

CONTRACTOR AGREEMENT

THIS CONTRACTOR AGREEMENT (the “Agreement”) is made this twenty-seventh day of March, 2021, by and between the TOWN OF WASHINGTON GROVE (the “Town”), a municipal corporation of the State of Maryland, whose address is 300 Grove Avenue, P.O. Box 216, Washington Grove, MD 20880-0216 and _____, a corporation registered to do business in Maryland, hereinafter referred to as “Contractor,” whose principal address is _____.

WHEREAS, Contractor desires to act for the Town as an independent contractor to provide road repair, milling and resurfacing of Town roadways and related incidental work; and

WHEREAS, the Town desires that the Contractor provide such services.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Appointment.** The Town hereby engages Contractor, as an independent licensed Contractor and not as an agent or employee of the Town, to provide service for road repair, milling and resurfacing of Town roadways and related incidental work and Contractor hereby accepts such work, rights and obligations, subject to the terms and provisions of this Agreement.

2. **Scope of Work.** Pursuant to the Agreement, the Contractor agrees to furnish all the material and perform all of the work in compliance with the requirements and standards contained in the Contract Documents, as defined herein. All work shall be performed in accordance with the standards in the industry. The work is divided into three (3) areas: AREA

A – intersection of Chestnut Road and Oak Street; AREA B – the apron of McCauley Street at Washington Grove Lane; AREA C – intersection of Center Street and Hickory Road. The Town requires work under this Agreement to begin within five (5) business days of notice to proceed.

AREA A – Install CMP with end sections - Chestnut at Oak

Excavate existing asphalt 5' on either side of pipe
Excavate soil material to subgrade for pipe placement
Haul all debris offsite
Finegrade and compact subgrade
Place filter fabric at pipe infall and outfall area
Set new pipe and end sections (pipe to be a minimum of 12" in diameter)
Embed pipe in crushed asphalt or stone
Apply tack coat to vertical edges
Install hot asphalt to finished grade
Furnish and install large diameter stone at infall and outfall

For all work:

Furnish manhole rings and water rings as necessary
Haul away all debris and arrange for proper disposal
All work shall be completed in a first class workmanlike manner and shall conform to the best practice of the trade.

AREA B – Mill and overlay apron - McCauley at Washington Grove Lane

Furnish and maintain temporary traffic control for the work
Profile existing asphalt to 4" depth
Broom clean existing asphalt
Apply tack coat to milled surface
Furnish and install 4" surface asphalt compacted depth (9.5mm)

For all work:

Furnish and install finished asphalt approximately 10 ft. X 50 ft.
Haul away all debris and arrange for proper disposal.
All work shall be completed in a first class workmanlike manner and shall conform to the best practice of the trade.

AREA C – Remove and replace CMP - Chestnut at Oak

Excavate existing asphalt 10' on either side of pipe to soil subgrade
Remove existing 12"
Haul all debris offsite
Finegrade and compact subgrade
Set new pipe (13" by 17" crush pipe)
Embed pipe in crushed asphalt or stone
Apply tack coat to vertical edges

Install hot mix asphalt to finished grade and compact

For all work:

Excavate unsuitable subgrade

Furnish manhole rings and water rings as necessary

Furnish and install crushed stone or millings

Haul away all debris and arrange for proper disposal

All work shall be completed in a first class workmanlike manner and shall conform to the best practice of the trade.

3. **Dates of Work.** The work shall commence in within five (5) calendar days of notice to proceed. All work shall be performed pursuant to a work schedule submitted by the Contractor and approved by the Town and shall be completed within seven (7) days of commencement. It is understood by the parties hereto that time is of the essence in the completion of the services under this Agreement.

4. **Contract Price.** The Town agrees to pay the Contractor, as consideration for the Contractor's satisfactory performance of all obligations under this Agreement, a sum not to exceed \$50,000. All incidental costs including, personnel, equipment and travel, are included in the contract price. Invoices for payment of services may be submitted on a monthly basis and must be accompanied by any documentation required by the Town. Invoices will be paid after approval by the Town. In no event shall the amount billed by the Contractor exceed that amount attributed to the work completed as of the date of the bill.

Additional services related to this project shall be provided by the Contractor on an as-needed basis only as agreed with the Town in writing and shall be based where possible on the unit prices contained in the Bid Proposal Form.

5. **Contract Documents.** This Agreement and the following enumerated documents,

which are incorporated by reference as if fully set forth herein, form the contract and are termed the Contract Documents and are binding upon the Contractor:

Request for Proposal issued by the Town, with Exhibit 1
Contractor Bid Proposal
Required affidavits and certifications
Schedule of Work
Certificates of Insurance and additional insured endorsements

The terms of this Agreement shall prevail in any conflict with the terms in other Contract Documents.

6. Other Payments; Expenses; Taxes. The Town will not be responsible for any cost or expenses of operation of any kind associated with Contractor's provision of services pursuant to this Agreement, except as set out herein. Contractor shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services to be rendered hereunder except as set out herein. The parties hereto further agree that the Town shall have no obligation to reimburse, pay directly or otherwise satisfy any expenses of the Contractor in connection with the performance of his obligations under this Agreement except as set out herein.

It is expressly understood and acknowledged by the parties hereto that the fees payable hereunder shall be paid in the gross amount, without reduction for any Federal or State withholding or other payroll taxes, or any other governmental taxes or charges. The parties hereto further recognize that Contractor, as an independent contractor of the Town, is responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, Social Security payments, unemployment compensation payments, and any other fees, taxes, and expenses whatsoever. In the event that Contractor is deemed not to be an independent contractor by any local, state or federal governmental agency, Contractor agrees to

indemnify and hold harmless the Town for any and all fees, costs and expenses, including, but not limited to, attorneys fees incurred thereby. The Town is a non-taxable entity.

7. **Insurance**. Within 10 calendar days of the execution of this Agreement, and prior to commencement of work, Contractor will purchase and maintain during the entire term of this Agreement, comprehensive general liability insurance, automobile liability insurance and workers' compensation insurance with limits of not less than those set forth below. On each policy, with the exception of the workers compensation coverage, Contractor will name the Town as an additional insured under an additional insured endorsement.

A. Comprehensive General Liability Insurance:

Combined single liability limit of \$2,000,000 per occurrence and \$4,000,000 aggregate.

B. Automobile Liability Coverage:

Combined single liability limit of \$2,000,000 per occurrence and \$4,000,000 aggregate.

C. Workers' Compensation:

Contractor shall comply with the requirements of the State of Maryland for the provision of workers' compensation insurance.

By submission of a proposal, Contractor hereby certifies that they are in compliance with applicable requirements. All insurance shall include completed operations and contractual liability coverage. The Town shall receive 30 days prior notice of any amendment, reduction or elimination of the insurance coverage required herein.

The required insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Coverage will be primary and noncontributory with any other insurance and self-insurance.

Provision of any insurance required herein does not relieve the Contractor of any of the responsibilities or obligations assumed by the Contractor in the Agreement, or for which Contractor may be liable by law or otherwise.

Provision of such insurance is not intended in any way to waive the Town's immunities or any damage limits applicable to municipal governments as provided by law.

8. Indemnification: Contractor shall be responsible for any loss, personal injury, death and any other damage that may be done or suffered by reason of the negligent or intentional act or omission or failure to perform any contractual obligations by Contractor, its agents, servants, employees and sub-contractors. Contractor must indemnify and save the Town and its officials, agents and employees harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred, due to intentional or negligent acts or omissions, or failure to perform any of its obligations, on the part of the Contractor, its agents, servants, employees or subcontractors.

9. Licenses, Permits, Applicable Laws. Contractor will be responsible for obtaining any and all licenses, certifications or permits pertaining to performance of work under the Agreement. All services and materials provided by Contractor shall conform to all applicable laws and regulations.

10. Materials and Standard of Work. All work performed and material provided pursuant to this Agreement shall be in conformance with standards and specifications applicable in the industry. All work shall be performed in a first class neat and workmanlike manner by trained and experienced personnel. Defective or unsuitable materials or workmanship shall be rejected and shall be made good by the Contractor at Contractor's expense, notwithstanding that

such deficiencies have been previously accepted or were due to no fault of the Contractor.

11. Subcontracting. The Contractor may not subcontract any other work required under this Agreement without the consent of the Town. If the Contractor wishes to subcontract any of the said work, it must provide subcontractor names, addresses, and telephone numbers and a description of the work to be done. The Contractor is not relieved of primary responsibility for full and complete performance of any work identified to the subcontractor. There shall be no contractual relationship between the Town and the subcontractor.

12. Accurate Information. The Contractor certifies that all information provided in response to the invitation to bid or other requests for information is true and correct. Any false or misleading information is grounds for the Town to reject the bid and terminate this contract.

13. Errors in Specifications. The Contractor shall take no advantage of any error or omission in the specifications. The Town shall make such corrections and interpretations as may be deemed necessary and that decision shall be final.

14. Use of Site. The Contractor shall coordinate with the Town when bringing heavy equipment to the site, in order to best insure access without injury to property.

15. Contractor Staff. The parties are and shall be independent contractors to each other. Nothing herein shall be construed as creating an agency, joint venture or partnership among or between the parties. Contractor's employees are not, nor shall they be deemed, employees of Town. The Contractor shall appoint one or more personnel members or supervisors to act as liaison with the Town and emergency service personnel. All liaisons shall be fluently bi-lingual in English and the Contractor's and/or sub-contractor's employees' language(s) and at least one liaison shall be present at each work site at all times when any of the Contractor's employees or agents are at the site.

16. Periodic and Final Inspection. The Town will make periodic inspections of the work through its representative. A final inspection of the work shall be made by a representative of the Town and the Contractor at the end of the work and cure period to ensure that all requirements have been met. The Contractor is responsible for ensuring that all necessary inspections are scheduled and performed by the appropriate individual and/or agency. The Town shall be notified immediately of any adverse or unexpected conditions located in the field in order to allow for inspection before further action is taken or work performed in that area.

17. Capacity to Perform. The Contractor represents that all equipment and personnel necessary for providing the described services and items will be available as needed.

18. Miscellaneous. Title and paragraph headings contained herein are for convenience only. These terms and conditions shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assignees. Neither party may assign any of its rights or obligations hereunder without the written consent of the other party.

19. Injury to Property. In case of any direct or indirect damage done to public or private property resulting from the negligence or intentional misconduct on the part of the Contractor, its agents, servants or employees, the Contractor shall, at its own cost and expense, restore such property to a condition similar or equal to that existing before such damage was done. In case of failure on the part of the Contractor to so restore such property or properties, the cost of such restorations shall be deducted from any monies due or to become due the Contractor under the contract, or the Town may deduct from any monies due the Contractor, a sum sufficient, in the judgment of the Project Manager, to reimburse the owners of the property so damaged. This remedy shall be in addition to, and not in place of, any other remedy allowed by law. In no event shall Contractor be responsible for any direct or indirect damage done to public

or private property to the extent caused by any party other than Contractor, its agents, servants or employees.

20. Construction and Legal Effect. This Agreement, including all Contract Documents, constitutes the entire understanding between the parties. No modification or addition to this Agreement shall have any effect unless made in writing and signed by both parties hereto.

21. Relief. The Contractor recognizes the substantial and immediate harm that a breach or threatened breach of this Agreement will impose upon the Town, and further recognizes that in such event monetary damages may be available to the Town. Accordingly, in the event of a breach or threatened breach of this Agreement, Contractor consents to the Town's entitlement to seek ex parte, preliminary, interlocutory, temporary or permanent injunctive, or any other equitable relief, protecting and fully enforcing the Town's rights hereunder and preventing the Contractor from further breaching any of its obligations set forth herein. Nothing herein shall be construed as prohibiting the Town from pursuing any other remedies available to the Town at law or in equity for such breach or threatened breach, including the recovery of damages from Contractor.

22. Termination for Default. Notwithstanding anything to the contrary herein, this Agreement may be terminated upon the failure of the Contractor to deliver work, supplies, materials or services in a timely manner, to correct defective work or materials, to act in good faith, or to carry out the work in accordance with contract documents, each of which shall constitute a breach of this Agreement. Upon the happening of such a breach, the Town may terminate this Agreement. Either party may terminate this Agreement following the breach of a material term by the other party which breach has not been cured by the thirtieth (30th) day

following written notice of such breach to the breaching party, without prejudice to any rights accrued prior to such termination. This provision shall not limit either party in exercising any other rights or remedies it may have.

23. Termination for Convenience. The performance of work or delivery of services under this Agreement may be terminated in whole or in part at any time upon written notice when the Town determines that such termination is in its best interest. The Town will be liable only for labor, materials, goods, and services furnished prior to the effective date of such termination and in no event will the Town be liable for loss of profit on services not performed.

24. Notices. All notices shall be sufficient if delivered in person or sent by certified mail to the parties at the following addresses:

To the Town:

John Compton, Mayor
Town of Washington
300 Grove Avenue
P.O. Box 216
Washington Grove, MD 20880-0216

To the Contractor:

25. Costs. The prevailing party shall be entitled to attorney's fees and costs incurred in any actions or claims brought for breach, to enforce this contract, or for damages thereunder.

26. Enforcement Provisions. The failure of the Town or Contractor, at any time, to enforce any of the provisions of this Agreement, or any right with respect thereto, will in no way be construed to be a waiver of such provisions or right, or in any way to affect the validity of this Agreement. The exercise by either party of any rights under this Agreement shall not preclude or

prejudice the subsequent exercise of the same or any other rights under this Agreement.

27. **Governing Law.** This Agreement shall be governed by the laws of the State of Maryland, excluding its conflict of law rules, as if this Agreement were made and to be performed entirely within the State of Maryland.

28. **Severability.** If any term or provision of this Agreement shall be held invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be enforced to the fullest extent permitted by law.

29. **Set-Off.** In the event that Contractor shall owe an obligation of any type whatsoever to the Town at any time during the term hereof or after termination of the relationship created hereunder, the Town shall have the right to offset any amount so owed by the Contractor against any compensation due the Contractor from the Town.

30. **Increase or Decrease of Quantities.** The Town reserves the right to increase or decrease the quantity of materials to be furnished or of work to be done under this Contract whenever it is deemed advisable or necessary. Such increase or decrease shall in no way void this Contract and the total price of the contract shall be adjusted accordingly. The Town reserves the right to increase or decrease quantities based on a per unit price for the specific item, amount, or work requested without affecting the contract prices for any item or remaining work. Unit prices shall not be increased or decreased regardless of changes in quantity and shall be based solely on the unit price quotation.

31. **Warranties.** The Contractor shall warrant all of the work performed under this Contract for a maintenance period of one (1) year after the date of conditional acceptance thereof by the City. In the event the Contractor neglects to make such repairs required during the

warranty period, the Town may cause such damage to be repaired and made good at the cost of and expense of the Contractor.

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

ATTEST:

TOWN OF WASHINGTON GROVE

Kathy Lehman, Clerk

By: _____
John Compton, Mayor

CONTRACTOR

WITNESS

By: _____

Name:
Title: