

SECTION 4 - AGREEMENT

PROJECT AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2016 by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and **CJ Concrete Construction, Inc.**, hereinafter referred to as ("CONTRACTOR").

RECITALS:

The following recitals are a substantive part of this Agreement:

This Agreement is entered into pursuant to Garden Grove COUNCIL AUTHORIZATION, DATED _____.

CITY desires to utilize the services of Furnish All Labor, Material and Equipment for On-Call Concrete Construction at Various Locations for the City of Garden Grove per City standards and specifications.

CONTRACTOR is qualified by virtue of experience, training, education, and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 4.0 **Compensation.** CONTRACTOR shall be compensated as follows: Compensation under this agreement shall be a Not to exceed (NTE) amount of Four Hundred Fifty Thousand Dollars (\$450,000.00), per year, payable in arrears and in accordance with Bid Proposal (Attachment B), which is attached and is hereby incorporated by reference. Payment for work under this Agreement shall be made per invoice or request for work completed subject to Section 4.11 hereof. All work shall be in accordance with Bid No. S-1189 and the Plans and Specifications (Attachment A), which are attached and are hereby incorporated by reference.

Pricing shall remain firm for the first year of the performance period. Thereafter, contractor may request pricing increase prior to the signing of each option year.

At the request of the CONTRACTOR, the CITY may adjust all item prices by the amount in the increase or decrease during the previous twelve (12) months in the Los Angeles, Anaheim, Riverside All Urban Consumers Index. To determine the percent increase or decrease, the term "previous twelve months" shall mean the twelve-month period ending March 31 of that year, or if not available, the prior month. The City shall then have the option of increasing the rate of compensation, decreasing the scope of work, or terminating the agreement.

4.1 **General Conditions.** CONTRACTOR certifies and agrees that all the terms, conditions and obligations of the Contract Documents as hereinafter defined, the location of the job site, and the conditions under which the work is to be performed have been thoroughly reviewed, and enters into this Contract based upon CONTRACTOR'S investigation of all such matters and is in no way relying upon any opinions or representations of CITY. It is agreed that this Contract represents the entire agreement. It is further agreed that the Contract Documents including the Notice Inviting Bids, Special Instructions to Bidders, if any, Plans and Specifications, and Contractor's Proposal, are incorporated in this Contract by reference, with the same force and effect as if the same were set forth at length herein, and that CONTRACTOR and its subcontractors, if any, will be and are bound by any and all of said Contract Documents insofar as they relate in any part or in any way, directly or indirectly, to the work covered by this Contract.

"Project" as used herein defines the entire scope of the work covered by all the Contract Documents. Anything mentioned in the Specifications and not indicated in the Plans, or indicated in the Plans and not mentioned in the Specifications, shall be of like effect as if indicated and mentioned in both. In case of discrepancy in the Plans or Specifications, the matter shall be immediately submitted to City's Engineer, without whose decision CONTRACTOR shall not adjust said discrepancy save only at CONTRACTOR'S own risk and expense. The decision of the Engineer shall be final.

4.2 **Materials and Labor.** CONTRACTOR shall furnish, under the conditions expressed in the Plans and Specifications, at CONTRACTOR'S own expense, all labor and materials necessary, except such as are mentioned in the Specifications to be furnished by the CITY, to complete the project, in good workmanlike and substantial order. If CONTRACTOR fails to pay for labor or materials when due, CITY may settle such claims by making demand upon the surety to this Agreement. In the event of the failure or refusal of the surety to satisfy said claims, CITY may settle them directly and deduct the amount of payments from the Contract price and any amounts due to CONTRACTOR. In the event CITY receives a stop notice from any laborer or material supplier alleging non-payment by CONTRACTOR, CITY shall be entitled to deduct all of its costs and expenses incurred relating thereto, including but not limited to administrative and legal fees.

4.3 **Project.** The PROJECT is described as Furnish All Labor, Material and Equipment for On-Call Concrete Construction at Various Locations for the City of Garden Grove per City standards and specifications.

4.4 **Plans and Specifications.** The work to be done is described in a set of detailed Plans and Specifications for: Furnish All Labor, Material and Equipment for On-Call Concrete Construction at Various Locations for the City of Garden Grove per City standards and specifications.

Said Plans and Specifications and any revisions, amendments or addenda thereto are attached hereto and incorporated herein as part of this Contract and referred to by reference. The work to be done must also be in accordance with the General Provisions, Standard Specifications and Standard Plans of City which are also incorporated herein and referred to by reference.

4.5 Time of Commencement and Completion. The term of this agreement shall be in effect from July 1, 2016 through June 30, 2017 with an option authorizing the City Manager or Designee to continue said agreement on a year-to-year basis to a maximum of four (4) additional years. In order to exercise this option, the CITY shall provide CONTRACTOR thirty (30) days notice prior to June 30, 2017 and June 30 of each subsequent year (if applicable), of its desire to extend the agreement. CONTRACTOR agrees to provide the services described in attached bid sheet for said additional period, should the CITY give the required notice. This agreement may be terminated by the CITY without cause. CONTRACTOR agrees to commence the Project within TEN (10) calendar days from the date set forth in the "Notice to Proceed".

4.6 Time is of the Essence. Time is of the essence of this Contract. As required by the Contract Documents, CONTRACTOR shall prepare and obtain approval of all shop drawings, details and samples, and do all other things necessary and incidental to the prosecution of CONTRACTOR'S work in conformance with an approved construction progress schedule. CONTRACTOR shall coordinate the work covered by this Contract with that of all other contractors, subcontractors and of the CITY, in a manner that will facilitate the efficient completion of the entire work in accordance with Section 4.5 herein. CITY shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of other subcontractors, and, in general, all matters representing the timely and orderly conduct of the work of CONTRACTOR on the premises.

4.7 Excusable Delays. CONTRACTOR shall be excused for any delay in the prosecution or completion of the Project caused by acts of God; inclement weather; damages caused by fire or other casualty for which CONTRACTOR is not responsible; and act, neglect or default of CITY; failure of CITY to make timely payments to CONTRACTOR; late delivery of materials required by this CONTRACT to be furnished by CITY; combined action of the workers in no way caused by or resulting from default or collusion on the part of CONTRACTOR; a lockout by CITY; or any other delays unforeseen by CONTRACTOR and beyond CONTRACTOR'S reasonable control.

City shall extend the time fixed in Section 4.5 herein for completion of the Project by the number of days CONTRACTOR has thus been delayed, provided that CONTRACTOR presents a written request to CITY for such time extension within fifteen (15) days of the commencement of such delay and CITY finds that the delay is justified. CITY'S decision will be conclusive on the parties to this Contract.

Failure to file such request within the time allowed shall be deemed a waiver of the claim by CONTRACTOR.

No claims by CONTRACTOR for additional compensation or damages for delays will be allowed unless CONTRACTOR satisfies CITY that such delays were unavoidable and not the result of any action or inaction of CONTRACTOR and that CONTRACTOR took all available measures to mitigate such damages. Extensions of time and extra compensation as a result of incurring undisclosed utilities will be determined in accordance with Section 9-103A of the State of California Department of Transportation Standard Specifications. The CITY'S decision will be conclusive on all parties to this Contract.

4.8 Extra Work. The Contract price includes compensation for all work performed by CONTRACTOR, unless CONTRACTOR obtains a written change order signed by a designated representative of CITY specifying the exact nature of the extra work and the amount of extra compensation to be paid all as more particularly set forth in Section 4.9 hereof. CITY shall extend the time fixed in Section 4.5 for completion of the Project by the number of days reasonably required for CONTRACTOR to perform the extra work, as determined by CITY'S Engineer. The decision of the Engineer shall be final.

4.9 Changes in Project.

4.9.1 CITY may at any time, without notice to any surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes:

- a. in the Specifications (including drawings and designs);
- b. in the time, method or manner of performance of the work;
- c. in the City-furnished facilities, equipment, materials, services or site; or
- d. directing acceleration in the performance of the work.

4.9.2 A change order shall also be any other written order (including direction, instruction, interpretation or determination) from the CITY which causes any change, provided CONTRACTOR gives the CITY written notice stating the date, circumstances and source of the order and that CONTRACTOR regards the order as a change order.

4.9.3 Except as provided in this Section 4.9, no order, statement or conduct of the CITY or its representatives shall be treated as a change under this Section 9 or entitle CONTRACTOR to an equitable adjustment.

4.9.4 If any change under this Section 4.9 causes an increase or decrease in CONTRACTOR'S actual, direct cost or the time required to perform any part of the work under this Contract, whether or not changed by any order, the CITY shall make an equitable adjustment and modify the

Contract in writing. Except for claims based on defective specifications, no claim for any change under paragraph (4.9.2) above shall be allowed for any costs incurred more than 20 days before the CONTRACTOR gives written notice as required in paragraph (4.9.2). In the case of defective specifications for which the CITY is responsible, the equitable adjustment shall include any increased direct cost CONTRACTOR reasonably incurred in attempting to comply with those defective specifications.

4.9.5 If CONTRACTOR intends to assert a claim for an equitable adjustment under this Section 4.9, it must, within thirty (30) days after receipt of a written change order under paragraph (4.9.1) or the furnishing of a written notice under paragraph (4.9.2), submit a written statement to the CITY setting forth the general nature and monetary extent of such claim. The CITY may extend the 30-day period. CONTRACTOR may include the statement of claim in the notice under paragraph (4.9.2) of this Section 4.9.

4.9.6 No claim by CONTRACTOR for an equitable adjustment shall be allowed if made after final payment under this Agreement.

4.9.7 CONTRACTOR hereby agrees to make any and all changes, furnish the materials and perform the work that CITY may require without nullifying this Contract. CONTRACTOR shall adhere strictly to the Plans and Specifications unless a change therefrom is authorized in writing by the CITY. Under no condition shall CONTRACTOR make any changes to the Project, either in additions or deduction, without the written order of the CITY and the CITY shall not pay for any extra charges made by CONTRACTOR that have not been agreed upon in advance in writing by the CITY. CONTRACTOR shall submit immediately to the CITY written copies of its firm's cost or credit proposal for change in the work. Disputed work shall be performed as ordered in writing by the CITY and the proper cost or credit breakdowns therefor shall be submitted without delay by CONTRACTOR to CITY.

4.10 Liquidated Damages for Delay. The parties agree that if the total work called for under this Contract, in all parts and requirements, is not completed within the time specified in Section 4.5 herein, plus the allowance made for delays or extensions authorized under Section 4.7, 4.8 and 4.9 herein, the CITY will sustain damage which would be extremely difficult and impractical to ascertain. The parties therefore agree that CONTRACTOR will pay to CITY the sum of two hundred and fifty dollars (\$250.00) per day for each and every calendar day during which completion of the Project is so delayed. CONTRACTOR agrees to pay such liquidated damages and further agrees that CITY may offset the amount of liquidated damages from any moneys due or that may become due CONTRACTOR under the Contract.

4.11 Contract Price and Method of Payment. CITY agrees to pay and the CONTRACTOR agrees to accept as full consideration for the faithful performance of this Contract, subject to any subsequent additions or deductions as provided in approved change orders, the sum as itemized in the bid proposal. Progress payments shall be made to the CONTRACTOR per month for each successive month as the work progresses. The CONTRACTOR shall be paid such sum as will bring the total payments received since the commencement of the work up to ninety five percent (95%) of the value of the work completed, less all previous payments, provided that the CONTRACTOR submits the request for payment prior to the end of the day required to meet the payment schedule. The CITY will retain five percent (5%) of the amount of each such progress estimate and material cost until 30 days after the recordation of the Notice of Completion.

Payments shall be made on demands drawn in the manner required by law, accompanied by a certificate signed by the CITY'S Engineer, stating that the work for which payment is demanded has been performed in accordance with the terms of the Contract. Partial payments of the Contract price shall not be considered as an acceptance of any part of the work.

4.12 Substitution of Securities in Lieu of Retention of Funds. Pursuant to California Public Contract Code Section 22300, the CONTRACTOR will be entitled to post approved securities with the CITY or an approved financial institution in order to have the CITY release funds retained by the CITY to ensure performance of the Contract. CONTRACTOR shall be required to execute an addendum to this Contract together with escrow instructions and any other documents in order to effect this substitution.

4.13 Completion. CITY may require affidavits or certificates of payment and/or releases from any subcontractor, laborer or material supplier in connection with Stop Notices, which have been filed under the provisions of the statutes of the State of California.

4.14 Contractor's Employee Compensation.

4.14.1 General Prevailing Rate. CITY has ascertained CONTRACTOR shall comply with all applicable requirements of Division 2, Part 7, Chapter 1 of the California Labor Code and all applicable federal requirements respecting the payment of prevailing wages. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the prevailing wage rates determined by the Director of the Department of Industrial Relations (DIR) for similar classifications of labor, the CONTRACTOR and its Subcontractors shall pay not less than the higher wage rate. The DIR will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal Wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the CONTRACTOR and

Subcontractors, the CONTRACTOR and its Subcontractors shall pay not less than the Federal Minimum wage rate which most closely approximates the duties of the employees in question.

4.14.2 Forfeiture for Violation. CONTRACTOR shall, as a penalty to the CITY, forfeit one hundred dollars (\$100.00) for each calendar day or portion thereof for each worker paid (either by the CONTRACTOR or any subcontractor under it) less than the prevailing rate of per diem wages as set by the Director of Industrial Relations, in accordance with Sections 1770-1780 of the California Labor Code for the work provided for in this Contract, all in accordance with Section 1775 of the Labor Code of the State of California.

4.14.3 Apprentices. Section 1777.5, 1777.6 and 1777.7 of the Labor Code of the State of California, regarding the employment of apprentices is applicable to this Contract and the CONTRACTOR shall comply therewith; provided, however, that this requirement shall not apply if and/or to the extent that the Contract of the general CONTRACTOR, or the contracts of specialty contractors not bidding for work through a general or prime contractor involves less than thirty thousand dollars (\$30,000.00).

4.14.4 Workday. In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and CONTRACTOR shall not require more than eight (8) hours of labor in a day from any person employed by him thereunder except as provided in paragraph (4.14.1) above. CONTRACTOR shall conform to Article 3, Chapter 1, Part 7 (Sections 1810 et sep.) of the Labor Code of the State of California and shall forfeit to the CITY as a penalty, the sum of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by CONTRACTOR or any subcontractor for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in any one week in violation of said Article. CONTRACTOR shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by CONTRACTOR in connection with the Project.

4.14.5 Record of Wages: Inspection. CONTRACTOR agrees to maintain accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by it in connection with the Project and agrees to require that each of its subcontractors does the same. The applicable CONTRACTOR or subcontractor or its agent having authority over such matters shall certify all payroll records as accurate. CONTRACTOR further agrees that its payroll records and those of its subcontractors shall be available to the employee or employee's representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards and shall comply with all of the provisions of Labor Code Section 1776, in general. CONTRACTOR shall

comply with all of the provisions of Labor Code Section 1776, and shall submit payroll records to the Labor Commissioner pursuant to Labor Code section 1771.4(a)(3).

4.14.6 CONTRACTOR REGISTRATION; MAINTENANCE OF PAYROLL RECORDS; JOB SITE POSTING

4.14.6.1 **Contractor Registration.** CONTRACTOR and its subcontractors must be registered with the California Department of Industrial Relations pursuant to Labor Code Section 1725.5. This Agreement shall not be effective until CONTRACTOR provides proof of registration to the CITY.

4.14.6.2 **Payroll Records.** CONTRACTOR shall maintain accurate payroll records and shall comply with all of the provisions of Labor Code Section 1776, and shall submit payroll records to the Labor Commissioner pursuant to Labor Code section 1771.4(a)(3).

4.14.6.3 **Posting of Job Site Notices.** CONTRACTOR shall comply with the job site notices posting requirements established by the Labor Commissioner pursuant to Title 8, California Code of Regulations Section 16461(e) or other regulation promulgated pursuant to Labor Code Section 1771.4(a)(2).

4.14.6.4 **Notice of DIR Compliance Monitoring and Enforcement.** Pursuant to Labor Code Section 1771.4, this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

4.15 Surety Bonds. CONTRACTOR shall, upon entering into performance of this Agreement, furnish bonds in the amount of one hundred percent (100%) of the Contract price bid, to guarantee the faithful performance of the work, and the other in the amount of one hundred percent (100%) of the Contract price bid to guarantee payment of all claims for labor and materials furnished. This Contract shall not become effective until such bonds are supplied to and approved by the CITY. The Surety Company must have an AM Best rating of A- VII or better.

4.16 Insurance.

4.16.1 CONTRACTOR is also aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or undertake self-insurance with provisions of that Code and will comply with such provisions before commencing the performance of the work of this Contract.

4.16.2 CONTRACTOR and all subcontractors will carry and provide Workers' Compensation insurance for the protection of its employees during the progress of the work and *provide Employers Liability in an amount not less than \$1,000,000*. The insurer shall waive its rights of subrogation against the CITY, its officers, agents and employees and shall issue a certificate to the policy evidencing same.

4.16.3 For any claims related to this Agreement, CONTRACTOR'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall by excess of the CONTRACTOR'S insurance and shall not contribute with it.

4.16.4 Before CONTRACTOR performs any work at, or prepares or delivers materials to, the site of construction, CONTRACTOR shall furnish certificates of insurance and endorsements evidencing the foregoing insurance coverage and such certificates of insurance and endorsements shall provide the name and policy number of each carrier and that the insurance is in force and will not be cancelled without 30 days written notice to the CITY. CONTRACTOR shall maintain all of the foregoing insurance in force until the work under this contract is satisfactorily and fully completed to the satisfaction of the CITY. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of CITY by Contractor under Section 4.17 of this Contract. Notwithstanding nor diminishing the obligations of CONTRACTOR with respect to the foregoing, CONTRACTOR shall subscribe for and maintain in full force and effect during the life of this Contract, the following insurance in amounts not less than the amounts specified and issued by a company having a Best's Guide Rate of A-, Class VII or better (claims made and modified occurrence policies are not acceptable).

4.16.5 COMMENCEMENT OF WORK. CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance. Contractor shall also provide a waiver of subrogation for each policy.

4.16.6 INSURANCE AMOUNTS. CONTRACTOR and all subcontractors shall maintain the following insurance in the amount and type for the duration of this Agreement:

- (a) Commercial general liability in an amount not less than \$3,000,000 per occurrence, and not excluding XCU; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY

and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

- (b) Automobile liability in an amount not less than \$1,000,000 combined single limit; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (c) Excess liability, follows form coverage, shall be provided for any underlying policy that does not meet the insurance requirements set forth herein. (**claims made and modified occurrence policies are not acceptable**) Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-Class VII or better, as approved by the CITY.

An Additional Insured Endorsement, **ongoing and products-completed operations**, for the policy under section 4.16.6 (a) shall designate CITY, its officers, officials, employees, agents, and volunteers for this contract and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees, as determined by the CITY, as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to city's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.16.6 (b) shall designate CITY, its officers, officials, employees, agents, and volunteers for this contract and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees, as determined by the CITY, as additional insureds for automobiles owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

In the event any of CONTRACTOR'S underlying policies do not meet policy limits within the insurance requirements, CONTRACTOR shall provide coverage under the excess liability policy in 4.16.6 (c). Policy must be a follows form excess/umbrella policy. CONTRACTOR shall provide the schedule of underlying polices for an excess liability policy, state that the excess policy follows form on the insurance certificate, and provide an additional insured endorsement for the excess liability policy designating CITY, its officers, officials, employees, agents, and volunteers for this contract and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees, as determined by the CITY, as additional insureds.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers for this contract and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers, for this contract and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees, as determined by the CITY shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.

4.17 Risk and Indemnification. All work covered by this Contract done at the site of the Project or in preparing or delivering materials to the site shall be at the risk of CONTRACTOR alone. CONTRACTOR agrees to save, indemnify and keep CITY, its Officers, Agents, Employees, Engineers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their directors, Officers, Agents and Employees harmless against any and all liability, claims, judgments, costs and demands, including demands arising from injuries or death of persons (CONTRACTOR'S employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by CONTRACTOR, save and except claims or litigation arising through the *active negligence* or sole willful misconduct of CITY and will make good to reimburse CITY for any expenditures, including reasonable attorneys' fees CITY may incur by reason of such matters, and if requested by CITY, will defend any such suits at the sole cost and expense of CONTRACTOR.

4.18 Termination.

4.18.1 This Contract may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONTRACTOR is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Termination of contract shall conform to Section 8-1.11 of the State of California, Department of Transportation Standard Specifications.

4.18.2 If termination for default or convenience is effected by the CITY, an equitable adjustment in the price provided for in this Contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the CONTRACTOR at the time of termination may be adjusted to cover any additional costs to the CITY because of the CONTRACTOR'S default. The equitable adjustment for any termination shall provide for payment to the

CONTRACTOR for services rendered and expenses incurred in accordance with section 8-1.11 of the State of California, Department of Transportation Standard Specifications.

4.18.3 Upon receipt of a termination action under paragraph (4.18.1) or (4.18.2) above, the CONTRACTOR shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the CITY all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONTRACTOR in performing this Contract whether completed or in process.

4.18.4 Upon termination under paragraphs (4.18.1) and (4.18.2) above, the CITY may take over the work and may award another party an agreement to complete the work under this Contract.

4.19 Warranty. The CONTRACTOR agrees to perform all work under this Contract in accordance with the CITY'S designs, drawings and specifications.

The CONTRACTOR guarantees for a period of one (1) year from the date of the notice of completion of the work that the completed work is free from all defects due to faulty materials, equipment or workmanship and that he shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs or any damage to other parts of the system resulting from such defects. The CITY shall promptly give notice to the CONTRACTOR of observed defects. In the event that the CONTRACTOR fails to make adjustments, repairs, corrections or other work made necessary by such defects, the CITY may do so and charge the CONTRACTOR the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

The CONTRACTOR'S obligations under this clause are in addition to the CONTRACTOR'S other express or implied assurances provided under this Contract and in no way diminish any other rights that the CITY may have against the CONTRACTOR for faulty materials, equipment or work.

4.20 Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, *each party shall be responsible for their own attorneys' fees, costs and necessary expenses.* If any action is brought against the CONTRACTOR or any subcontractor to enforce a Stop Notice or Notice to Withhold, which named the CITY as a party to said action, the CITY shall be entitled to all attorneys' fees, costs and necessary disbursements arising out of the defense or such action by the CITY. The CITY shall be entitled to deduct its costs for any Stop Notice filed, whether court action is involved or not.

4.21 Notices. Any notice required or permitted under this Contract may be given by ordinary mail at the address set forth below. Any party whose address changes shall notify the other party in writing.

To CITY: City of Garden Grove
 City Attorney
 11222 Acacia Parkway
 Garden Grove, California 92840

To CONTRACTOR: CJ Concrete Construction, Inc.
 Attention: John C. Sarno, President
 10142 Shoemaker Avenue
 Santa Fe Springs, CA 90670

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(Agreement Signature Block On Next Page)

IN WITNESS THEREOF, these parties have executed this Project Agreement on the day and year shown below.

Date: _____

"CITY"
CITY OF GARDEN GROVE

By: _____
City Manager

ATTEST:

City Clerk

Date: _____

"CONTRACTOR"
CJ Concrete Construction, Inc.

Contractor's State Lic. No. 720989A

Expiration Date: 04-30-2018

By: _____

Title: President

Date: 05-04-2016

Tax ID No. 95-4578126

DIR Registration No. 100006673

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to the CITY.

APPROVED AS TO FORM:

Omar Sandoval
Garden Grove City Attorney

ATTACHMENT "B" (BID PROPOSAL) PAGE 1 OF 4 REVISED
NOTE: This REVISED version of ATTACHMENT "B" (BID PROPOSAL) must be submitted with your bid or the bid may be deemed as non-responsive!

SECTION 2 - PROPOSAL

THE HONORABLE MAYOR AND CITY COUNCIL
 CITY OF GARDEN GROVE
 11222 ACACIA PARKWAY
 GARDEN GROVE, CALIFORNIA 92840

To: THE HONORABLE MAYOR AND CITY COUNCIL

The undersigned having carefully examined the Plans and Specifications for: Furnish All Labor, Material and Equipment for On-Call Concrete Construction at Various Locations for the City of Garden Grove per City standards and specifications, HEREBY PROPOSE to finish all labor, materials, equipment and transportation, and do all the work required to complete work in accordance with the Plans and Specifications for the sum price of:

Option A. (Contractor to perform all required work to City Standards except, City crews will complete all saw-cutting, removal of concrete and/or asphalt, root pruning, root removal, backfill, lawn replacement, sprinkler repair, and asphalt street repair adjacent to gutters.)

<u>Items</u>	<u>Approximate Quantities Per Project</u>	<u>Description</u>	<u>Unit Price</u>	<u>Anticipated Quantity</u>
A.	2,400 Sq ft.	Replace sidewalk	<u>4.00</u> /Sq ft	25,000 Sq ft \$ <u>100,000.00</u>
B.	200 Lin. ft.	Replace curb & gutter in place (18" wide gutter)	<u>25.00</u> /Ln ft	Up to: 8000 Ln.ft. \$ <u>200,000.00</u>
C.	100 Lin ft.	Replace curb & gutter in place (24" wide gutter)	<u>28.00</u> /Ln ft	Up to: 8000 Ln. ft. \$ <u>224,000.00</u>
D.	As required.	Replace standard cross Gutter	<u>10.00</u> /Sq ft	Up to: 8000 Sq. ft. \$ <u>80,000.00</u>

ATTACHMENT "B" (BID PROPOSAL) PAGE 2 OF 4 REVISED

E.	200 Sq. ft.	Replace driveway approach, excluding curb & gutter	<u>5.00</u> /Sq ft	Up to: 8000 Sq. ft. \$ <u>40,000.00</u>
F.	180 Sq. ft.	Replace wheelchair ramp excluding curb and gutter (6" thick)	<u>5.00</u> /Sq ft	Up to: 10,000 Sq. ft. \$ <u>50,000.00</u>
GRAND TOTAL (OPTION A ONLY)				\$ <u>694,000.00</u>

OPTION B. (Contractor to perform all required work to City Standards, no exceptions)

<u>Items</u>	<u>Approximate Quantities Per Project</u>	<u>Description</u>	<u>Unit Price</u>	<u>Anticipated Quantity</u>
A.	2,400 Sq ft.	Replace sidewalk in place	<u>5.75</u> /Sqft	25,000 Sq ft. \$ <u>143,750.00</u>
B.	200 Lin. ft.	Replace curb & gutter in place (18" wide gutter)	<u>38.00</u> /Lnft	Up to: 8,000 Ln. ft. \$ <u>304,000.00</u>
C.	100 Lin. ft	Replace curb & gutter in place (24" wide gutter).	<u>40.00</u> /Lnft	Up to: 8,000 Ln. ft. \$ <u>320,000.00</u>
D.	As required	Replace standard cross Gutter	<u>14.00</u> /Sqft	Up to: 8,000 Sq. ft. \$ <u>112,000.00</u>
E.	200 Sq. ft.	Replace driveway approach excluding curb & gutter	<u>7.95</u> /Sqft	Up to: 8,000 Sq. ft. \$ <u>63,600.00</u>

ATTACHMENT "B" (BID PROPOSAL) PAGE 3 OF 4 REVISED

F.	180 Sq. ft.	Replace wheelchair ramp, excluding curb & gutter. (6" thick)	Up to: 10,000 Sq.ft.
			<u>10⁰⁰</u> /Sq.ft. \$ <u>100,000⁰⁰</u>
G.	100 Lin. Ft.	Replace "A" Curb	Up to 4000 Ln. Ft.
			<u>25⁰⁰</u> /Ln.ft. \$ <u>100,000⁰⁰</u>

NOTE: Items H. and J. below will not be used to determine the lowest bidder since estimated quantities are not available at this time and these items will be on an as-needed basis only.

H.	As Necessary	Over-excavate, remove and replace existing asphalt per specs	\$ <u>8⁰⁰</u> /Sq.ft.
J.	As Necessary	Place, grade and compact Crushed aggregate base (CAB) At over-excavated asphalt areas	\$ <u>20⁰⁰</u> Per Ton
GRAND TOTAL (OPTION B ONLY)			\$ <u>1,143,350⁰⁰</u>

.....
Only Option B (Items A-G) will be used to determine the lowest responsible bidder. Option A will be used at the sole discretion of the City based on need and available funds.

ALL LINE ITEMS for Options A and B on ATTACHMENT "B" must be completed or your bid may be deemed as non-responsive!!

TOTAL BID AMOUNT

OPTION A-\$ 694,000⁰⁰

OPTION B-\$ 1,143,350⁰⁰ will be used to determine the lowest responsible bidder.

TOTAL BID AMOUNT (OPTIONS A AND B COMBINED) \$ 1,837,350⁰⁰

Total Bid Amount in Written Words:

ONE million eight hundred thirty seven thousand
three hundred fifty dollars and 00 cents.

(In the event of an error, the written words will prevail.)

ATTACHMENT "B" (BID PROPOSAL) PAGE 4 OF 4 REVISED

It is understood and agreed that:

(a) No verbal agreement or conversation with any officer, agent, or employee of CITY, either before or after the execution of the Agreement, shall affect or modify any of the terms or obligations of this Proposal.

(b) CITY will not be responsible for any errors or omissions on the part of the undersigned in making up his bid, nor will bidders be released on account of errors.

(c) The undersigned hereby certifies that this Proposal is genuine and is not sham or collusive, or made in the interest or in behalf of any person not herein named, and that the undersigned has not directly or indirectly induced or solicited any other bidder to put in a sham bid, or any other person, firm, or corporation to refrain from bidding, and that the undersigned has not in any manner sought, by collusion, to secure for himself an advantage over any other bidder.

(d) The undersigned is licensed in accordance with the laws of the State of California.

Check below where appropriate:

Partnership: That _____ are partners, doing business under the firm name of _____, and that the co-partnership makes the accompanying proposal.

Corporation: That John C. Sarno of CJ Concrete Construction, Inc. make the accompanying proposal.

Individual: That _____ is the bidder and makes the accompanying proposal.

CJ Concrete Construction, Inc.
Company Name
10172 Shoemaker Ave.
Address
Santa Fe Springs, CA 90670
City - State - Zip Code
562-777-2222
Telephone
720989 A
California Contractors License Number
CJ Concrete Construction, Inc.
Bidder's Name (Please Print)
[Signature] Date 4-26-16
Authorized Signature

ATTACHMENT "A"

IFB S-1189

SPECIFICATIONS FOR:

Furnish All Labor, Material and Equipment for On-Call Concrete Construction at Various Locations for the City of Garden Grove per City Standards and Specifications

I. GENERAL INFORMATION

A. The City of Garden Grove Public Works Department is backlogged with maintenance repairs to sidewalks, curbs, gutters, cross gutters, wheel chair ramps, and driveway approaches in various locations throughout the City. This project is to combine work of CITY crews, which includes saw-cutting, removal of damaged concrete, root pruning to a depth of six (6) inches below existing concrete, root removal to a depth of six (6) inches below existing concrete, backfill, lawn replacement, sprinkler repair, and asphalt street repair adjacent to gutters with the work of the contractor who will provide forming, pouring, and finishing of concrete. In some instances, at the City's discretion, the contractor will be required to perform all of the aforementioned operations and that will be performed under "OPTION B."

B. The term of this agreement shall be in effect from July 1, 2016 through June 30, 2017 with an option authorizing the City Manager or Designee to continue said agreement on a year-to-year basis to a maximum of four (4) additional years. In order to exercise this option, the CITY shall provide CONTRACTOR thirty (30) days notice prior to June 30, 2016 and June 30 of each subsequent year (if applicable), of its desire to extend the agreement. CONTRACTOR agrees to provide the services described in attached bid sheet for said additional period, should the CITY give the required notice.

At the request of the CONTRACTOR, the CITY may adjust all item prices by the amount in the increase or decrease during the previous twelve (12) months in the Los Angeles, Anaheim, Riverside All Urban Consumers Index. To determine the percent increase or decrease, the term "previous twelve months" shall mean the twelve-month period ending March 31 of that year, or if not available, the prior month.

C. For program flexibility and effectiveness, the City is seeking two responses for this project. Under Option A, the City will perform all traffic control, root pruning to a depth of 12 inches and root removal as necessary, concrete and/or asphalt removal, hauling and disposal, grading, barricading of area, repair of damaged sprinklers and/or water lines, backfilling and finish grading, and asphalt repairs. The contractor will perform all forming, placing, finishing, stripping and removal of forms, and clean-up of all CONTRACTOR operations. Under Option B, the successful CONTRACTOR will do ALL necessary operations. The City will not be involved in any actual work.

- D. CITY shall have the right to terminate this Agreement without cause, by giving not less than thirty (30) days written notice of termination.
- E. The work consists of furnishing all labor, materials, equipment and services as may be necessary to complete the proposed replacement of sidewalks, curbs, gutters, cross gutters, driveway approaches and wheel chair ramps at locations to be designated.

The CONTRACTOR shall be informed by the Public Works Director or Designee of the areas where the work is to be performed.

The CITY reserves the option to begin and complete the following portions of the project, or at times direct that they be performed by the CONTRACTOR.

1. Traffic control associated with all contractual work operations.
2. Removal of existing concrete and pavement.
3. Root pruning and/or removal to a depth of six (6) inches below existing concrete.
4. Installation of the new asphalt patch against the newly poured concrete gutter and/or cross gutter and/or wheel chair ramp.
5. Placement of backfill material.
6. Repair of sprinkler systems.
7. Adjust utility covers to grade.

The CONTRACTOR will be responsible for forming, compacting and pouring of the curb, gutter, cross gutters, driveway approaches, sidewalk, and wheel chair ramps and if requested, any or all of the aforementioned.

- F. Unless superseded by written specifications within this document, the CONTRACTOR shall perform all work and use methods in accordance with the applicable sections of the Standard Specifications for Public Works Construction, latest edition which can be found in Appendix A of this bid document. (Subsequently referred to as "The Green Book") and the City of Garden Grove Public Works Department Standard Plans, latest edition.

II. PROTECTION OF PERSONS AND PROPERTY

The CONTRACTOR shall:

- A. Initiate, maintain, and supervise all safety precautions and programs in connection with the work.
- B. Take all reasonable precautions for the safety of, and provide all reasonable protection, prevent damage, injury or loss to:

1. All employees on the work and other persons who may be affected thereby;
 2. All the work and all materials and equipment to be incorporated therein; and
 3. Other property at the site and adjacent thereto.
- C. Give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property, and their protection from damage, injury or loss.
- D. Promptly remedy all damage or loss to any property caused in whole or in part by the CONTRACTOR, any subcontractor, or any that may be liable, except damage or loss attributable to the acts or omissions of the owner or his/her representative or anyone directly or indirectly employed by either of them, or be anyone for whose acts either of them may be liable and not attributable to the fault or negligence of the CONTRACTOR.
- E. Provide protection so as to minimize interference with an interruption to the adjacent property owner/tenant's employees and production process.
- F. Advise the property owner/tenant whenever work is expected to be hazardous to the property owner's employees and production process.

III. INSPECTION OF WORK BY CITY

- A. All work performed and all materials furnished shall be subject to the inspection and approval of the Director of Public Works or his/her authorized representative, and the CONTRACTOR shall prosecute work only with said inspection and approval.
- B. Any work done without proper inspection will be subject to rejection. The Director of Public Works or his/her authorized representative shall at all times have access to work during its preparation and construction, and the CONTRACTOR shall furnish every reasonable facility for ascertaining that the materials used, methods employed, and the workmanship are in accordance with these specifications.
- C. The inspection of the work shall not relieve the CONTRACTOR of any obligation to fulfill all conditions of the contract.
- D. If any work should be covered up without approval or consent of the Director of Public Works, it shall be uncovered for examination and properly restored at the CONTRACTOR's expense.

IV. WORK INCLUDED

- A. Provide all materials, labor, and equipment to complete the specified replacement of sidewalks, curbs, gutters, cross gutters, driveway approaches, wheel chair ramps, including any applicable asphalt repairs and/or patching. Each project will consist of a minimum of 2,400 square feet of concrete or 200 lineal foot of curb. The aforementioned quantities may not be continual sections, but small sections and at times on various streets (**sporadic**).
- B. Install new sidewalks, curbs and gutter, cross gutters, driveway approaches, and wheel chair ramps at each site.
- C. Clean and remove any debris caused by CONTRACTOR'S construction activity.

V. GENERAL

- A. Under Option (A), the CITY shall properly barricade and delineate all areas from the time work begins until the work is complete and the area is opened for use. The CONTRACTOR will be responsible for furnishing traffic control in accordance with the provisions of the latest edition of the Work Area Traffic Control Handbook ("WATCH") during the performance of and up to and including the acceptance by the CITY of all CONTRACTOR completed operations.

Traffic Control: Pedestrian and vehicular traffic shall be allowed to pass through the work area, whenever possible to do so, safely and with as little inconvenience and delay as possible. The CONTRACTOR shall provide adequate flag persons as reasonably necessary for the safety of persons and vehicles. Under Option (B), the CONTRACTOR will do all of the above.

- B. The CONTRACTOR shall promptly clean up the construction area, remove debris, and hand sweep at all locations at the end of each day. If CONTRACTOR personnel do not begin cleanup prior to 8 a.m. of the day following completion, CITY will arrange to provide cleanup and charge expenses to the CONTRACTOR.
- C. The CONTRACTOR shall have three (3) working days to complete all sidewalk or curb and gutter or driveway approaches or wheelchair ramps or bus pads and cleanup per project. The CONTRACTOR will be notified a minimum of 5 days before initiation of a project by the Public Works Director or designee.
- D. No work will be allowed outside regular working hours without the express permission of the Public Works Director or authorized representative, except work items relating to maintenance and cleanup of the work area for the purpose of public safety and convenience. In the event work outside regular hours is allowed, any extra expense incurred by the CONTRACTOR shall be considered as being included in his/her bid prices and no extra compensation will be due for such work; and CONTRACTOR is responsible for crediting CITY for inspector's salary, including overtime. Regular working hours will be 7 a.m.

to 3 p.m., Monday through Thursdays and every other Friday as designated by the Director of Public Works.

Non-Working Days: Holidays, every other Friday and the days between Christmas Day and New Year's Day are non-working days for the CITY. CONTRACTOR shall make requests for time extensions to work on these days seven calendar days in advance and shall reimburse CITY for the actual cost of overtime inspection.

- E. The CONTRACTOR shall be responsible for protecting existing utilities and maintaining location of an access to all gate valves during construction. CONTRACTOR shall confer with the CITY inspector to provide an acceptable method for the prevention of utility cover embedment in or bonding to the concrete. In addition to Sections 5 and 306 of the Standard Specification, the CONTRACTOR shall also adhere to standards of each related utility.

Where damage is caused by the CONTRACTOR's operations, the CONTRACTOR shall, at his/her expense, repair or replace damaged facilities promptly, in accordance with appropriate standards. Should the CONTRACTOR fail to perform the required repairs or replacements, the cost of performing such repairs or replacements will be deducted from any monies due or to become due to the CONTRACTOR.

- F. Special attention is directed to possible flood hazards and/or nuisance water, such as irrigation and other runoff. The CONTRACTOR may be responsible for all injuries or damages to any portion of the work occasioned by the above causes and shall make good such injuries or damages at no cost to the CITY prior to the completion and acceptance of the work. **Best management practices** in accordance with the City's Local Implementation Plan shall be employed at all times.
- G. If rain is encountered during construction, the CONTRACTOR may bear all cost for the materials (including AC, AB, and over-excavation) which might be damaged by water, and shall take all necessary steps to protect the work site (including using sandbags to protect work site, pump to keep raining and nuisance water away from the open excavated area, and other necessary protecting methods. **Best management practices** in accordance with the City's Local Implementation Plan shall be employed at all times.

Payment for the preceding shall be included in the various bid items of work, and no additional compensation will be allowed.

- H. The CONTRACTOR shall guarantee for a period of one year, after acceptance of the work by the CITY, all materials and workmanship against any defects whatsoever. CONTRACTOR shall be notified of any defects which CONTRACTOR shall promptly repair at the CONTRACTOR's expense. The CONTRACTOR will be charged for all costs incurred by the CITY if, during the guarantee period, the CITY determines any CONTRACTOR failure is an emergency. Permanent repair shall be done by CONTRACTOR thereafter at the CONTRACTOR's expense.

- I. Cooperation with Others: The CONTRACTOR shall endeavor to maintain good public relations at all times. The work shall be conducted in a manner which will cause the least possible interference without annoyance to the public.
- J. Supervision: The CONTRACTOR will assure that a qualified English speaking supervisor is present at all times when work is being performed. If a citizen has a complaint or concern about work being performed, the CONTRACTOR's supervisor shall make initial contact with the citizen and endeavor to resolve the problem. The supervisor shall report each daily work schedule to the Public Works Supervisor or duly appointed representative prior to 2:30 p.m., on the preceding afternoon.

VI. COMPACTION

- A. A relative compaction of 90 percent is required on subgrade material.
- B. Subgrade at each location shall be inspected prior to replacement of the concrete sidewalk.
- C. Any compaction tests will be made by the CITY at no additional expense to CONTRACTOR.

VII. CONCRETE WORK

- A. Concrete work shall be per Standard Plans and Details, City of Garden Grove (see attached).
- B. Concrete shall be Class 520-C-2500 with a maximum slump of four (4) inches, except where noted on Standard Plans.
- C. Sidewalk surface shall have a light broom finish to match existing sidewalk and/or curb and gutter.
- D. If both ends of new construction abut existing sidewalk, the new construction shall be scored to match existing.
- E. Sidewalks longer than 30 feet in length shall have weakened plain joints per City Standard Plans.
- F. All excess concrete shall be removed from the work area.
- G. Strip and remove excess concrete debris and clean all edges of newly poured concrete.
- H. All work shall be stamped with a stamp approved by CITY with name of CONTRACTOR and year.
- I. Install weakened plain joints per City Standard Plans around tree wells as designated by the Engineer.

- J. 4" Colored P.C.C. Work shall consist of constructing 4" colored concrete as designated by the Engineer. Concrete shall be a 6-1/2 sack of cement per cubic yard of concrete with a compressive strength of 3,000 lbs. psi at 28 days. The coarse aggregate shall be 3/8" maximum and shall not be more than 30% by volume per cubic yard. The color shall be approved by the Engineer prior to application in field and shall be achieved by application of a Schofield Lithochrome color hardener or approved equal. Color shall be applied evenly with an approved shaker at the rate of 60 pounds per 100 square feet.

Colored P.C.C. shall be sprayed with a lithochrome (or approved equal) color wax matching the color of the concrete. It shall be applied to the finished surface at a minimum rate of 600 square feet per gallon of unthinned color wax, in accordance with the manufacturer's recommendations. Color hardeners and color wax shall be approved by the Engineer prior to construction. The CONTRACTOR shall submit as examples of accomplished work a minimum of five (5) locations at which he/she has done a similar type of construction. No construction of concrete shall commence prior to approval from the Engineer.

VIII. BILLING AND PAYMENT

- A. The CITY shall issue written notice of work to the CONTRACTOR with a list of the type of work required, showing location and quantity. The CONTRACTOR shall complete the requested work within the time period designated by the CITY and submit written billing within thirty (30) days of completion. The written billing shall show: Work issuance completion and invoice dates, plus an itemized list of the completed work showing location and quantity corresponding to that same item on the work order.