

City of South Daytona

Office of the City Manager

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3014



MEMORANDUM

To: James L. Gillis Jr., City Manager

From: Becky Witte, Deputy City Clerk

Re: Consideration of approving a piggyback agreement from New Smyrna Beach Utilities with Sparks Concrete, LLC for Concrete Services and Asphalt Repair Services on an as needed basis within budgeted allocations per fiscal year.

Date: May 25, 2023

The Street Maintenance Division of the Public Works Department generally handles the repair and installation of sidewalks and curbs as well as asphalt repair in South Daytona. Moreover, other departments also rely on these services, including Parks and Recreation as well as the Utilities Department. On occasion, there are times when schedules are hectic, or a project is too complex for our crews to complete in a timely manner. To resolve this situation, the City has the ability to utilize a contractor under a continuing service contract to complete these projects when our crews are unable to do so within budgeted allocations per fiscal year.

Sparks Concrete LLC has provided the City the opportunity to utilize the competitively awarded agreements from New Smyrna Beach Utilities for Concrete Services and Asphalt Repair Services. Utilizing an existing contract with a larger agency, the City is able to secure better pricing for these projects. Per the City's purchasing policy, New Smyrna Beach Utilities has approved utilizing the agreements.

In order to expedite projects and utilize cost savings, staff recommends the Council approve a piggyback agreement from New Smyrna Beach Utilities with Sparks Concrete, LLC for Concrete Services and Asphalt Repair Services on an as needed basis within budgeted allocations per fiscal year.



New Smyrna Beach ... UTILITIES ...

December 9, 2022

Sparks Concrete, LLC
4106 South Nova Road
Port Orange, FL 32127

Dear Mrs. Doreen Sparks,

In RFQ 20-194, for replacement concrete services, New Smyrna Beach Utilities reserved the right to extend the contract for three additional (1) one-year periods, upon mutual agreement in writing.

New Smyrna Beach Utilities would like to extend the contract for the third of three annual renewals, based on the terms and conditions of the original agreement. If in agreement to the extension of the contract (2/1/23-1/31/24), please indicate, by signature, on the line provided below and return.

If a price adjustment (+/-) is warranted, please include price change documentation and return

Description	Unit	Current Price	Renewal Price
Concrete Sidewalk & Driveway Replacement	CY	\$495.00	\$ 715.00
Concrete Sidewalk & Driveway-New	CY	\$450.00	\$ 715.00
Concrete Miami Gutter-Drop Curbing	LF	\$21.00	\$ 30.00
Concrete Type "E" Curbing	LF	\$21.75	\$ 31.00
Concrete Type "F" Curbing	LF	\$27.00	\$ 32.75



New Smyrna Beach ... UTILITIES ...

Concrete Environmental Curbing	LF	\$19.00	\$ 29.00
MOT Lane Closure	Day	\$1,600.00	\$ 1,600.00

Acceptance by the undersigned to extend contract for the third additional year in accordance with RFQ 20-194.

Respectfully,
Rachel Kampf
Administrative Assistant
Purchasing Department
New Smyrna Beach Utilities
386-424-3043
Rkampf@nsbufl.com

Sparks Concrete, LLC
Company Name

Doreen Sparks / 12/13/22
Signature/Date

Doreen Sparks, Manager
Print Name/Title

NEW SMYRNA BEACH UTILITIES
ITB 06-23

AGREEMENT FOR ASPHALT REPAIR SERVICES

THIS AGREEMENT FOR ASPHALT REPAIR SERVICES ("AGREEMENT") is made and entered into this 24th day of April, 202³, by and between the **NEW SMYRNA BEACH UTILITIES**, located at 200 Canal Street, New Smyrna Beach, Florida 32168, and **Sparks Concrete, LLC** (hereafter **SERVICE PROVIDER**"), located at 4106 S Nova Road, Port Orange, FL 32127.

RECITALS

1. The **NEW SMYRNA BEACH UTILITIES** was created by special act of the Florida Legislature as a political subdivision of the State of Florida with certain powers, authorities, and duties related to the provision of water, wastewater, reclaimed water, and electric utility services, including the authority to enter into contracts.

2. The **NEW SMYRNA BEACH UTILITIES** wishes to obtain **Asphalt Repair Services**

3. The **SERVICE PROVIDER** is willing to provide such services.

ACCORDINGLY, for and in consideration of the Recitals hereof, the mutual undertakings and agreements herein contained and assumed, and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the Parties, the Parties hereby covenant and agree as follows:

SECTION 1. RECITALS. The above Recitals are true and correct and form a material part of this Agreement.

SECTION 2. TERM. This Agreement is to become effective upon execution by both parties. The initial term shall be for **ONE** (1) year(s). Additionally, the parties agree that this Agreement may be renewed beyond the initial term, up to **Three** (3) additional one-year periods upon mutual agreement in writing. Either party may elect to terminate the Agreement by giving written notice prior to **FIFTEEN DAYS (15).**

SECTION 3. DESCRIPTION OF SERVICES. **SERVICE PROVIDER** agrees to perform **Asphalt Repair Services** as specified in Exhibit "A" attached to and incorporated into this Agreement

SECTION 4. CHANGES IN THE SCOPE OF WORK.

4.1 NEW SMYRNA BEACH UTILITIES may make changes in the services at any time by giving written notice to **SERVICE PROVIDER**. If such changes increase, decrease or eliminate any amount of work, **NEW SMYRNA BEACH UTILITIES** and **SERVICE PROVIDER** will negotiate any change in total cost or schedule modifications. If **NEW SMYRNA BEACH UTILITIES** approves, **NEW SMYRNA BEACH UTILITIES** shall amend the Scope of Services to reflect the modifications; and **SERVICE PROVIDER** shall

NEW SMYRNA BEACH UTILITIES

ITB 06-23

be compensated for said services in accordance with the terms of Section 5 herein. All change orders shall be in writing and executed by both **NEW SMYRNA BEACH UTILITIES** designated representative and the **SERVICE PROVIDER**.

4.2 All of **NEW SMYRNA BEACH UTILITIES** said Scope of Services and amendments thereto shall be performed in strict accordance with the terms of this Agreement insofar as they are applicable.

SECTION 5. SCHEDULE AND PERIOD OF PERFORMANCE.

5.1 **SERVICE PROVIDER** shall perform its services in conformance with the agreed upon schedule. **SERVICE PROVIDER** shall complete all of said services in a timely manner and will keep **NEW SMYRNA BEACH UTILITIES** apprised of the status of work on a monthly basis. Should **SERVICE PROVIDER** fall behind the agreed-upon schedule, it shall employ such resources so as to comply with the agreed-upon schedule.

5.2 No extension for completion of services shall be granted to **SERVICE PROVIDER** without **NEW SMYRNA BEACH UTILITIES** prior written consent, except as provided in Sections 4.1 and 22.1 herein.

SECTION 6. COMPENSATION FOR SERVICES. **NEW SMYRNA BEACH UTILITIES** agrees to compensate **SERVICE PROVIDER** for services properly performed at the rates of:

RATES EFFECTIVE 4/24/23 – 4/23/24

CITY OF NEW SMYRNA BEACH SPECS

DESCRIPTION	QUANTITY	UNIT	COST/UNIT
Emergency next day Mobilization (Milling and paving)	1	LS (< 300 SY)	\$50.00
Emergency next day Mobilization (Milling and paving)	1	LS (> 300 SY)	\$50.00
Mobilization w/in 2 weeks of notice (Milling and paving)	1	LS (< 300 SY)	\$40.00
Mobilization w/in 2 weeks of notice (Milling and paving)	1	LS (> 300 SY)	\$40.00

NEW SMYRNA BEACH UTILITIES
ITB 06-23

1 Inch SP 9.5 Asphalt Surface Course (and overlay)	1	SY (<200 SY)	\$25.00
1 Inch SP 9.5 Asphalt Surface Course (and overlay)	1	SY (>200 SY)	\$25.00
1-1/2 Inch SP 9.5 Asphalt	1	SY (<200 SY)	\$25.00
1-1/2 Inch SP 9.5 Asphalt	1	SY (>200 SY)	\$30.00
1-1/2 Inch SP 9.5 Asphalt (within 24 Hours)	1	SY (<200 SY)	\$30.00
1-1/2 Inch SP 9.5 Asphalt (within 24 hours)	1	SY (>200 SY)	\$40.00
DESCRIPTION	QUANTITY	UNIT	COST/UNIT
2 Inches SP 12.5 Asphalt	1	SY (<200 SY)	\$35.00
2 Inches SP 12.5 Asphalt	1	SY (>200 SY)	\$35.00
2 Inches SP 12.5 Asphalt (within 24 hours)	1	SY (<200 SY)	\$40.00
2 Inches SP 12.5 Asphalt (within 24 hours)	1	SY (>200 SY)	\$40.00
Alternate Asphalt Base SP 12.5	1	SY	\$55.00
Milling existing surface (per 1/2 inch)	1	SY (<300 SY)	\$15.00

NEW SMYRNA BEACH UTILITIES
ITB 06-23

Milling existing surface (per ½ inch)	1	SY (>300 SY)	\$15.00
Thermoplastic Paint (6" White, w/RPM)	1	LF	\$12.00
Thermoplastic Paint (6" Yellow, w/RPM)	1	LF	\$12.00
Thermoplastic Paint (Cross walk)	1	EA	\$400.00
Thermoplastic Paint (Stop Bar)	1	EA	\$400.00
DESCRIPTION	QUANTITY	UNIT	COST/UNIT
Traffic Paint (6" White, w/RPM)	1	LF	\$12.00
Traffic Paint (6" Yellow, w/RPM)	1	LF	\$12.00
Reflective Pavement Markers (installed)	1	EA	\$8.00
Removal of Material	1	SY	\$25.00
Compaction of Existing Base Course	1	SY	\$25.00
Compaction of New Base Course, 8" Limerock	1	SY	\$50.00
Maintenance of Traffic (Lane Closures w/flagmen)*	1	LS	\$1,000.00

NEW SMYRNA BEACH UTILITIES
ITB 06-23

Maintenance of Traffic (Road Closures with Detour)*	1	LS	\$3,000.00
Maintenance of Traffic (shoulder work)	1	LS	\$1,000.00
Concrete Curb Repair	1	LF	\$75.00
Decorative Pavement Repair (pavers/stamped asphalt)	1	SF	\$150.00

COUNTY OF VOLUSIA SPECS

DESCRIPTION	QUANTITY	UNIT	COST/UNIT
Emergency next day Mobilization (Milling and paving)	1	LS (< 300 SY)	\$50.00
Emergency next day Mobilization (Milling and paving)	1	LS (> 300 SY)	\$50.00
Mobilization w/in 2 weeks of notice (Milling and paving)	1	LS (< 300 SY)	\$45.00
Mobilization w/in 2 weeks of notice (Milling and paving)	1	LS (> 300 SY)	\$40.00
1 Inch SP 9.5 Asphalt Surface Course (and overlay)	1	SY (<200 SY)	\$25.00
1 Inch SP 9.5 Asphalt Surface Course (and overlay)	1	SY (>200 SY)	\$25.00
1 Inch SP 9.5 Asphalt Structural Course	1	SY (<200 SY)	\$25.00

NEW SMYRNA BEACH UTILITIES
ITB 06-23

1 Inch SP 9.5 Asphalt Structural Course	1	SY (>200 SY)	\$25.00
2 Inches SP 12.5 Asphalt	1	SY (<200 SY)	\$35.00
2 Inches SP 12.5 Asphalt	1	SY (>200 SY)	\$35.00
DESCRIPTION	QUANTITY	UNIT	COST/UNIT
2 Inches SP 12.5 Asphalt (within 24 hours)	1	SY (<200 SY)	\$40.00
2 Inches SP 12.5 Asphalt (within 24 hours)	1	SY (>200 SY)	\$40.00
Match Friction Course	1	SY	\$75.00
Alternate Asphalt Base SP 12.5	1	SY	\$55.00
Milling existing surface (per ½ inch)	1	SY (<300 SY)	\$15.00
Milling existing surface (per ½ inch)	1	SY (>300 SY)	\$15.00
Thermoplastic Paint (6" White, w/RPM)	1	LF	\$12.00
Thermoplastic Paint (6" Yellow, w/RPM)	1	LF	\$12.00
Thermoplastic Paint (Cross walk)	1	EA	\$400.00

NEW SMYRNA BEACH UTILITIES
ITB 06-23

Thermoplastic Paint (Stop Bar)	1	EA	\$400.00
Traffic Paint (6" White, w/RPM)	1	LF	\$10.00
DESCRIPTION	QUANTITY	UNIT	COST/UNIT
Traffic Paint (6" Yellow, w/RPM)	1	LF	\$12.00
Reflective Pavement Markers (installed)	1	EA	\$8.00
Removal of Material	1	SY	\$25.00
Compaction of Existing Base Course	1	SY	\$25.00
Compaction of New Base Course, 8" Limerock	1	SY	\$50.00
Cement Stabilized Base County TP-265	1	SY	\$50.00
Maintenance of Traffic (Lane Closures w/flagmen)*	1	LS	\$1,000.00
Maintenance of Traffic (Road Closures with Detour)*	1	LS	\$3,000.00
Maintenance of Traffic (shoulder work)	1	LS	\$1,000.00
Concrete Curb Repair	1	LF	\$75.00

NEW SMYRNA BEACH UTILITIES

ITB 06-23

Decorative Pavement Repair (pavers/stamped asphalt)	1	SF	\$150.00
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SECTION 7. PAYMENT; INVOICES.

7.1 Invoices for **SERVICE PROVIDER'S** services shall be submitted to the **NEW SMYRNA BEACH UTILITIES** at monthly intervals for services rendered during the previous period. Each invoice shall delineate the period in which the services were rendered; shall include a summary of the progress to date as a percentage of the major phases of the work. Each invoice shall be certified as correct by a duly authorized representative of **SERVICE PROVIDER**. The bill[s] shall identify the services completed and the amount charged.

7.2 **NEW SMYRNA BEACH UTILITIES** or its authorized representative shall have the right, at all reasonable times, at its own expense, to inspect and audit the books and records of **SERVICE PROVIDER** insofar as they pertain to the direct charges payable by **NEW SMYRNA BEACH UTILITIES** under this Agreement and such audit is performed within three (3) years after the expiration of this Agreement. The composition of fixed rates will not be subject to audit.

7.3 All invoices shall be due and payable thirty (30) days from receipt thereof by **NEW SMYRNA BEACH UTILITIES**, subject to **NEW SMYRNA BEACH UTILITIES** right to contest, in good faith, all or any part of the charges set forth therein. Payment of invoices shall not be unreasonably withheld by **NEW SMYRNA BEACH UTILITIES**, but the **NEW SMYRNA BEACH UTILITIES** reserves the right to reject any statement which fails to adequately describe the services rendered by **SERVICE PROVIDER**. Upon written notice to **SERVICE PROVIDER**, payment may be withheld, in whole or in part, for **SERVICE PROVIDER'S** failure to comply with a term, condition or requirement of this Agreement. **SERVICE PROVIDER** will help effect resolution and transmit a revised invoice as necessary. Thereafter, the withheld amount(s) shall be paid upon **SERVICE PROVIDER'S** satisfactory demonstration of compliance to the **NEW SMYRNA BEACH UTILITIES**. Amounts not questioned by **NEW SMYRNA BEACH UTILITIES** shall be promptly paid to **SERVICE PROVIDER** in accordance with the above payment procedures.

SECTION 8. RIGHT TO INSPECTION. **NEW SMYRNA BEACH UTILITIES** or its affiliates shall at all times have the right to review or observe the services performed by **SERVICE PROVIDER**. No inspection, review, or observation shall relieve **SERVICE PROVIDER** of its responsibility under this Agreement.

SECTION 9. WARRANTY AND ACCEPTANCE. The **SERVICE PROVIDER** agrees that all material shall be new and workmanship shall be first class in every respect. The work shall be subject to inspection and acceptance by the **NEW SMYRNA BEACH**

NEW SMYRNA BEACH UTILITIES

ITB 06-23

UTILITIES. SERVICE PROVIDER guarantees its work hereunder for a period of 12 months after completion and acceptance of the work unless otherwise set forth herein. In the event **NEW SMYRNA BEACH UTILITIES** discovers defects in material or workmanship at any time before the expiration of the specified warranty period, **SERVICE PROVIDER** shall, upon written notice from the **NEW SMYRNA BEACH UTILITIES**, repair or replace at its sole expense any such defects. The **NEW SMYRNA BEACH UTILITIES** may perform such repairs or replacements by other reasonable means and **SERVICE PROVIDER** agrees to pay for such corrective measures. Neither acceptance of the work by the **NEW SMYRNA BEACH UTILITIES** nor payment shall relieve **SERVICE PROVIDER** from liability under the indemnity clause or any of the guarantees or warranties contained or implied herein.

SECTION 10. SAFETY. To the extent the **NEW SMYRNA BEACH UTILITIES** safety standards do not violate other County, State or Federal standards, **SERVICE PROVIDER** agrees to comply with **NEW SMYRNA BEACH UTILITIES** safety standards while on the property of the **NEW SMYRNA BEACH UTILITIES**. **SERVICE PROVIDER** shall have full responsibility and assume all liability for the safety and supervision of its employees while performing services provided hereunder.

SECTION 11. INSURANCE.

11.1 SERVICE PROVIDER shall maintain in force during the term of this Agreement, at its own expense, public liability insurance and other insurance coverage as set forth in Exhibit "B" which is hereby made a part of this Agreement.

11.2 SERVICE PROVIDER and **NEW SMYRNA BEACH UTILITIES** waive all rights against each other and their respective directors, officers, partners, New Smyrna Beach Utilities, officials, agents, subcontractors, **SERVICE PROVIDERS**, and employees for damages covered by any type of property insurance during and after the completion of the services. A similar provision shall be incorporated into all construction contractual arrangements entered into by **NEW SMYRNA BEACH UTILITIES** and shall protect **NEW SMYRNA BEACH UTILITIES** and **SERVICE PROVIDER** to the same extent. All project contractors shall be required to include **NEW SMYRNA BEACH UTILITIES** and **SERVICE PROVIDER** as additional insureds on their general liability insurance policies.

SECTION 12. STANDARDS OF CONDUCT; COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS.

12.1 The **SERVICE PROVIDER** warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the **SERVICE PROVIDER** to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the **SERVICE PROVIDER** any fee, New Smyrna Beach Utilities, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.

12.2 The **SERVICE PROVIDER** covenants that it or any of its employees presently has no interest and shall not acquire any interest, direct or indirect, financial or

NEW SMYRNA BEACH UTILITIES
ITB 06-23

otherwise, that would conflict in any manner or degree with performance of services hereunder.

12.3 The **SERVICE PROVIDER** agrees that it and its employees shall be bound by the Standards of Conduct provided in Section 112.313, Florida Statutes, as it relates to services performed under this Agreement, which standards will by reference be made a part of this Agreement as though set forth in full. The **SERVICE PROVIDER** agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the services performed.

12.4 The **SERVICE PROVIDER** shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

12.5 The **SERVICE PROVIDER** warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the **SERVICE PROVIDER** to solicit or secure this agreement and that he has not paid or agreed to pay any person, company, corporations, individual, or firm, other than a bona fide employee working solely for the **SERVICE PROVIDER** any fee, New Smyrna Beach Utilities, percentage, gift or other consideration contingent upon or resulting from the award or making of this agreement.

12.6 **SERVICE PROVIDER** is subject to the provisions of Section 287.133(2)(a), Florida Statutes, on Public Entity Crimes.

SECTION 13. SERVICE PROVIDER'S REPRESENTATIONS. On behalf of its employees, agents, servants and contractors, **SERVICE PROVIDER** represents and warrants to the **NEW SMYRNA BEACH UTILITIES** each of the following:

13.1 **SERVICE PROVIDER** represents that the services provided hereunder shall conform to all requirements of this Agreement; shall be consistent with recognized and sound consulting practices and procedures; and shall conform to the professional standards of care, skill, and diligence appropriate to the nature of the services rendered.

13.2 **SERVICE PROVIDER** represents that the personnel furnishing such services shall be qualified and competent to perform the services assigned to them and that such guidance given by and the recommendations and performance of such personnel shall reflect their best personal knowledge and judgment.

13.3 **SERVICE PROVIDER** represents that if **SERVICE PROVIDER**, through its negligent acts, errors, or omissions, causes any injury to **NEW SMYRNA BEACH UTILITIES** or causes any physical damage to, or destruction of, any of **NEW SMYRNA BEACH UTILITIES** property during the term of this Agreement, it shall be liable for said injuries and/or damages, including reasonable attorney fees and costs incurred as a result therefrom.

NEW SMYRNA BEACH UTILITIES
ITB 06-23

13.4 SERVICE PROVIDER represents that none of **SERVICE PROVIDER's** principals or the immediate family of **SERVICE PROVIDER's** principals has a compensation arrangement of any kind with City. For purposes of this subsection, the term "immediate family" shall include a spouse, natural or adoptive parent, child or sibling, stepparent, stepchild, stepbrother or stepsister, father-in-law, mother-in-law, grandparent, grandchild or spouse of a grandparent or grandchild. For purposes of this subsection, compensation shall be defined as any type of remuneration directly or indirectly, overtly or covertly, paid in cash or in kind.

13.5 SERVICE PROVIDER represents that it is not undergoing any type of audit by a public or private, state or regulatory body or auditing entity.

13.6 SERVICE PROVIDER represents that it and its principals have not engaged in, and during the term of this Agreement agree not to engage in, any activities prohibited under the federal anti-kickback laws (42 U.S.C. 1320a-7, 1320a-7a, 1320a-7b), the regulations promulgated pursuant to such federal statutes, related state or local statutes or regulations, or rules of professional conduct.

13.7 Should **SERVICE PROVIDER** breach the representations set forth above, **NEW SMYRNA BEACH UTILITIES** shall have such remedies as are set forth in this Agreement. To the extent an applicable remedy is not provided herein, both Parties shall have all such remedies as allowed under the laws of the State of Florida. Additionally, without limiting the generality of the foregoing, if prior to the expiration of two (2) years from the date **SERVICE PROVIDER** completes its services hereunder, **SERVICE PROVIDER'S** services are negligent or erroneous and **NEW SMYRNA BEACH UTILITIES** notifies **SERVICE PROVIDER** in writing that a negligent error or omission has been discovered in **SERVICE PROVIDER'S** services, **SERVICE PROVIDER** shall correctly perform such negligent services at no additional cost to **NEW SMYRNA BEACH UTILITIES** and within a reasonable time period.

SECTION 14. GUARANTEE AGAINST INFRINGEMENT. **SERVICE PROVIDER** guarantees that all services provided under this Agreement shall be free from claims of patent, copyright, and trademark infringement. **SERVICE PROVIDER** shall indemnify, hold harmless, and defend **NEW SMYRNA BEACH UTILITIES**, its officers, directors, employees, agents, assigns, and servants from and against any and all liability, including expenses, legal or otherwise, for actual or alleged infringement of any patent, copyright, or trademark resulting from the use of any goods, services, or other item delivered under this Agreement.

SECTION 15. INDEMNIFICATION. **SERVICE PROVIDER** shall defend, indemnify, and hold harmless the **NEW SMYRNA BEACH UTILITIES**, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with **SERVICE PROVIDER'S** negligent performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from Agreements between the **SERVICE PROVIDER** and third parties made pursuant to this Agreement. **SERVICE PROVIDER** shall reimburse the **NEW SMYRNA BEACH UTILITIES** for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any

NEW SMYRNA BEACH UTILITIES
ITB 06-23

such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with **SERVICE PROVIDER'S** performance or non-performance of this Agreement. This section shall be interpreted and construed in a manner to comply with any applicable Florida Statutes, including without limitation Sections 725.06 and 725.08, Fla. Stat., if applicable. The provisions of this section shall survive termination of this Agreement. Ten dollars (\$10) of the payments made by the **NEW SMYRNA BEACH UTILITIES** constitute separate, distinct, and independent consideration for the granting of this indemnification, the receipt and sufficiency of which is voluntary and knowingly acknowledged by the **SERVICE PROVIDER**.

SECTION 16. AUDIT; PUBLIC RECORDS RETENTION; DOCUMENTS; OWNERSHIP.

16.1 Upon **NEW SMYRNA BEACH UTILITIES** or its designated Project Leader's request, at any time during the term of this Agreement or upon completion or termination of this Agreement, **SERVICE PROVIDER** shall provide **NEW SMYRNA BEACH UTILITIES** or its designated Project Leader with a copy of all documents prepared by **SERVICE PROVIDER** under this Agreement. Documents shall be original and PDF versions.

16.2 The parties acknowledge that the **NEW SMYRNA BEACH UTILITIES** is a part of the government of the City of New Smyrna Beach, Florida, and subject to the Florida Public Records Law. **SERVICE PROVIDER** has been advised the **NEW SMYRNA BEACH UTILITIES** that all its activities are subject to the Public Records Law (Chapter 119, Florida Statutes) and the Sunshine Law (Section 286.011, Florida Statutes), and agrees to maintain all records necessary to comply with the requirement of such laws, and for the proper supervision of the services performed pursuant to this Agreement. **SERVICE PROVIDER** agrees to comply with all **NEW SMYRNA BEACH UTILITIES** policies and procedures in observing the requirement of said laws. **SERVICE PROVIDER** shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the **SERVICE PROVIDER** in conjunction with this **AGREEMENT**. Specifically, the **SERVICE PROVIDER** must:

(1) Keep and maintain public records that ordinarily and necessarily would be required by the **NEW SMYRNA BEACH UTILITIES** in order to perform the services being performed by the **SERVICE PROVIDER**.

(2) Provide the public with access to public records on the same terms and conditions that the **NEW SMYRNA BEACH UTILITIES** would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(4) Meet all requirements for retaining public records and transfer, at no cost, to the **NEW SMYRNA BEACH UTILITIES** all public records in possession of the **SERVICE**

NEW SMYRNA BEACH UTILITIES
ITB 06-23

PROVIDER upon termination of the **AGREEMENT** and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the **NEW SMYRNA BEACH UTILITIES** in a format that is compatible with the information technology systems of the **NEW SMYRNA BEACH UTILITIES**.

The **SERVICE PROVIDER** shall promptly provide the **NEW SMYRNA BEACH UTILITIES** with a copy of any request to inspect or copy public records in possession of the **SERVICE PROVIDER** and shall promptly provide the **NEW SMYRNA BEACH UTILITIES** a copy of the **SERVICE PROVIDER'S** response to each such request. Failure to grant such public access will be grounds for immediate termination of this **AGREEMENT** by the **NEW SMYRNA BEACH UTILITIES**.

16.3 NEW SMYRNA BEACH UTILITIES shall have the right to audit the books, records and accounts of **SERVICE PROVIDER** that are related to the performance of Services pursuant to this Agreement. **SERVICE PROVIDER** shall keep such books, records and accounts as may be necessary in order to record complete and correct entries related to this Agreement. **SERVICE PROVIDER** shall preserve and make available, at reasonable times for examination and audit by **NEW SMYRNA BEACH UTILITIES**, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or if the Florida Public Records Act is not applicable for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by **NEW SMYRNA BEACH UTILITIES** to be applicable to **SERVICE PROVIDER'S** records, **SERVICE PROVIDER** shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by **SERVICE PROVIDER**. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for **NEW SMYRNA BEACH UTILITIES** disallowance and/or recovery of any payment upon such entry. The **SERVICE PROVIDER** shall retain all records relating to this Agreement for five years after the **NEW SMYRNA BEACH UTILITIES** makes final payment and all other pending matters are closed.

16.4 Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of **NEW SMYRNA BEACH UTILITIES**. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by **SERVICE PROVIDER**, whether finished or unfinished, shall become the property of **NEW SMYRNA BEACH UTILITIES** and shall be delivered by **SERVICE PROVIDER** to the **NEW SMYRNA BEACH UTILITIES** within seven (7) days of termination of this Agreement by either party. Any compensation due to **SERVICE PROVIDER** may be withheld until all documents are received as provided herein.

NEW SMYRNA BEACH UTILITIES
ITB 06-23

SECTION 17. ASSIGNMENT

17.1 SERVICE PROVIDER shall not assign or subcontract this Agreement or any rights or any monies due or to become due hereunder without the prior, written consent of **NEW SMYRNA BEACH UTILITIES**. All requirements to be observed by the **SERVICE PROVIDER** shall be observed by all subcontractors.

17.2 If upon receiving written approval from **NEW SMYRNA BEACH UTILITIES**, any part of this Agreement is subcontracted by **SERVICE PROVIDER**, **SERVICE PROVIDER** shall be fully responsible to **NEW SMYRNA BEACH UTILITIES** for all acts and/or omissions performed by the subcontractor as if no subcontract had been made.

17.3 If **NEW SMYRNA BEACH UTILITIES** determines that any subcontractor is not performing in accordance with this Agreement, **NEW SMYRNA BEACH UTILITIES** shall so notify **SERVICE PROVIDER** who shall take immediate steps to cancel the subcontract, or correct the deficiency. **NEW SMYRNA BEACH UTILITIES** shall also be given permission to communicate directly to the subcontractor, which communication shall not constitute interference with contractor/subcontractor relationship, provided that **NEW SMYRNA BEACH UTILITIES** notifies **SERVICE PROVIDER** in writing of said communication.

17.4 If any part of this Agreement is subcontracted by **SERVICE PROVIDER** prior to commencement of any work by the subcontractor, **SERVICE PROVIDER** shall require the subcontractor to provide **NEW SMYRNA BEACH UTILITIES** with insurance coverage as set forth by Section 11 and Exhibit "B".

SECTION 18. INDEPENDENT CONTRACTOR. The parties intend that an independent contractor relationship will be created by this Agreement. It is understood that **NEW SMYRNA BEACH UTILITIES** does not agree to use **SERVICE PROVIDER** exclusively. It is further understood that **SERVICE PROVIDER** is free to contract for similar services to be performed for others while under contract with **NEW SMYRNA BEACH UTILITIES**. The parties expressly acknowledge that **SERVICE PROVIDER** is an independent **SERVICE PROVIDER**, and nothing contained in this Agreement will be deemed or construed to create a partnership or joint venture between **NEW SMYRNA BEACH UTILITIES** and **SERVICE PROVIDER** or any other relationship between the parties. Additionally, nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, or to allow **NEW SMYRNA BEACH UTILITIES**, or its agents, representative, or employees, to exercise control or direction over the manner or method by which **SERVICE PROVIDER** performs any services which are the subject of this Agreement.

SECTION 19. AUTHORIZATION. **SERVICE PROVIDER** shall not, without authorization first being given by **NEW SMYRNA BEACH UTILITIES**: a) Use or pledge money or credit of the **NEW SMYRNA BEACH UTILITIES**, except in the usual and regular course of business and on account of or for the benefit of the **NEW SMYRNA BEACH UTILITIES**; b) Release or discharge any debt due to **NEW SMYRNA BEACH UTILITIES** without receiving the full amount thereof; c) Commit any act causing seizure or attachment of the **NEW SMYRNA BEACH UTILITIES** property; or d) Cause **NEW**

NEW SMYRNA BEACH UTILITIES
ITB 06-23

SMYRNA BEACH UTILITIES to become a guarantor, surety, or endorser, or give any note which obligates the **NEW SMYRNA BEACH UTILITIES**.

SECTION 20. TAXES. **SERVICE PROVIDER** shall assume full responsibility for payment of all federal, state, and local taxes or contributions imposed or required under unemployment insurance, Social Security, and income tax laws, with respect to **SERVICE PROVIDER'S** performance of this Agreement.

SECTION 21. DEFAULT. If, during the term of this Agreement, **SERVICE PROVIDER** shall be in default of any provision of this Agreement, **NEW SMYRNA BEACH UTILITIES** may suspend its payment or performance hereunder until such delinquency or default has been corrected; provided, however, that no suspension shall be effective unless and until **NEW SMYRNA BEACH UTILITIES** gives notice of the default to **SERVICE PROVIDER** with at least ten (10) days to cure such default.

SECTION 22. TERMINATION. Notwithstanding any other provision of this Agreement, **NEW SMYRNA BEACH UTILITIES** may, upon fifteen (15) days written notice to **SERVICE PROVIDER**, terminate this Agreement if: (a) **SERVICE PROVIDER** is adjudged to be bankrupt; (b) **SERVICE PROVIDER** makes a general assignment for the benefit of its creditors; (c) **SERVICE PROVIDER** fails to comply with any of the conditions or provisions of this Agreement; or (d) **SERVICE PROVIDER** is experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this Agreement, without prejudice to any other right or remedy **NEW SMYRNA BEACH UTILITIES** may have under this Agreement; or (e) when deemed by the **NEW SMYRNA BEACH UTILITIES** (in its sole discretion) is in the best interest of the **NEW SMYRNA BEACH UTILITIES**. In the event of such termination, **NEW SMYRNA BEACH UTILITIES** shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this Agreement, for work properly performed prior to the effective date of termination.

SECTION 23. FORCE MAJEURE. Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; flood; windstorm; explosion; riot; war; sabotage; strikes; extraordinary breakdown or damage to **NEW SMYRNA BEACH UTILITIES** generating plants, their equipment, or facilities; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; or cause or causes beyond the control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes.

SECTION 24. NOTICE. Any notices required to be given by the terms of this Agreement shall be delivered by hand or mailed, postage prepaid, to:

NEW SMYRNA BEACH UTILITIES
ITB 06-23

For SERVICE PROVIDER:

Sparks Concrete, LLC
Attention: Doreen Sparks-Manager
4106 S Nova Road
Port Orange, FL 32127

For NEW SMYRNA BEACH UTILITIES:

New Smyrna Beach Utilities
Attention : Josef Grusauskas-Director, Water Resources
P.O. Box 100
New Smyrna Beach, FL 32170-0100

SECTION 25. GOVERNING LAW. This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida.

SECTION 26. SEVERABILITY. In the event any portion of part of this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of competent jurisdiction, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts thereof shall otherwise be fully enforceable.

SECTION 27. WAIVER AND ELECTION OF REMEDIES.

27.1 Waiver by **NEW SMYRNA BEACH UTILITIES** of any term, condition, or provision of this Agreement shall not be considered a waiver of any term, condition, or provision in the future.

27.2 No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

27.3 Notwithstanding any other provision of this Agreement, the provisions of Sections 13, 14 and 15 shall survive the termination or expiration of this Agreement.

SECTION 28. THIRD PARTY RIGHTS. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than **NEW SMYRNA BEACH UTILITIES** and **SERVICE PROVIDER**.

SECTION 29. LIMITATION OF LIABILITY. To the fullest extent permitted by law, **SERVICE PROVIDER'S** total liability for any and all claims, losses, damages and expenses resulting in any way from this Agreement shall not exceed the total compensation received by **SERVICE PROVIDER** under the applicable Scope of Services notwithstanding the fault, tort (including negligence), strict liability or other basis of legal

NEW SMYRNA BEACH UTILITIES

ITB 06-23

liability of the **SERVICE PROVIDER** and shall extend to its officers, directors, employees, licensors, agents, subcontractors, vendors and related entities.

SECTION 30. CONSEQUENTIAL DAMAGES. Notwithstanding any provision in this Agreement to the contrary, and to the fullest extent permitted by law, **NEW SMYRNA BEACH UTILITIES** shall not be liable to **SERVICE PROVIDER** for loss of profits, revenue, use, opportunity, and goodwill; cost of substitute facilities, goods, and services; cost of capital; and increased operating costs.

SECTION 31. ENTIRE AGREEMENT. This Agreement, including Exhibits "A" and "B" constitutes the entire agreement between **NEW SMYRNA BEACH UTILITIES** and **SERVICE PROVIDER** with respect to the services specified and all previous representations relative thereto, either written or oral, are hereby annulled and superseded.

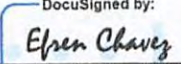
SECTION 32. JOINT PREPARATION. Preparation of this Agreement has been a joint effort of **NEW SMYRNA BEACH UTILITIES** and **SERVICE PROVIDER** and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

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

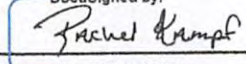
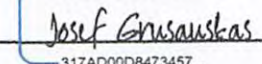
NEW SMYRNA BEACH UTILITIES:

SERVICE PROVIDER:

NEW SMYRNA BEACH UTILITIES

By: 
DocuSigned by:
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 Efren Chavez

Director of Finance/CFO

ATTEST: 
DocuSigned by:
317AD00D8473457...
 By: 
 Josef Grusauskas

Director of Department

By: 

Its: Manager

ATTEST: 

Its: Office Manager

(CORPORATE SEAL)

NEW SMYRNA BEACH UTILITIES

ITB 06-23

EXHIBIT A

Special Conditions

The New Smyrna Beach Utilities is seeking proposals for as needed Asphalt/Paving Repairs. This will be a one (1) year contract with the option for three (3) additional one year renewals upon mutual agreement. All work will be performed on an as needed basis and will require work to be done within 2-weeks of notice. **We also have an option for emergency repairs and these must be completed with 24 hours of notification.**

City of New Smyrna Beach Street Opening Patch Detail dated 2007 shall use SP 9.5 in lieu of S-3 Asphalt

The bid tabulation is split into two sections, County & City specifications. All work to be completed must meet or exceed the corresponding specifications as shown.

Annual Contract to run from 04-24-23 / 04-23-24 with three additional One-year renewals.

Estimated Annual Expenditure for Services Not to Exceed: \$65,000.00 Year

NSBUFL Plans to award a Primary and a Back-up contractor for this contract

EXHIBIT "B": INSURANCE REQUIREMENTS

I. INSURANCE: Except as otherwise specified in this contract, the **SERVICE PROVIDER** and its subcontractors of any tier will be required at their own expense to maintain in effect at all times during the performance of the work insurance coverage with limits set forth below with insurers and under forms of policies satisfactory to the **NEW SMYRNA BEACH UTILITIES**. It shall be the responsibility of the **SERVICE PROVIDER** and its subcontractors to maintain adequate insurance coverage and to assure that subcontractors are adequately insured at all times. Failure of the **SERVICE PROVIDER** and its subcontractors to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation.

The **SERVICE PROVIDER** and its subcontractors shall furnish to the **NEW SMYRNA BEACH UTILITIES** such Certificates of Insurance or endorsements required by the provisions set forth herein, which Certificates of Insurance shall name the **NEW SMYRNA BEACH UTILITIES** as Additional Insured. All Certificates of Insurance must be provided by an acceptable insurance carrier to the **NEW SMYRNA BEACH UTILITIES** and that the carrier should have no less rating than A - X by A.M. Best and Company. **NEW SMYRNA BEACH UTILITIES** reserves the right to accept or decline carrier providing coverage.

NEW SMYRNA BEACH UTILITIES

ITB 06-23

II. CERTIFICATES OF INSURANCE: At the time of the execution of this contract and each subcontract, but in any event, prior to commencing work, the **SERVICE PROVIDER** and its subcontractors shall furnish the **NEW SMYRNA BEACH UTILITIES** with Certificates of Insurance as evidence that the policies providing the required coverages and limits of insurance are in full force and effect. The Certificates shall provide that any company issuing an insurance policy for the work under this contract shall provide not less than thirty (30) days' advance notice to the **NEW SMYRNA BEACH UTILITIES** in writing of cancellation, non-renewal, or material change in the policy of insurance. In addition, the **SERVICE PROVIDER** shall immediately provide written notice to the **NEW SMYRNA BEACH UTILITIES** upon receipt of notice of cancellation of an insurance policy or a decision to terminate or alter any insurance policy. All Certificates of Insurance shall clearly state that all applicable requirements have been satisfied including certification that the Comprehensive General Liability policies are of the "occurrence form". Certificates of Insurance for **SERVICE PROVIDER** and subcontractor-furnished insurance and notices of any cancellations, terminations, or alterations of such policies shall be mailed to the **NEW SMYRNA BEACH UTILITIES** office, ATTN: Procurement Manager, at P.O. Box 100, New Smyrna Beach, Florida 32170-0100.

III. ADDITIONAL INSURED: All insurance coverages (except Workers' Compensation and Professional Liability) furnished under this contract shall include the **SERVICE PROVIDER**, the **NEW SMYRNA BEACH UTILITIES** and its New Smyrna Beach Utilities, officials, directors, officers, agents, and employees as Additional Insured's with respect to the activities of the **SERVICE PROVIDER** and its subcontractors.

These policies shall contain a "cross-liability" or "severability of interest" clause or endorsement. Notwithstanding any other provisions of these policies, the insurance afforded shall apply separately to each insured, named insured, or Additional Insured with respect to any claim, suit, or judgment made or brought by or for any other insured, named insured, or Additional Insured as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount or amounts for which the insurer would have been liable had only one insured been named.

IV. WAIVER OF SUBROGATION: The **SERVICE PROVIDER** and its subcontractors shall require their insurance carrier, with respect to all insurance policies, to waive all rights of subrogation against the **NEW SMYRNA BEACH UTILITIES**, its New Smyrna Beach Utilities, officials, directors, officers, agents, and employees.

V. COMPREHENSIVE GENERAL LIABILITY: This insurance shall be an occurrence-type policy written in comprehensive form and shall protect the **SERVICE PROVIDER** and its subcontractors and the Additional Insured's against all claims arising from bodily injury, sickness, disease, or death of any person other than the **SERVICE PROVIDER's** employees or damage to property of the **NEW SMYRNA BEACH UTILITIES** or others arising out of the act or omission of the **SERVICE PROVIDER** or its subcontractors or their agents, employees, or subcontractors. This policy shall include protection against claims insured by usual Personal Injury Liability coverage and an endorsement (Protective Liability) to insure the contractual liability assumed by the **SERVICE PROVIDER** and its subcontractors under the Section entitled "Indemnification," as well

NEW SMYRNA BEACH UTILITIES
ITB 06-23

as Completed Operations, Products Liability, Contractual Liability, Broad Form Property Coverage, Premises/Operations, and Independent Contractors.

Combined Single Limit: \$1,000,000 per claim and annual aggregate of \$2,000,000.

VI. COMPREHENSIVE AUTOMOBILE LIABILITY: This insurance shall be written in the comprehensive form and shall protect the **SERVICE PROVIDER** and its subcontractors and the Additional Insured's against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. The liability shall not be less than:

Combined Single Limit: \$1,000,000 per claim and annual aggregate of \$2,000,000.

VII. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY: The insurance shall protect the **SERVICE PROVIDER** and its subcontractors against all claims under applicable state workers' compensation laws. The insured shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of workers' compensation laws. This policy shall include an all-states endorsement. The liability limits shall not be less than:

Workers' Compensation: Statutory

Employers' Liability: \$100,000 each accident;
\$500,000 disease policy limit;
and
\$100,000 disease, each employee.

VIII. PROFESSIONAL LIABILITY: Professional Liability insurance shall be provided in an amount of \$100,000.