003. The President, or any Vice President, acting with any Secretary or Assistant Secretary, shall have power and authority:

- 1. To appoint Attorney(s)-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof; and
2. To revoke, at any time, any such Attorney-in-fact and revoke the authority given, except as provided below
3. In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.
4. In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner - Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of the Company adopted at a meeting duly called and held on the 6th day of December 2011, of which the following is a true excerpt:

RESOLVED that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, contracts of indemnity and other writings obligatory in the nature thereof, and such signature and seal when so used shall have the same force and effect as though manually affixed.



IN WITNESS WHEREOF, THE GUARANTEE COMPANY OF NORTH AMERICA USA has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 2nd day of October, 2015.

THE GUARANTEE COMPANY OF NORTH AMERICA USA

[Signature of Stephen C. Ruschak]

[Signature of Randall Musselman]

STATE OF MICHIGAN
County of Oakland

Stephen C. Ruschak, President & Chief Operating Officer

Randall Musselman, Secretary

On this 2nd day of October, 2015 before me came the individuals who executed the preceding instrument, to me personally known, and being by me duly sworn, said that each is the herein described and authorized officer of The Guarantee Company of North America USA; that the seal affixed to said instrument is the Corporate Seal of said Company; that the Corporate Seal and each signature were duly affixed by order of the Board of Directors of said company.



Cynthia A. Takai
Notary Public, State of Michigan
County of Oakland
My Commission Expires February 27, 2024
Acting in Oakland County

IN WITNESS WHEREOF, I have hereunto set my hand at The Guarantee Company of North America USA offices the day and year above written.

[Signature of Cynthia A. Takai]

I, Randall Musselman, Secretary of THE GUARANTEE COMPANY OF NORTH AMERICA USA, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by THE GUARANTEE COMPANY OF NORTH AMERICA USA, which is still in full force and effect.



IN WITNESS WHEREOF, I have thereunto set my hand and attached the seal of said Company this 29th day of May, 2019

[Signature of Randall Musselman]

Randall Musselman, Secretary

Bond Number 12175378

**LABOR AND MATERIAL BOND TO ACCOMPANY CONTRACT
PUBLIC WORK**

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS the CITY OF COSTA MESA, 77 Fair Drive, Costa Mesa, California 92626, has awarded to American Asphalt South, Inc.

hereinafter designated as the "Contractor," a contract which is hereby incorporated by reference herein, for the work described as follows: Slurry Seal Project (Zone 2 and 5) City Project No. 19-2

_____ ; and
WHEREAS, said Contractor is required by the provisions of Chapter 7, Division 3, Title 15, Sections 3247-3248, Civil Code to furnish a bond in connection with said contract, as hereinafter set forth.

NOW, THEREFORE, We American Asphalt South, Inc.

the undersigned Contractor, as Principal, and The Guarantee Company of North America USA
a corporation organized and existing under the laws of the State of Michigan

and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the CITY OF COSTA MESA in the penal sum of Four Hundred Twenty Five Thousand Seven Hundred Forty

One and No Cents Dollars (\$ 425,741.00), said sum being not less than one-half of the estimated amount payable by the said CITY OF COSTA MESA under the terms of the contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

The Condition Of This Obligation Is Such, That, if said Contractor, his or its heirs, executors, administrators, successors or assigns, or sub-contractors, shall fail to pay for any materials, provisions, provender or other supplies or teams, implements or machinery used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor performed under the above contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and sub-contractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, the surety or sureties herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the said Surety will pay a reasonable attorney's fee to be fixed by the court. This bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Section 3181 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond. And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, We have hereunto set our hands and seals this 29th day of May, 2019.

American Asphalt South, Inc.

Lyle Spivey Secretary

The Guarantee Company of North America USA

Elizabeth Condi

Elizabeth Condi, Attorney-in-Fact

One Towne Square, Ste. 1470, Southfield, Michigan 48076

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Butte)

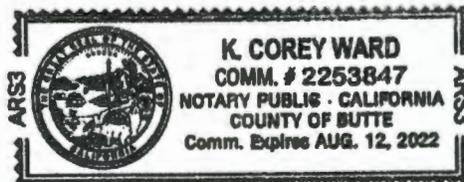
On May 29, 2019 before me, K. Corey Ward, Notary Public
(insert name and title of the officer)

personally appeared Elizabeth Collodi,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~
subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in
~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature K. Corey Ward (Seal)





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Randall Musselman, Secretary