

*Agreement Between Owner and Contractor
Construction with Materials*

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2017 JUL 5 A 11:00
TOWNSHIP OF NUTLEY

AGREEMENT made as of the

5

day of

July

2017 JUL 5, 2017

A 11:00

BETWEEN the Owner:

THE TOWNSHIP OF NUTLEY

Township Hall
One Kennedy Drive
Nutley, New Jersey 07110

Phone: (973) 284-4984

and the Contractor:

D & L PAVING CONTRACTORS, INC.

675 Franklin Avenue
Nutley, New Jersey 07110

Phone: (973) 772-9292

The Contract is for, but not limited to: 2017 Various Roadway Improvements as listed in the bid documents. The Work and materials are further described in the Project Specifications and the **Municipal Resolution No. 145-17** awarding this contract.

The Owner and Contractor agree as follows.

ARTICLE I: THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the Project Specifications, including, *inter alia*, the Specifications and Instructions to Bidders, and General Requirements, the Bid Proposal, the Resolution of the Owner, items included as Addenda issued prior to execution of this Agreement and properly submitted and/or completed and executed by the Contractor, Drawings or other descriptions of the work and/or materials, Other Documents, which may be listed in this Agreement and/or Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

ARTICLE 2: THE WORK

The general description of the work and materials to be performed and provided by the Contractor is for, but not limited to: **2017 Various Roadway Improvements.**

ARTICLE 3: PERFORMANCE UNDER THIS CONTRACT

The Contractor shall fully perform each and every obligation described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 4: DATE OF AGREEMENT AND COMMENCEMENT OF PERFORMANCE

4.1 The date of the Agreement shall be the date for Commencement of Performance by the Contractor unless it is agreed that the date is to be set in a notice to proceed issued by the Owner:

Date of Commencement of Performance (if different): _____

4.2 If, prior to the commencement of performance, the Owner requires time to file mortgages, mechanics' liens and other security interests, the Owner's time requirement shall be as follows: NONE

4.3 Date for Substantial Completion. The Contractor shall achieve Substantial Completion of the entire Work as set forth in the General Specifications.

ARTICLE 5: TIME OF PERFORMANCE

5.1 The Contractor shall achieve substantial completion of the work in accordance with the Project Specifications.

5.2 The time of performance is the time period of time from the commencement of performance, as set forth above, to the date of Substantial Completion, as same may be set forth in the Project Specifications.

5.3 The time of performance and the date of Substantial Completion are of the essence of the Agreement, and failure of the Contractor to complete the work and deliver the materials within the time of performance shall constitute a breach excusing the Owner from any further performance.

5.4 In the event that the Contractor has not achieved substantial completion by the date set forth herein, then the Contractor shall pay the owner as liquidated damages the sum of \$500.00 for each day the work remains incomplete.

ARTICLE 6: PRICE

6.1 The Owner shall pay the Contractor the price of the work performed and materials delivered which shall be based upon the price bid by the Contractor in the bid proposal and accepted by the Owner in the municipal resolution for the Base Bid in the amount of Three Hundred Sixty-Seven Thousand, Seven Hundred Nineteen Dollars and 15/100 (\$367,719.15); Alternate Bid #1 in the amount of Seventeen Thousand, Two Hundred, Sixty-Nine Dollars and 25/100 (\$17,269.25), and Alternate Bid #2 in the amount of Forty-Five Thousand, Seven

Hundred Seventy-One Dollars and 09/100 (\$45,771.09) for the total sum of Four Hundred Thirty Thousand, Seven Hundred Fifty-Nine Dollars and 49/100 (\$430,759.49).

ARTICLE 7: PAYMENTS

7.1 Payment shall be made by the Owner to the Contractor in accordance with the Project Specifications. The Contractor shall submit an Invoice to the Owner's Representative, or its designee, which Invoice shall be based upon a valid Purchase Order issued by the Purchasing Department of the Owner.

7.2 It is stipulated and agreed that the obligation of the Owner to make payments hereunder is expressly contingent upon (a) the Contractor's compliance with the New Jersey Prevailing Wage Act, if applicable, and the delivery to the Owner by the Contractor of the payroll records required; (b) the Contractor's compliance with the requirements of P.L. 1975, c. 127 (*N.J.S.A. 10:5-31 et. Seq.; N.J.A.C. 17-27*) and the delivery to the Owner and the Affirmative Action Office of the State of New Jersey by the Contractor of an Initial Project Workforce Report (AA201); and (c) the Contractor's compliance with the Public Works Contractor Registration Act, PL 1999, Chapter 238 (*N.J.S.A. 34:11-56.48 et. seq.*), if applicable, and the delivery to the Owner by the Contractor of the Registration Certificate required thereunder.

ARTICLE 8: SUBCONTRACTORS

The Contractor agrees to bind every subcontractor by the terms of the Contract Documents. The Contract Documents shall not be construed as creating any contractual relationship between any subcontractor and the Owner. Additional terms concerning the duties and obligations of the Contractor and its subcontractors are further defined in the Contract Documents.

ARTICLE 9: WAIVERS

Neither the inspection by the Owner or by the Owner's agents, nor any orders or measurement of certificate by the Architect or Engineer, nor any order by the Owner for the payment of money, nor payment for or acceptance of the whole or any part of the Work by the Owner, nor any extension of time or any possession taken by the Owner or its employees, shall operate as a waiver of any provision of this Contract, any power herein reserved to the Owner, or any right to damages herein provided. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. Any remedy provided in this Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided and in addition to all other suits, actions, or legal proceedings. The Owner shall also be entitled as of right to a writ of injunction against any breach of any of the provisions of this Contract.

ARTICLE 10: INDEMNIFICATION

The Contractor shall indemnify, defend, and hold harmless the Owner, Architect and the Engineer, their officers, employees and agents, against any loss, liability, claims or demands (including death and/or property damage); arising out of or resulting, in whole or in part, from

ARTICLE 11: ASSIGNMENT

This Contract and all of the covenants herein shall be binding upon the Owner and the Contractor respectively, and the Contractors sub-consultants, partners, successors, assigns and legal representatives. Neither the Owner nor the Contractor shall have the right to assign, transfer or sublet their interests or obligations hereunder without written consent of the other party.

ARTICLE 12: CONTRACTORS STATUS AND RESPONSIBILITIES

12.1 The status of the Contractor shall be that of an independent principal, and not an agent or employee of the Owner.

12.2 The Contractor represents that it is authorized to do business in the State of New Jersey and has to date complied with all laws regarding foreign corporation transacting business within the state.

12.3 The Contractor shall be responsible for providing competent, suitably qualified personnel to perform the Work.

12.4 The Contractor shall be responsible for proceeding with the work and adhering to the schedule during all disputes or disagreements with the Owner. No work shall be delayed or postponed pending resolution of any dispute or disagreement.

12.5 The Contractor acknowledges its obligation to pay prevailing wages under the *New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et. seq.*, (herein the “Act”), if applicable, and further acknowledges that Regulation *N.J.A.C. 12:60-2.1* and 6.1 of the Act requires that certified payroll records must be submitted to the public body for each employee providing services to the Owner under this Contract. The Contractor is responsible for ensuring that it submits certified payroll records within ten (10) days of the payment of wages. The obligation of the Owner to make payments hereunder is expressly contingent upon the Contractor’s compliance with the New Jersey Prevailing Wage Act and the submission of the records in the manner set forth herein.

12.6 The Contractor acknowledges its obligation to comply with the requirements of P.L. 1975, c. 127 (*N.J.S.A. 10:5-31 et. seq.; N.J.A.C. 17-27*). If the Contractor does not have a federally approved or sanctioned affirmative action program, then the Contractor must present one of the following to the Purchasing Agent of the Owner: (1) A photocopy of a valid letter from the U.S. Department of Labor that the Contractor has an existing federally approved or sanctioned Affirmative Action Plan (good for one year from the date of the letter), or (2) A photocopy of an approved Certification of Employee Information Report in accordance with *N.J.A.C. 17:27-4*, or (3) An Affirmative Action Employee Information Report (Form AA302) provided by the Affirmative Action Office and completed in accordance with *N.J.A.C. 17:27-4*.

Contractor has provided or will simultaneously herewith provide the Owner with a copy of an Employee Information Report and that said copy is part of the Contract Documents.

12.7 The Contractor acknowledges no Contractor shall bid or engage in any contract for public work (see *N.J.S.A. 34:11-56.26*), if applicable, unless the Contractor is registered with the State of New Jersey pursuant to the Public Works Contractor Registration Act, PL 1999, Chapter 238 (*N.J.S.A. 34:11-56.48 et. seq.*), and continues that registration in force during the term of this Contract. In the event that the Certificate of Registration expires during the term of the Contract, the Contractor will submit to the Owner a copy of the renewal application form, the transmittal letter to the Commissioner of Labor, and the check representing the application fee no less than thirty (30) days prior to the expiration of the current registration term. The Contractor represents that it is registered with the State of New Jersey pursuant to the Public Works Contractor Registration Act, PL 1999, Chapter 238 (*N.J.S.A. 34:11-56.48 et. seq.*) and agrees to submit to the Owner the Certificate of Registration and any renewal applications. The obligation of the Owner to make payments hereunder is expressly contingent upon the Contractor compliance with the Public Works Contractor Registration Act and the submission of the certificate in the manner set forth herein.

ARTICLE 13: GUARANTEE AND CORRECTION OF DEFECTIVE WORK

The Contractor warrants and guarantees to the Owner that all Work will be performed in accordance with all applicable federal, state, and local laws, standards and regulations and these Contract Documents; and that the Work will not be defective.

ARTICLE 14: MANDATORY CONTRACT DISPUTE PROCEDURES

The Contractor agrees to Mandatory Contract Dispute Procedures required by *N.J.S.A. 40A:11-50*, as described below.

In an effort to resolve any disputes that arise during the construction of the project or following the completion of the project, the Bidder and Owner agree that all disputes between them arising out of or relating to the performance of the work described in the Contract Documents shall be submitted to non-binding mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

The Bidder further agrees to include a similar mediation provision in all agreements with independent Contractors and consultants retained for the project and to require all independent Contractors and consultants also to include a similar mediation provision in all agreements with

subcontractors, sub- consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

Nothing in this section shall prevent the Owner from seeking injunctive or declaratory relief in court at any time. The alternative dispute resolution practices required by this section shall not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts to be entered into pursuant to P.L. 1971, c. 198 (*N.J.S.A. 40A:11-1 et seq.*).

ARTICLE 15: MISCELLANEOUS PROVISIONS

15.1 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time (*Insert rate of interest agreed upon, if any.*):

Two and one half (2.5%) percent.

15.2 Representatives.

Owner's representative is:

Mayor Joseph P. Scarpelli
Township of Nutley
1 Cortland Street
Nutley, New Jersey 07110
Telephone: (973) 284-4959

The Contractor's representative is:

Mr. Joseph Matarazzo
D & L Paving Contractors, Inc.
675 Franklin Avenue
Nutley, New Jersey 07110
Telephone: (973) 667-7300

15.3 Within five (5) days from the date of this Agreement, the Contractor shall deliver to the Owner the proof of all insurance required in the as set forth in the Project Specifications and a corporate resolution authorizing this transaction. The obligation of the Owner to make payments hereunder is expressly contingent upon the Contractor obtaining and delivering these documents in the form set forth in the Contract Documents and in the manner set forth in this paragraph.

15.4 Other provisions:

ARTICLE 16: FAIR AND OPEN CONTRACT

16.1 This contract has been awarded to Contractor through a “fair and open” process pursuant to N.J.S.A. 19:44A-20.4.

ARTICLE 17. MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE N.J.S.A 10:5-31 et seq., N.J.A.C. 17:27 CONSTRUCTION CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up-grading, 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 in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable 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 age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided,

however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

- (1) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
- (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
- (3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
- (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement

or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contractor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Division, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division and submitted promptly to the Division upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program

will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

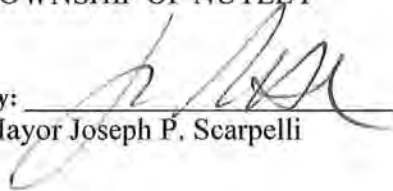
After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA 201) electronically provided to the public agency by the Division, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

This Agreement is entered into as of the day and year first written above and is executed in at least four original copies, of which one is to be delivered to the Contractor, one to the Superintendent of the Department, for use in the administration of the Contract, one to the Clerk of the Owner, and one to the Office of the Township Attorney.

OWNER:
TOWNSHIP OF NUTLEY

By: 
Mayor Joseph P. Scarpelli

CONTRACTOR:
D & L PAVING CONTRACTORS, INC.

By: 
Please Print Name: Joseph Mazzucco

Contractor Corporate Acknowledgment (to be executed where the Contractor is a corporation)

STATE OF NEW JERSEY

: ss.

COUNTY OF ESSEX

I certify that on (insert date) 7/5/17, 2017, (insert name of corporate officer) Joseph Matrone, (insert title of corporate officer) President of the Contractor, personally came before me, a Notary Public of New Jersey, and this person acknowledged under oath, to my satisfaction, that (a) this person is the (insert title) President and authorized signatory of the Contractor, a corporation duly organized and validly existing under the laws of the State of New Jersey, and the Contractor named in the within document; (b) has the full authority to sign this document and bind the Contractor to the provisions herein; (c) signed, sealed and delivered this document as the voluntary act and deed of the municipality, duly authorized by a proper resolution by the Board of Directors.

Tracey Stanzano
Notary Public of the State of New Jersey



Owner Municipal Corporate Acknowledgment (where the Owner is a municipal corporation)

STATE OF NEW JERSEY

: ss.

COUNTY OF ESSEX

I certify that on (insert date) July 6, 2017, (insert name of municipal corporate officer) Joseph P. Scarpelli, (insert title of corporate officer) Mayor of the Owner, personally came before me, a Notary Public of New Jersey, and this person acknowledged under oath, to my satisfaction, that this person

- (a) is the Mayor and authorized signatory of the Township of Nutley, a municipal corporation duly organized and validly existing under the laws of the State of New Jersey, and the municipal corporation named in the within document;
- (b) has the full authority to sign this document and bind the municipality to the provisions herein; and
- (c) signed, sealed and delivered this document as the voluntary act and deed of the municipality, duly authorized by a proper resolution by the Board of Commissioners.

Jennifer M. Garner
Notary Public of the State of NJ

JENNIFER M. GARNER
NOTARY PUBLIC OF NEW JERSEY
ID # 2453237
My Commission Expires 8/13/2020