STATE OF TEXAS §
§ **AGREEMENT FOR ON-CALL CONCRETE**
COUNTY OF COLLIN § **AND TRAIL MAINTENANCE**

This agreement ("Agreement") is made by and between the City of Allen, Texas ("City") and Alderink Enterprises, Inc. dba CI Pavement ("Contractor") acting by and through their authorized representatives.

Recitals:

WHEREAS, the City desires to engage Contractor as the secondary contractor for On-Call Concrete and Trail Maintenance services in accordance with the bid specifications and Contractor's response to Invitation for Bid number 2019-8-81 both of which are attached hereto and incorporated herein as Exhibit "A" ("Specifications"); and

WHEREAS. the parties understand and agree that City has executed an agreement with a primary vendor for On-Call Concrete and Trail Maintenance services and the City intends to use Contractor solely as a secondary vendor for On-Call Concrete and Trail Maintenance services on an as needed basis at the City's sole discretion, and

WHEREAS, Company agrees to perform all services necessary to deliver On-Call Concrete and Trail Maintenance services as a secondary vendor upon request by the City on an as needed basis in accordance with this Agreement and the Specifications.

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

Article I
Term

The term of this Agreement shall begin on the first day of October 2019 (the "Effective Date") and continue until the last day of September 2020, unless earlier terminated as provided herein (the "Initial Term").

City maintains the right to automatically renew this Agreement for up to two additional renewal terms of one year at the City's sole discretion, the first renewal term beginning on October 1, 2020.

Article II
Contract Documents

Every provision of the documents below is incorporated into this Agreement by reference. The documents referenced below are in descending order of precedence. Any conflict between or among any of the documents shall be resolved in favor of the document with higher precedence.

A. This Agreement;

B. City's Invitation for Bid #2019-8-81 ("Specifications"); and

C. Contractor Response to City's Invitation for Bid #2019-8-81 ("Response").

Article III
Scope of Services

Contractor shall provide the Services specifically set forth in the Specifications, including those requirements in the sample contract to the extent they do not conflict with this Agreement, as contained in Exhibit "A," which is attached hereto and made a part of this Agreement for all purposes.

Article IV
Schedule of Work

Contractor agrees to commence Services upon the Effective Date of this Agreement and to complete the required Services in accordance with the schedules and at the times and locations provided by the City as set forth in Exhibit "A," including the Requirements in the sample contract to the extent they do not conflict with this Agreement.

Article V
Compensation and Method of Payment

City shall compensate Contractor for the Services, including all labor, materials, equipment and supplies as provided in Exhibit "A." The total compensation to Contractor shall not exceed **$1,200,000.00** (***one million, two hundred thousand dollars and no/100/cents***) during the Initial Term or any renewal term under this Agreement. Contractor shall provide the City with written invoices on a monthly basis describing the work and Services performed as provided in Exhibit "A." Upon approval, City shall compensate Contractor as provided herein and in Exhibit "A" with the payment term being net 30 days after the date the City is delivered a written invoice for Services completed.

Article VI
Notice to Proceed

Contractor shall not proceed with any work required under this Agreement without a written Notice to Proceed from City. Any work performed or expenses incurred by Contractor prior to Contractor's receipt of a written Notice to Proceed from City shall be entirely at Contractor's own risk. Work performed and expenses incurred after Contractor has received a written Notice to Proceed from City will be eligible for reimbursement under the terms of this Agreement, subject to an approved task order.

Article VII
Suspension of Work

City shall have the right to immediately suspend work by Contractor if City determines in its sole discretion that Contractor has, or will fail to perform, in accordance with this Agreement. In such event, any payments due Contractor shall be suspended until Contractor has taken satisfactory corrective action.

Article VIII
Devotion of Time; Personnel; and Equipment

8.1 The Contractor shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should the City require additional services not included under this Agreement, the Contractor shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by the City; and without decreasing the effectiveness of the performance of services required under this Agreement.

8.2 To the extent reasonably necessary for the Contractor to perform the services under this Agreement, the Contractor shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Contractor may deem proper to aid or assist in the performance of the services under this Agreement. The cost of such personnel and assistance shall be borne exclusively by the Contractor.

8.3 The Contractor shall furnish the facilities, equipment, telephones, facsimile machines, email facilities, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

8.4 Time is and shall be of the essence in the performance of this Agreement as written.

Article IX
Availability of Funds

If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, this Agreement shall be canceled and Contractor may only be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of services delivered under this Agreement or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations for such purposes.

Article X
Termination

This Agreement may be terminated by:

(a) by mutual written agreement of the parties;

(b) immediately by City, if Contractor defaults or breaches any of the terms or conditions of this Agreement;

(c) by either party, upon thirty (30) days prior to written notice. Should Contractor terminate this Agreement under this provision, Contractor shall further state the reason(s) for termination in its written notice;

(d) by City, if Company suffers an Event of Bankruptcy or Insolvency; or "Event of Bankruptcy" shall mean the dissolution or termination (other than a dissolution or termination by reason of Company merging with an affiliate of Company) of Company's existence as a going business, insolvency, appointment of receiver for any part of Company's property and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Company and in the event such proceeding is not voluntarily commenced by the Company, such proceeding is not dismissed within ninety (90) business days after the filing thereof;

(e) by City, if City fails to budget and appropriate funds for payment of the obligations hereunder for the then ensuing fiscal year; or

Article XI
Insurance

(a) For coverage requirements, please refer to the table on the following page. All insurance shall be endorsed to provide the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; (2) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to the City that indicates the insurance company will provide to the City at least a thirty (30) day prior written notice for cancellation, non-renewal, and/or material changes of the policy. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, the Contractor shall provide at least thirty (30) days prior written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance.

(b) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a

primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City.

(c) A certificate of insurance and copies of policy endorsements evidencing the required insurance shall be submitted to the City prior to commencement of services. On every date of renewal of the required insurance policies, the Contractor shall cause a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Contractor shall within ten (10) business days after written request provide the City with certificates of insurance and policy endorsements for the insurance required herein. The delivery of the certificates of insurance and policy endorsements to the City is a condition precedent to the payment of any amounts due to Contractor by the City. The failure to provide valid certificates of insurance and policy endorsements shall be deemed a default and/or breach of this Agreement.

Contracts in the Amount of $1,000,000-$8,000,000

Type of Insurance	Amount of Insurance	Provisions
1. Broad Form Commercial General Liability to include coverage for: a) Premises/Operations b) Products/Completed Operations c) Independent Contractors d) Personal Liability e) Contractual Liability	$2,000,000 each occurrence, $4,000,000 general aggregate; $4,000,000 umbrella	City to be listed as additional insured and provided 30-day notice of cancellation or material change in coverage. City requires that insurer be rated A or higher by A.M. Best or equivalent. Waiver of Subrogation
2. Business Auto Liability	• $1,000,000 per occurrence • $2,000,000 aggregate or; • $2,000,000 combined single limits	City to be named as additional insured
3. Workers' Comp & Employers' Liability	Statutory Limits $1,000,000 each accident	City to be provided a waiver of subrogation
4. Builders Risk Policy	100% of construction total	If Applicable
5. a) Professional Liability b) E & O coverage	1,000,000 per occurrence	If Applicable

Article XII
Miscellaneous

12.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings written or oral agreements between the parties with respect to this subject matter.

12.2 Assignment. Contractor may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by Contractor to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

12.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

12.4 Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

12.5 Amendments. This Agreement may be amended by the mutual written agreement of the parties.

12.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

12.7 Independent Contractor. It is understood and agreed by and between the parties that Contractor, in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent Contractor, and not as an agent or employee of City. Contractor shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

12.8 Under the Authority of the Clean Water Act, the Environmental Protection Agency (EPA), the City of Allen has endeavored to reduce / improve storm water quality per direction of the Texas Commission of Environmental Quality (TCEQ). The City of Allen has developed standard operating procedures (SOP's) for our Storm Water Management Program (SWMP). By signing this contract all vendors accept to follow our SOP's of our SWMP. Follow the link for our SOP's http://www.cityofallen.org/933/Storm-Water-Management

12.9 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:
Eric Ellwanger
City Manager
3rd floor, City Hall
305 Century Parkway
Allen, Texas 75013
Facsimile: 214-509-4118
Telephone: 214-509-4110

with copy to:
Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 N. Akard, 1800 Lincoln Plaza
Dallas, Texas 75201
Facsimile: 214-965-0010

If intended for Contractor:
Doug Alderink
Vice President
Alderink Enterprises, Inc.
dba CI Pavement
101 Josephine Lane
Grand Prairie, Texas 75050
Facsimile: 972-721-9796
Telephone: 972-721-1755

12.10 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

12.11 Exhibits and Recitals. The exhibits attached hereto, and the Recitals are incorporated herein and made a part hereof for all purposes.

12.12 Indemnification. Contractor shall release, defend, indemnify and hold harmless City and its officers, agents and employees from and against all damages, injuries (including death), claims, property damages, (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the performance of the work or caused by the negligent act or omission of Contractor, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Contractor is legally responsible (hereinafter "Claims"). Contractor is expressly required to defend City against all such Claims.

In its sole discretion, City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under

no obligation to do so. Any such action by City is not to be construed as a waiver of Company's obligation to defend City or as a waiver of Contractor's obligation to indemnify City pursuant to this Contract. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by City.

12.13 Audits and Records. Contractor agrees that during the term hereof, City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of the Contractor's records relating to the services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by City or date of termination if sooner.

12.14 Conflicts of Interests. The Contractor represents that no official or employee of City has any direct or indirect pecuniary interest in this Agreement.

12.15 Warranty. The Contractor warrants to the City that all labor furnished to perform the work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that the work will be performed in a good and workmanlike manner and at least in accordance with industry standards, and that the work will be of good quality, free from faults and defects and in strict conformance with this contract. All work not conforming to these requirements may be considered defective.

12.16 Uniforms. Contractor shall provide and require its employees to wear a uniform that bears the company name, logo, and the employee's name. Uniforms are not to be dirty, stained, or torn. Uniforms shall be worn at all times while on the job. Contractor shall provide and ensure the wearing of protective clothing, masks, eye protection, etc., as required by laws, regulation, ordinances, and/or manufacturer's instruction for material and equipment. All employees of Contractor working on right-of-ways or medians must utilize personal protective equipment such as safety vests to insure their visibility to drivers.

12.17 Warning Devices and Barricades. The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, and other devices as may be necessary or appropriate or required by the City to protect persons or property in, near or adjacent to the jobsite. The contractor shall comply with all applicable Federal, State, and Local Laws regarding occupational safety and health as well as providing protection of the environment. This shall include but not be limited to compliance with U.S. Department of Labor-Occupational Safety and Health Administration (OSHA), and U.S. Environmental Protection Agency (EPA) guidelines and regulations. No separate compensation shall be paid to the Contractor for such measures.

12.18 Protection of Utilities. The Contractor shall use best efforts to leave undisturbed and uninterrupted all irrigation systems, utilities, and utility services provided to the job site or which presently exist at, above, or beneath the location

where the work is to be performed. In the event that any irrigation system, utility, or utility service is disturbed or damaged during the progress of the work, the Contractor shall forthwith repair, remedy or restore the utility at Contractor's sole expense. The Contractor is responsible for an inspection of the site prior to commencing work on site to ensure that no damage is existing or will not occur when maintenance begins. If damage is noted or if probable damage will occur, then it is the contractor's responsibility to notify the City of Allen representative so that the City of Allen can take action to correct and document the problem(s). The contractor is responsible for the replacement of all irrigation heads that are damaged by mowing with like equipment approved by the City of Allen.

12.19 PROHIBITION OF BOYCOTT ISRAEL. Company verifies that it does not Boycott Israel and agrees that during the term of this Contract will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended. Effective September 1, 2019, this section does not apply if the Vendor is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the Vendor has ten (10) or more fulltime employees and (ii) this Contract has a value of $100,000.00 or more to be paid under the terms of this Contract.

(Signature page to follow)

EXECUTED this _____ day of _____, 2019.

CITY OF ALLEN

By: _____
Eric Ellwanger, City Manager

305 Century Parkway
Allen, Texas 75013

ATTEST

_____
Shelley B. George, City Secretary

EXECUTED this _____ day of _____, 2019.

_____
Alderink Enterprises, Inc. dba CI Pavement

By: _____
Signature of Authorized Officer

Name: _____
Print Name

Title: _____

Alderink Enterprises, Inc. dba CI Pavement
101 Josephine Lane
Grand Prairie, Texas 75050

EXHIBIT "A"
SPECIFICATIONS AND RESPONSE

1. City's Invitation for Bid #2019-8-81.

2. Contractor's Response to City's Invitation for Bid #2019-8-81.