

BY: Councilmember Hein  
 FIRST READING: January 17, 2024  
 SECOND READING: February 7, 2024

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIDGETON, MISSOURI, AUTHORIZING THE MAYOR AND CITY CLERK TO RENEW THE AGREEMENT, SUBSTANTIALLY IN THE FORM ATTACHED HERETO, WITH M&H CONCRETE CONTRACTORS, INC. FOR THE 2024 CONCRETE PAVEMENT REPLACEMENT WITH THE SAME SCHEDULE OF RATES AS 2023, INCREASED BY A MAXIMUM OF THREE PERCENT, ASSOCIATED WITH SELECT STREETS IN THE HARMANN ESTATES SUBDIVISION IN AN AMOUNT OF ONE MILLION FORTY TWO THOUSAND TWO HUNDRED TWENTY EIGHT AND 70/100 (\$1,042,228.70), THE PROJECT BUDGET INCLUDES A CONTINGENCY IN THE AMOUNT OF TWENTY FIVE THOUSAND DOLLARS AND 00/100 (\$25,000.00)

WHEREAS, the project will consist of concrete pavement replacement on select streets in the Harmann Estates Subdivision; anticipated streets include Harmann Estates Drive, Admiralton Drive, Archerton Drive, Beaverton Drive and Birmingham Drive.


BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIDGETON, MISSOURI, AS FOLLOWS:

Section 1. That the Mayor and City Clerk are hereby authorized to renew the agreement, substantially in the form attached hereto, with M&H Concrete Contractors, Inc. for the 2024 concrete pavement replacement with the same schedule of rates as 2023, increased by a maximum of 3 percent, associated with select streets in the Harmann Estates Subdivision in an amount of one million forty two thousand two hundred twenty eight and 70/100 (\$1,042,228.70), the project budget includes a contingency in the amount of twenty five thousand dollars and 00/100 (\$25,000.00).

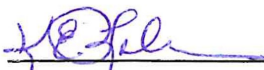
Section 2. This Ordinance shall be in full force and effect from and after its passage and approval.

PASSED THIS 7TH DAY OF FEBRUARY, 2024

APPROVED THIS 7TH DAY OF FEBRUARY, 2024

  
 Terry W. Briggs, Mayor

ATTEST:

  
 Karen E. Robinson, MRCC-S/CMC  
 City Clerk

**CITY-CONTRACTOR AGREEMENT**

This City-Contractor Agreement (hereinafter called the "Contract" or "Agreement") made and entered into the 8th day of February, 2024, by and between the City of Bridgeton, Missouri (hereinafter called the "City") and, M&H Concrete Contractors, Inc. a Corporation with offices at 3151 Industrial Park Place West, St. Peters MO (hereinafter called the "Contractor"). The project identified as Concrete Pavement Replacement – FY2024.

WITNESSETH, that the Contractor and the City, for the consideration set forth herein agree as follows:

**ARTICLE I**

**The Contract Documents**

The Contract Documents consist of the 2023 Bid Documents dated February 7, 2023, which includes the General Conditions of City-Contractor Agreement, the Job Special Provisions, State Wage Determination, Non-Collusion Affidavit, Performance Payment Bond, Specifications, Drawings, the Construction Schedule, all Addenda, and all Modifications issued after execution of this Contract, which together with this Agreement form the Contract, and are all as fully a part of the Contract as if attached to this Agreement or repeated herein. All definitions set forth in the General Conditions of City-Contractor Agreement are applicable to this Agreement.

**ARTICLE II**

**Scope of Work**

The Contractor, acting as an independent contractor, shall do everything required by the Contract Documents. Contractor represents and warrants that it has special skills which qualify it to perform the Work in accordance with the Contract and that it is free to perform all such Work and is not a party to any other agreement, written or oral, the performance of which would prevent or interfere with the performance, in whole or in part, of the Work.

### **ARTICLE III**

#### **Time of Completion**

All time limits stated in the Contract Documents are of the essence. The Contractor agrees that all Work shall be diligently prosecuted at such rate as to complete the project within **One Hundred Five (105) Working Days**.

A "Working Day" shall be defined as any day when, in the judgment of the Engineer, soil and weather conditions would permit the major operation of the project for six hours or more, unless other unavoidable conditions prevent the Contractor's operations. If conditions require the Contractor to stop work in less than six hours, the day will not be counted as a Working Day. Saturdays, Sundays, and any day which is a legal holiday under the laws of the State of Missouri will not be counted as Working Days. The count of Working Days will start within **Ten (10) days** from when the Contractor has received the Notice to Proceed from the City (the "Commencement Date").

As used herein, "Primary Term" shall mean the period beginning on the Commencement Date and ending on the final Working Day. The City shall have the option to renew this Agreement for a period of equal duration as the Primary Term, on the same terms and conditions as this Agreement. If the City elects to renew this Agreement, the contract unit prices during the extension period(s) shall be at the same schedule of rates as the prior year. Furthermore, if the right to renew is exercised, the parties will include an addendum to the Contract identifying the streets for the project during the renewal term and the timeline for the project schedule for the relevant renewal term. The Primary Term, together with any exercised renewal, is referred to herein as the "Contract Time."

### **ARTICLE IV**

#### **The Contract Price**

The City will pay the Contractor for the performance of the Contract in current funds, for the total quantities of Work properly performed at each Site at the unit prices stipulated in the 2023 Agreement dated April 5, 2023 plus a maximum of 3 percent subject to additions and deductions as provided in Article VII of this City-Contractor Agreement, and said amount shall in no event exceed

One million forty two thousand two hundred twenty eight and 70/100 ( \$1,042,228.70 )  
(the "**Contract Price Cap**"). In no event shall the amount owed to the Contractor exceed the contract unit prices or the Contractor Price Cap unless agreed to by the City through a Change

Order. No additional compensation will be given for any increase in material or labor costs for the "Awarded Contract Year".

## ARTICLE V

### Performance of the Work

(a) Within seven calendar days (7) after being awarded the Contract, the Contractor shall prepare and submit for the City's approval (1) a **Construction Schedule** for the Work in a bar chart format which Construction Schedule shall indicate the dates for starting and completing the various stages of construction and (2) a **Traffic Control Plan** indicating the location of all proposed signage, detours, road closures throughout the project which adequately address the traffic control plan of the proposed work. All traffic control shall be according to the latest standards of the Manual on Uniform Traffic Control Devices developed by the Federal Highway Administration. The Notice to Proceed shall be issued within ten (10) business days of the award, however no Work will commence until the Contractor's schedule and traffic control plan is submitted and approved by the City. The Contractor shall be required to substantially finish portions of the Work as designated by the Engineer prior to continuation of further work remaining on the project. This may include backfilling, paving, sodding, or cleanup as designated by the Engineer.

(b) Completion of the Work in accordance with the time limits set forth in the Construction Schedule is an essential condition of the Contract. If the Contractor fails to complete the Work in accordance with the Construction Schedule, unless the delay is excusable under the provisions of Article VI hereof, the Contractor shall pay the City as liquidated damages and not as a penalty, the sum of \$250.00 for each calendar day the Contractor fails to comply with the Construction Schedule. The total amount so payable to the City as liquidated damages may be deducted from any sums due or to become due to Contractor from City.

(c) After Commencement of the Work, and until final completion of the Work, the Contractor shall report to the City at such intervals as the City may reasonably direct, the actual progress of the work compared to the Construction Schedule. If the Contractor falls behind the Construction Schedule for any reason, it shall promptly take, and cause its Subcontractors to take, such action as is necessary to remedy the delay, and shall submit promptly to the City for approval a supplementary schedule or progress chart demonstrating the manner in which the delay will be remedied; provided, however, that if the delay is excusable under Article VI hereof, the Contractor will not be required to take, or cause its Subcontractors to take, any action which

would increase the overall cost of the Work (whether through overtime premium pay or otherwise), unless the City shall have agreed in writing to reimburse the Contractor for such increase in cost. Any increase in cost incurred in remedying a delay which is not excusable under Article VI hereof shall be borne by the Contractor.

## **ARTICLE VI**

### **Delays Beyond Contractor's Control**

(a) If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the City, or of a separate contractor employed by the City, or by national labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the City pending any agreed to mediation and arbitration, or by other causes which the City determines may justify delay, then the Construction Schedule shall be extended by Change Order for such reasonable time as the City may determine, provided, that, (i) the critical path is delayed, (ii) the Contractor could not have anticipated, avoided or mitigated the effect of the delay and (iii) no concurrent delays caused by Contractor, Subcontractor or Sub-subcontractor are or were present. In no event shall any extension be granted if the Contractor could have avoided the need for such extension by the exercise of reasonable care and foresight.

(b) All claims for extension of time shall be made in writing to the City no more than seven (7) days after the commencement of the delay; otherwise, they shall be waived. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work and shall notify the City within seven (7) days after the event causing the delay has ceased.

(c) Extension of time shall be the Contractor's sole remedy for any such delay described in Paragraph (a) of this Article unless the same shall have been caused by acts constituting intentional interference by the City with the Contractor's performance of the Work and where such acts continue after the Contractor's written notice to the City of such interference. The City's exercise of any of its rights under the Contract Documents regarding changes in the Work, regardless of the extent or number of such changes, or the City's exercise of any of its remedies of suspension of the Work or of correction or re-execution of any defective Work shall not under any circumstances be construed as intentional interference with the Contractor's performance of the Work.

(d) Weather shall not constitute a cause for granting an extension of time.

## **ARTICLE VII**

### **Changes in the Work**

(a) The City may make changes within the general scope of the contract by altering, adding to or deducting from the Work by Change Order. All such changes in the Work shall be executed under the conditions of the Contract. No extra work or change shall be made except pursuant to a Change Order signed by the City in accordance with the General Conditions. Any claim for an increase in the Contract Price Cap resulting from any such change in the Work shall be made by the Contractor in accordance with the General Conditions.

(b) If the requested change would result in a delay in the Construction Schedule, the provisions of paragraph (c) of Article V and of Article VI hereof shall apply. If the requested change would result in a decrease in the time required to perform the Work, the completion date and the Construction Schedule shall be adjusted by agreement between the parties to reflect such decrease.

(c) Any adjustment in the contract price for duly authorized extra work or change in the Work shall be determined based on the unit prices previously specified; to the extent such unit prices are applicable. To the extent such unit prices are not applicable, the adjustment in the contract price shall, at the option of the City, be determined by an acceptable lump sum properly itemized and supported by sufficient substantiating data to permit evaluation, or by an acceptable cost plus percentage or fixed fee, as set forth in the signed Change Order.

## **ARTICLE VIII**

### **Termination by City or Contractor**

(a) If the Contractor is adjudged a bankrupt, or if the Contractor makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor persistently or repeatedly fails, except in cases for which extension of time is provided, to make progress in accordance with the Construction Schedule, or if the Contractor fails to make prompt payment to Subcontractors or for material or labor, or persistently disregards laws, ordinances or the instructions of the City, or otherwise breaches any provision of the Contract, the City may, without prejudice to any other right or remedy, by giving written notice to the Contractor and its surety, terminate the Contract, take possession of the Work and of all materials and equipment thereon and finish the Work by

whatever method the City may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished.

(b) This Contract may be terminated by the City for its convenience by giving three (3) days prior written notice to the Contractor if the City, in its sole discretion, decides to discontinue or suspend construction.

(c) In the event of termination pursuant to paragraph (a) or (b) of this Article, the Contractor, upon the request of the City, shall promptly:

(i) assign to the City in the manner and to the extent directed by the City all right, title and interest of the Contractor under any subcontracts, purchase orders and construction equipment leases to which the Contractor is a party and which relate to the Work or to construction equipment required therefor, and

(ii) make available to the City to the extent directed by the City all construction equipment owned by the Contractor and employed in connection with the Work.

## **ARTICLE IX**

### **Contractor's Liability Insurance**

Contractor will, at a minimum, obtain insurance of the types and in the amounts described below, or as otherwise required by law. All insurers must have a Best rating of A-, IX, or higher. The Contractor shall purchase and maintain in full force and affect the following insurance coverage with an insurance carrier acceptable to the City:

The policy shall be endorsed to cover the contractual liability of the Contractor under the General Conditions.

The Contractor and its Subcontractors shall procure and maintain during the life of this Contract insurance of the types and minimum amounts as follows:

**1. Commercial General and Umbrella Liability Insurance.** Contractor will maintain commercial general liability ("CGL") with a limit of not less than \$2,000,000 each occurrence and \$2,000,000 in the aggregate. General aggregate limits must apply separately to this Project.

(a) CGL insurance will be written on the most recent edition of ISO occurrence form CG 0001 (or a substitute form providing equivalent coverage) and will cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury,

and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

(b) The City will be included as an additional insured under the CGL, using ISO Additional Insured Endorsement CG 20 10, or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance will apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by, the City.

(c) The City acknowledges that coverage for liability arising from employment-related practices may be carried by Contractor under a policy of insurance separate from the CGL insurance.

**2. Business Auto and Umbrella Liability Insurance.** Contractor will maintain business auto liability and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each accident.

(a) Such insurance will cover liability arising out of any auto (including owned, hired, and non-owned autos).

(b) Business auto coverage will be written on ISO form CA 0001, CA0005, CA 0002, or a substitute form providing equivalent liability coverage. If necessary, the policy will be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 0001.

(c) Contractor waives all rights against the City and its agents, officers, directors, and employees for recovery of damages to the extent the damages are covered by the business auto liability or commercial umbrella liability insurance obtained by Contractor pursuant to Section 2 of this Article.

**3. Workers Compensation Insurance.** CONTRACTOR WILL MAINTAIN WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE.

(a) The employers' liability and/or commercial umbrella limits will not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

(b) The workers' compensation limits will not be less than that required by applicable state statute.

**4. General Requirements.** The following provisions are applicable with respect to all insurance coverages required to be maintained by contractor hereunder.



(a) By requiring the insurance as set out herein, Owner does not represent that the coverage limits will necessarily be adequate to protect Contractor, and such coverage and limits will not be deemed as a limitation on Contractor's liability under the indemnities provided to the City under the Contract Documents.

(b) If Contractor's liability policies do not contain standard ISO separation of ISO separation of insured provision, or a substantially similar clause, they will be endorsed to provide cross-liability coverage.

(c) Prior to commencing the Work, Contractor will furnish the City with a certificate, or certificates, of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Upon request, Contractor shall furnish complete copies of each policy.

(d) All policies will provide for thirty (30) days written notice to the City prior to the cancellation or material change of any insurance referred to therein.

(e) All certificates shall include the additional insured endorsement and waiver of subrogation endorsements, or copies of policy language in connection with the same.

(f) Failure of the City to demand such certificates or other evidence of full compliance with these insurance requirements, or failure of the City to identify a deficiency from evidence that is provided will not be construed as a waiver of Contractor's obligation to maintain such insurance.

(g) The City will have the right, but not the obligation, to prohibit Contractor from entering any Project Site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner.

(h) Failure to maintain the insurance required in this Article may result in termination of this Agreement at the City's option. If Contractor fails to maintain the insurance as set forth herein, the City will have the right, but not the obligation, to purchase said insurance at Contractor's expense and deduct such costs from any amounts payable under the Contract Documents.

(i) With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate, or certificates, evidencing such coverage will be promptly provided to the City when requested.

**ARTICLE X****Equal Opportunity and Non-Discrimination**

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the basis of race, color, religion, sex, national origin or disability in the selection and retention of subcontractors. The Contractor will comply with Title VI of the Civil Rights Act of 1964, as the same has been or may be amended from time to time. In all solicitation either by competitive bidding or negotiations made by the contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified of the Contractor's obligations under this contract and the regulations relative to nondiscrimination on the ground of race, color religion, sex, national origin or disability.

The Contractor will take action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin or disability. Such action shall include, but not be limited to the employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post notices pertaining to the foregoing in conspicuous places available to employees and applicants for employment.

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or disability.

The Contractor will comply with all provisions of federal, state and local codes, ordinances and regulations governing the regulation of Equal Employment Opportunity and Non-Discrimination.

In the event that any or all of the provision(s) of the foregoing paragraphs conflict with federal, state or other local laws, ordinances or regulations, then the requirements of such federal, state or local laws, ordinances, or regulations shall prevail. Compliance with the foregoing provisions shall not relieve the Contractor from adherence to any and all additional requirements regarding equal employment or non-discrimination set forth in such federal, state or other local laws, ordinances or regulations.

**ARTICLE XI****Conflicts of Interest**

The parties agree to abide by all applicable federal, state and local laws, ordinances and regulations relating to conflicts of interest.

**ARTICLE XII****The Work**

The Contractor shall furnish all labor, materials and equipment necessary to complete all activities within the project scope. The Scope of Work includes the Concrete Pavement Replacement of street pavement within the City and provides for items as outlined in the construction drawings and specifications.

The street slabs proposed for the 2024 project are in the Harmann Estates subdivision and include Harmann Estates Drive, Admiraltown Drive, Archerton Drive, Beaverton Drive, and Birmingham Drive.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

CITY OF BRIDGETON

By Terry W. Briggs  
Terry W. Briggs, Mayor

(SEAL)

Attest: [Signature]  
City Clerk

DATE: 2/8/2024

By [Signature]  
"Contractor"

Rhonda Rubinstein  
Printed Name

Treasurer  
Title

Attest: Sheila Stucky

DATE: February 8, 2024