

AWARD OF CONTRACT TO PALP, INC., DBA EXCEL PAVING COMPANY FOR THE CONSTRUCTION OF PROJECT NO. 7245 – HARBOR BOULEVARD STREET IMPROVEMENTS LOCATED ON THE WESTERLY SIDE OF HARBOR BOULEVARD BETWEEN PALM STREET AND LAMPSON AVENUE, GARDEN GROVE; AND CONSIDERATION OF RELATED BID PROTEST

October 9, 2012

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which analyzed the potential environmental impacts of the Water Park Hotel project, including the improvements to be constructed pursuant to Project No. 7245. A Notice of Determination was filed on February 9, 2011. No further environmental review is required.

DISCUSSION

In response to prescribed bidding procedures, three (3) bids were received and opened by the City Clerk's office at 3:00 p.m. on July 17, 2012. The bids are summarized on the attached Bid Summary Sheet (Attachment 1). The apparent low bid was submitted by GMC in the amount of \$1,245,089.25. The apparent second low bid was submitted by Excel, in the amount of \$1,256,113. The difference in the two bids is \$11,023.75, or approximately 0.9%.

Bid Protest

On July 19, 2012, Excel, submitted a bid protest (Attachment 2) requesting the City find the bid submitted by GMC to be non-responsive for two separate reasons.

1. Excel alleged that the bid submitted by GMC contained corrections and "white-out" in violation of the Specifications Information to Bidders. Although the items in question have to do with the price of the bid, there is no ambiguity created by the corrections and they do not give GMC an unfair advantage not allowed other bidders. City staff determined Excel's first contention to be without merit.
2. Excel contends that GMC's bid should be deemed non-responsive because, based on the information submitted by GMC in its bid, GMC intends to subcontract in excess of 50% of the contract Price. Upon review of GMC's proposal, staff determined that in response to the requirements to list subcontractors that will perform work on the project in excess of 1/2 of 1% of the bid price, GMC listed subcontractors performing \$636,820 worth of work. That amount is \$14,275.37 greater than 50% of GMC's bid price.

Section 6, Article 37 of the Specifications states that the Standard Specifications for Public Works Construction (Greenbook) apply to this project and the requirements of the Greenbook shall apply to all phases of the work not controlled by other contract documents. Section 2-3.2, Self Performance, of the Greenbook states:

AWARD OF CONTRACT TO PALP, INC., DBA EXCEL PAVING COMPANY FOR THE CONSTRUCTION OF PROJECT NO. 7245 – HARBOR BOULEVARD STREET IMPROVEMENTS LOCATED ON THE WESTERLY SIDE OF HARBOR BOULEVARD BETWEEN PALM STREET AND LAMPSON AVENUE, GARDEN GROVE; AND CONSIDERATION OF RELATED BID PROTEST

October 9, 2012

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RECOMMENDATION


It is recommended that the Successor Agency:

- Uphold the protest submitted by Palp, Inc., DBA Excel Paving Company, and find that the bid submitted by GMC Engineering, Inc. was non-responsive due to GMC Engineering, Inc.'s stated intent to subcontract in excess of fifty percent (50%) of the Contract Price;
- Waive any irregularity in the bid submitted by Palp, Inc., dba Excel Paving Company and award the contract to the lowest responsive bidder, Palp, Inc. dba Excel Paving Company, in the amount of \$ 1,256,113.00, for the construction Project No. 7245 – Harbor Boulevard Street Improvements located on the westerly side of Harbor Boulevard between Palm Street and Lampson Avenue;
- Direct that Successor Agency funds be used to construct the proposed street improvements as authorized by the Department of Finance; and
- Authorize the Director to execute the Construction Agreement on behalf of the Successor Agency, and make minor modifications as appropriate thereto.


William E. Murray, P.E.
Public Works Director/City Engineer


By: Digna de los Reyes
Assistant Engineer

Recommended for Approval


Matthew Fertal
Director

- Attachment 1: Bid Summary
Attachment 2: Excel Paving Company Bid Protest Letter dated July 19, 2012
Attachment 3: July 23, 2012 letter to Excel Paving Company
Attachment 4: July 23, 2012 Letter to GMC Engineering, Inc.
Attachment 5: Construction Agreement and Bonds

**THE CITY OF GARDEN GROVE AS SUCCESSOR AGENCY
TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**

**PUBLIC WORKS DEPARTMENT
Engineering Division**

BID SUMMARY SHEET

FOR

**HARBOR BOULEVARD STREET IMPROVEMENTS
PROJECT NO. 7245**

BID OPENING: 3:00 P.M. on July 17, 2012

Engineer's Estimate: \$ 1,250,000.00

	Bidder's Name	Total Bid	% Under/Over Engrs. Est
1	GMC Engineering, Inc., Tustin –“Non-Responsive”	\$1,245,089.25	0.39 % under
2	<i>PALP, INC. DBA EXCEL PAVING CO., LONG BEACH</i>	\$1,256,113.00	0.49 % Over
3	<i>Hillcrest Contracting, Inc, Corona</i>	\$1,334,906.10	6.79 % Over

PALP, INC. DBA

EXCEL PAVING COMPANY

A GENERAL ENGINEERING CONTRACTOR
STATE LICENSE NO. 688659A

P.O. BOX 16405
LONG BEACH, CA 90806-5195
(562) 599-5841
FAX (562) 591-7485

City of Garden Grove
Public Works
13802 Newhope Street
Garden Grove, CA 92842
Attn: Mark P. Uphus., P.E., Senior Civil Engineer

July 19, 2012

Refr: Bid for Harbor Boulevard Street Improvements, Project No. 7245, bid July 17, 2012, at 3:00PM

Subj: Bid Proposal submitted by GMC Engineering is non-responsive

Mr. Uphus,

In regards to the above referenced bid, Excel Paving Company requests that the City of Garden Grove find GMC Engineering's Bid Proposal non-responsive and award the project to Excel as the lowest responsible bidder. The bid proposal submitted by GMC is non-responsive for the following reasons:

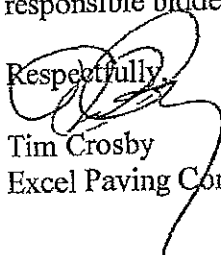
- 1.) On the page 28, "List of Proposed Subcontractors," GMC lists 4 subcontractors for a total dollar value of \$636,820.00, which is over 50% of GMC's total bid of \$1,245,089.25 and more than allowable by Public Code.
- 2.) There are several places on the bid proposal where GMC used 'white out' to erase original numbers and scopes of work. In the Notice to Contractors, Preparation of Bid form, the City specifically prohibits erasures.

GMC has subcontracted out asphalt, concrete, electrical, water, sewer, and dry utilities. Without commenting on the veracity of the dollar values GMC lists as subcontracted out, Excel would point out that GMC won't have much to do with their own forces on this project except for earthwork related items and storm drain laterals.

Noticeably missing from GMC's proposed subcontractors are the specialty trades of striping and slurry seal, the dollar values of which, if added to GMC's subcontractor list, would have placed GMC even more over the allowable percentage to subcontract out than they already are (note how GMC scratched out Superior Striping without replacing it with another striper). GMC does not have a history in the construction industry as a specialty contractor who performs either of these trades with its own forces.

Excel requests that the City of Garden Grove find GMC's bid proposal non-responsive for the reasons listed above and award the project to Excel Paving Company as the lowest responsible bidder.

Respectfully,


Tim Crosby
Excel Paving Company



**CITY OF GARDEN GROVE
PUBLIC WORKS**

July 23, 2012

Tim Crosby
Excel Paving Company
P.O. Box 16405
Long Beach, CA 90806-5841

Re: City of Garden Grove – Harbor Boulevard Street Improvements From
Palm Street to Lampson Avenue – Project No. 7245 – Bid Protest

William J. Dalton
Mayor

Steven R. Jones
Mayor Pro Tem

Dina Nguyen
Council Member

Bruce A. Broadwater
Council Member

Kris Beard
Council Member

Dear Mr. Crosby:

On July 19, 2012 Excel Paving Company ("Excel") submitted a bid protest for the above-referenced project. In that protest, Excel asked that the City find the bid submitted by the apparent low bidder, GMC Engineering, Inc. ("GMC"), non-responsive. Excel alleges that the bid submitted by GMC contained corrections and "white-out" in violation of the Specifications Information to Bidders and also, based on the information submitted by GMC, it appeared that GMC intended to subcontract out in excess of 50% of the Contract Price. Accordingly, Excel asks that the City award the project to Excel as the apparent next lowest bidder.

The City has reviewed your protest and the bids submitted by both GMC and Excel. The City has determined that as to your first contention, that GMC's bid contained corrections and "white out" in violation of the Instruction to Bidders and that, as a result, this issue should render the bid non-responsive has no merit.

Excel is correct that the Specifications, Section 1(A)(2) does state that the completed bid form shall be without alterations or erasures. However, Section 1(B)(6) states that the City reserves the right to waive any informality or irregularity in the bids received. As such, in this instance, since there is no ambiguity in GMC's bid price created by GMC's use of "white out" the City chooses to waive this irregularity. It should be noted that while Excel is making an issue of GMC's corrections, Excel's bid proposal also contains a correction in Bid Item 44 that could render it non-responsive under the same requirement. Since the City has chosen to waive this issue for GMC, it will also waive this issue for Excel.

In regards to Excel's contention that GMC's bid should be found non-responsive due its decision to subcontract out in excess of 50% of the Contract Price, the City finds that this contention has merit. Accordingly, staff intends to recommend that the City Council uphold Excel's protest on those grounds and find that GMC's bid is non-responsive. As a result, staff will recommend that the City Council award the project to Excel as the next lowest bidder.

If you have any questions, please feel free to contact Digna de los Reyes at 714 741-5179 at your convenience.

Sincerely,

Mark Uphus, P.E.
Senior Civil Engineer



Attachment 4
CITY OF GARDEN GROVE
PUBLIC WORKS

July 23, 2012

Gennady Chizhik
President
GMC Engineering, Inc.
1401 Warner Avenue, Suite B
Tustin, CA 92780

William J. Dalton
Mayor
Steven R. Jones
Mayor Pro Tem
Dina Nguyen
Council Member
Bruce A. Broadwater
Council Member
Kris Beard
Council Member

Re: City of Garden Grove Harbor Boulevard Street Improvements From
Palm Street to Lampson Avenue – Project No. 7245 – Bid Protest
Submitted by Excel Paving, Inc.

Dear Mr. Chizhik:

On July 17, 2012, GMC Engineering, Inc. ("GMC"), submitted a bid proposal for the above-referenced project. Upon first reading it appeared that GMC was the apparent low bidder. On July 19, 2012, Excel Paving, Inc. ("Excel"), submitted a bid protest to the City asking that GMC's bid be deemed non-responsive. A copy of the protest is attached hereto.

Excel's protest contends that the GMC's bid is non-responsive because of corrections made to the bid proposal and the use of "white out" on the pricing sheet. Excel is correct that the Specifications, Section 1(A)(2) do state that the completed bid form shall be without alterations or erasures. However, Section 1(B)(6) states that the City reserves the right to waive any informality or irregularity in the bids received. As such, in this instance, since there is no ambiguity in GMC's bid price created by GMC's use of "white out" the City chooses to waive this irregularity.

Next, Excel contends that that GMC's bid should be deemed non-responsive because, based on the information submitted by GMC in its bid, it is clear that GMC intends to subcontract in excess of 50% of the Contract Price. In your proposal, in response to the requirements to list subcontractors that will perform work on the project in excess of ½ of 1% of the bid price, you listed subcontractors performing \$636,820 worth of work. That amount is \$14,275.37 greater than 50% of your bid price.

Section 6, Article 37 of the Specifications states that the Standard Specifications for Public Works Construction (Greenbook), apply to this project and the requirements of the Greenbook shall apply to all phases of the work not controlled by other contract documents. Section 2-3.2, *Self Performance*, of the Greenbook states:

The Contractor shall perform, with its own organization, Contract work amounting to at least 50 percent of the Contract Price except that any

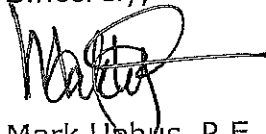
City of Garden Grove Harbor Boulevard Street Improvements From
Palm Street to Lampson Avenue – Project No. 7245 – Bid Protest
Submitted by Excel Paving, Inc.
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designated "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed will be deducted from the Contract Price before computing the amount required to be performed by the Contractor with its own organization. "Specialty Items" will be identified by the Agency in the Bid or in the Special Provisions.

The City did not designate any "Specialty Items" in the bid documents so therefore, based on the information submitted by GMC, it is clear that GMC will be subcontracting in excess of 50% of the Contract Price. This cannot be rectified or changed by GMC after bid opening. As a result, the City staff has no choice but to recommend that the City Council uphold the protest submitted by Excel and find the bid submitted by GMC to be non-responsive. Staff will recommend that the City Council award the project to Excel as the next lowest responsive bidder.

The City would like to thank you for your participation in this procurement and encourages you to participate in future procurements. If you have any questions, please feel free to contact Digna de los Reyes at 714 741-5179 at your convenience.

Sincerely,



Mark Upbus, P.E.
Senior Civil Engineer

C O N S T R U C T I O N A G R E E M E N T

PALP, INC. DBA EXCEL PAVING COMPANY

THIS AGREEMENT is made this 9th day of October, 2012 by the **CITY OF GARDEN GROVE as Successor Agency to the Garden Grove Agency for Community Development**, a municipal corporation, ("SUCCESSOR AGENCY"), and **PALP, INC. DBA EXCEL PAVING COMPANY**, hereinafter referred to as ("CONTRACTOR").

RECITALS:

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove Successor Agency Authorization dated October 9, 2012.
2. SUCCESSOR AGENCY desires to utilize the services of CONTRACTOR to furnish material, equipment, and labor for the **Harbor Boulevard Street Improvements from Palm Street to Lampson Avenue, Project No. 7245**.
3. CONTRACTOR is qualified by virtue of experience, training, education, and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

5.1 General Conditions. CONTRACTOR certifies and agrees that all the terms, conditions and obligations of the Contract Documents as hereinafter defined, the location of the job site, and the conditions under which the work is to be performed have been thoroughly reviewed, and enters into this Contract based upon CONTRACTOR'S investigation of all such matters and is in no way relying upon any opinions or representations of SUCCESSOR AGENCY. It is agreed that this Contract represents the entire agreement. It is further agreed that the Contract Documents including the Notice Inviting Bids, Special Instructions to Bidders, if any, and CONTRACTOR's Proposal, are incorporated in this Contract by reference, with the same force and effect as if the same were set forth at length herein, and that CONTRACTOR and its subcontractors, if any, will be and are bound by any and all of said Contract Documents insofar as they relate in any part or in any way, directly or indirectly, to the work covered by this Contract.

"*Project*" as used herein defines the entire scope of the work covered by all the Contract Documents. Anything mentioned in the Specifications and not indicated in the Plans, or indicated in the Plans and not mentioned in the Specifications, shall be of like effect as if indicated and mentioned in both. In case of discrepancy in the Plans or Specifications, the matter shall be immediately submitted to SUCCESSOR AGENCY's Engineer, without whose decision CONTRACTOR shall not adjust said discrepancy save only at CONTRACTOR'S own risk and expense. The decision of the Engineer shall be final.

5.2 Materials and Labor. CONTRACTOR shall furnish, under the conditions expressed in the Plans and Specifications, at CONTRACTOR'S own expense, all labor and materials necessary, except such as are mentioned in the Specifications to be furnished by the

SECTION 5 - AGREEMENT (Continued)

SUCCESSOR AGENCY, to construct and complete the project, in good workmanlike and substantial order.

If CONTRACTOR fails to pay for labor or materials when due, SUCCESSOR AGENCY may settle such claims by making demand upon the surety to this Agreement. In the event of the failure or refusal of the surety to satisfy said claims, SUCCESSOR AGENCY may settle them directly and deduct the amount of payments from the Contract price and any amounts due to CONTRACTOR. In the event SUCCESSOR AGENCY receives a stop notice from any laborer or material supplier alleging non-payment by CONTRACTOR, SUCCESSOR AGENCY shall be entitled to deduct all of its costs and expenses incurred relating thereto, including but not limited to administrative and legal fees.

5.3 Project. The PROJECT is described as: **Harbor Boulevard Street Improvements from Palm Street to Lampson Avenue, Project No. 7245.**

5.4 Plans and Specifications. The work to be done is shown in a set of detailed Plans and Specifications entitled: **Harbor Boulevard Street Improvements from Palm Street to Lampson Avenue, Project No. 7245.**

Said Plans and Specifications and any revision, amendments or addenda thereto are attached hereto and incorporated herein as part of this Contract and referred to by reference. The work to be done must also be in accordance with the General Provisions, Standard Specifications (Caltrans and Greenbook) and Standard Plans of the SUCCESSOR AGENCY, which are also incorporated herein and referred to by, reference.

5.5 Time of Commencement and Completion. CONTRACTOR agrees to commence the Project on date set forth in the "Notice to Proceed" issued by the SUCCESSOR AGENCY and shall diligently prosecute the work to completion within **one hundred twenty (120) working days** excluding delays caused or authorized by the SUCCESSOR AGENCY as set forth in Sections 5.7, 5.8 and 5.9 hereof.

5.6 Time is of the Essence. Time is of the essence of this Contract.

CONTRACTOR shall have **fourteen (14) calendar days from the award of the Contract** to execute the Contract and supply SUCCESSOR AGENCY with all of the documents and information required by the Instruction to Bidders and the other Contract Documents, including but not limited to, the necessary bonds and insurance certificates and endorsements. Once the SUCCESSOR AGENCY receives the executed Contract and all of the other properly drafted and executed documents and information, it may issue a Notice to Proceed to the CONTRACTOR. If CONTRACTOR refuses or fails to execute the Contract or refuses or fails to provide the required documents and information within the fourteen (14) calendar days, the SUCCESSOR AGENCY may then rescind the award of the Contract and then award the Contract to the next lowest responsive and responsible bidder.

As required by the Contract Documents, CONTRACTOR shall prepare and obtain approval of all shop drawings, details and samples, and do all other things necessary and incidental to the prosecution of CONTRACTOR'S work in conformance with an approved construction progress schedule. CONTRACTOR shall coordinate the work covered by this Contract with that of all other contractors, subcontractors and of the SUCCESSOR AGENCY, in a manner that will facilitate the efficient completion of the entire work in accordance with Section 5.5 herein. SUCCESSOR AGENCY shall have complete control of the premises on which the work is to

SECTION 5 - AGREEMENT (Continued)

be performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of other subcontractors, and, in general, all matters representing the timely and orderly conduct of the work of CONTRACTOR on the premises.

- 5.7 Excusable Delays.** CONTRACTOR shall be excused for any delay in the prosecution or completion of the Project caused by acts of God; inclement weather; damages caused by fire or other casualty for which CONTRACTOR is not responsible; any act, neglect or default of SUCCESSOR AGENCY; failure of SUCCESSOR AGENCY to make timely payments to CONTRACTOR; late delivery of materials required by this CONTRACT to be furnished by SUCCESSOR AGENCY; combined action of the workers in no way caused by or resulting from default or collusion on the part of CONTRACTOR; a lockout by SUCCESSOR AGENCY; or any other delays unforeseen by CONTRACTOR and beyond CONTRACTOR'S reasonable control.

SUCCESSOR AGENCY shall extend the time fixed in Section 5.5 herein for completion of the Project by the number of days CONTRACTOR has thus been delayed, provided that CONTRACTOR presents a written request to SUCCESSOR AGENCY for such time extension within fifteen (15) calendar days of the commencement of such delay and SUCCESSOR AGENCY finds that the delay is justified. SUCCESSOR AGENCY'S decision will be conclusive on the parties to this Contract. Failure to file such request within the time allowed shall be deemed a waiver of the claim by CONTRACTOR.

No claims by CONTRACTOR for additional compensation or damages for delays will be allowed unless CONTRACTOR satisfies CITY that such delays were unavoidable and not the result of any action or inaction of CONTRACTOR and that CONTRACTOR took all available measures to mitigate such damages. Extensions of time and extra compensation as a result of incurring undisclosed utilities would be determined in accordance with Section 9-103A of the California Department of Transportation Standard Specifications dated May 2006 and Section 3-3 of the Standard Specifications for Public Works Construction 2012 edition. The CITY'S decision will be conclusive on all parties to this Contract.

- 5.8 Extra Work.** The Contract price includes compensation for all work performed by CONTRACTOR, unless CONTRACTOR obtains a written change order signed by a designated representative of SUCCESSOR AGENCY specifying the exact nature of the extra work and the amount of extra compensation to be paid all as more particularly set forth in Section 5.9 hereof.

SUCCESSOR AGENCY shall extend the time fixed in Section 5.5 for completion of the Project by the number of days reasonably required for CONTRACTOR to perform the extra work, as determined by SUCCESSOR AGENCY'S Engineer. The decision of the Engineer shall be final.

- 5.9 Changes in Project.**

5.9.1 SUCCESSOR AGENCY may at any time, without notice to any surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes:

- a. In the Specifications (including drawings and designs);

SECTION 5 - AGREEMENT (Continued)

- b. In the time, method or manner of performance of the work;
- c. In the SUCCESSOR AGENCY -furnished facilities, equipment, materials, services or site; or
- d. Directing acceleration in the performance of the work.

If CONTRACTOR believes that the written order issued as part of this Section 5.9.1 has caused an increase in costs or time, the CONTRACTOR shall submit a written request for equitable adjustment to the SUCCESSOR AGENCY that includes a detailed cost breakdown and time impact analysis in sufficient detail to allow the SUCCESSOR AGENCY to analyze the request. Said notice shall be submitted via certified mail within twenty (20) calendar days of the CONTRACTOR'S receipt of the written order. CONTRACTOR'S failure to submit the written request for equitable adjustment within the required twenty (20) calendar days shall constitute a waiver of any potential change order or claim for said alleged change. The SUCCESSOR AGENCY shall review CONTRACTOR'S request and shall provide a written response within thirty (30) days of receipt of the request either approving or denying the request.

- 5.9.2** A change may also be any other conflict, difficulty or issue which the CONTRACTOR believes caused any change to the CONTRACTOR'S costs or project schedule, provided CONTRACTOR gives the SUCCESSOR AGENCY written notice and a request for equitable adjustment that includes a detailed cost breakdown and time impact analysis in sufficient detail to allow the SUCCESSOR AGENCY to analyze the request. The notice shall also state the date the CONTRACTOR became aware of the issue, circumstances and source of the issue and that CONTRACTOR regards the issue as a change order. Said written notice shall be delivered to the SUCCESSOR AGENCY via certified mail within twenty (20) calendar days of CONTRACTOR'S first notice of the issue. CONTRACTOR'S failure to submit the notice, which includes the written request for equitable adjustment within the required twenty (20) calendar days shall constitute a waiver of any potential change order or claim for said alleged change. The SUCCESSOR AGENCY shall review CONTRACTOR'S request and shall provide a written response within thirty (30) calendar days of receipt of the request either approving or denying the request.
- 5.9.3** Except as provided in this Section 5.9, no order, statement or conduct of the SUCCESSOR AGENCY or its representatives shall be treated as a change under this Section 5.9 or entitle CONTRACTOR to an equitable adjustment. Said written change order shall be delivered to the City via certified mail.
- 5.9.4** If any change under this Section 5.9 causes an increase or decrease in CONTRACTOR'S actual, direct cost or the time required to perform any part of the work under this Contract, whether or not changed by any order, the SUCCESSOR AGENCY shall make an equitable adjustment and modify the Contract in writing. Except for claims based on defective specifications, no claim for any change under paragraph (5.9.2) above shall be allowed for any costs incurred more than 20 days before the CONTRACTOR gives written notice as required in paragraph (5.9.2). In the case of defective specifications for which the SUCCESSOR AGENCY is responsible,

SECTION 5 - AGREEMENT (Continued)

the equitable adjustment shall include any increased direct cost CONTRACTOR reasonably incurred in attempting to comply with those defective specifications.

- 5.9.5** If CONTRACTOR intends to assert a claim for an equitable adjustment under this Section 5.9, it must, within thirty (30) days after receipt of a written change order under paragraph (5.9.1) or the furnishing of a written notice under paragraph (5.9.2), submit a written statement to the SUCCESSOR AGENCY setting forth the general nature and monetary extent of such claim. The SUCCESSOR AGENCY may extend the 30-day period. CONTRACTOR may include the statement of claim in the notice under paragraph (5.9.2) of this Section 5.9.
- 5.9.6** No claim by CONTRACTOR for an equitable adjustment shall be allowed if made after final payment under this Agreement.
- 5.9.7** CONTRACTOR hereby agrees to make all changes, furnish the materials, and perform the work that SUCCESSOR AGENCY may require without nullifying this Contract. CONTRACTOR shall adhere strictly to the Plans and Specifications unless the CITY therefrom authorizes a change in writing. Under no condition shall CONTRACTOR make any changes to the Project, either in additions or deductions, without the written order of the SUCCESSOR AGENCY and the SUCCESSOR AGENCY shall not pay for any extra charges made by CONTRACTOR that have not been agreed upon in advance in writing by the SUCCESSOR AGENCY. CONTRACTOR shall submit immediately to the SUCCESSOR AGENCY written copies of its firm's cost or credit proposal for change in the work. Disputed work shall be performed as ordered in writing by the SUCCESSOR AGENCY and the proper cost or credit breakdowns therefore shall be submitted without delay by CONTRACTOR to SUCCESSOR AGENCY.
- 5.10** **Liquidated Damages for Delay.** The parties agree that if the total work called for under this Contract, in all parts and requirements, is not completed within the time specified in Section 5.5 herein, plus the allowance made for delays or extensions authorized under Sections 5.7, 5.8 and 5.9 herein, the SUCCESSOR AGENCY will sustain damage which would be extremely difficult and impractical to ascertain. The parties therefore agree that CONTRACTOR will pay to SUCCESSOR AGENCY the sum of one thousand seven hundred dollars (\$1,700.00) per day for each calendar day during which completion of the Project is so delayed. CONTRACTOR agrees to pay such liquidated damages and further agrees that SUCCESSOR AGENCY may offset the amount of liquidated damages from any monies due or that may become due CONTRACTOR under the Contract.
- 5.11** **Contract Price and Method of Payment.** SUCCESSOR AGENCY agrees to pay and the CONTRACTOR agrees to accept as full consideration for the faithful performance of this Contract, subject to any subsequent additions or deductions as provided in approved change orders, the sum of **One Million, Two Hundred Fifty-Six Thousand, One Hundred Thirteen and No Cents Dollars and 00/100 (\$ 1,256,113.00)** as itemized in the bid proposal.

Progress payments shall be made to the CONTRACTOR per month for each successive month as the work progresses. The CONTRACTOR shall be paid such sum as will bring the total payments received since the commencement of the work up to ninety percent (90%) of the value of the work completed, less all previous payments, provided that the CONTRACTOR submits the request for payment prior to the end of the day required to meet the payment

SECTION 5 - AGREEMENT (Continued)

schedule. The SUCCESSOR AGENCY will retain ten percent (10%) of the amount of each such progress estimate and material cost until 30 days after the recordation of the Notice of Completion.

Payments shall be made on demands drawn in the manner required by law, accompanied by a certificate signed by the SUCCESSOR AGENCY'S Engineer, stating that the work for which payment is demanded has been performed in accordance with the terms of the Contract. Partial payments of the Contract price shall not be considered as an acceptance of any part of the work.

5.12 Substitution of Securities in Lieu of Retention of Funds. Pursuant to California Public Works Contract Code § 22300, the CONTRACTOR will be entitled to post approved securities with the SUCCESSOR AGENCY or an approved financial institution in order to have the SUCCESSOR AGENCY release funds retained by the SUCCESSOR AGENCY to ensure performance of the Contract. CONTRACTOR shall be required to execute an addendum to this Contract together with escrow instructions and any other documents in order to effect this substitution.

5.13 Completion. Within ten (10) working days after the contract completion date of the Project, CONTRACTOR shall file with the SUCCESSOR AGENCY'S Engineer its affidavit stating that all workers and persons employed, all firms supplying materials, and all subcontractors upon the Project have been paid in full, and that there are no claims outstanding against the Project for either labor or material, except those certain items, if any, to be set forth in an affidavit covering disputed claims, or items in connection with Stop Notices which have been filed under the provisions of the statutes of the State of California. SUCCESSOR AGENCY may require affidavits or certificates of payment and/or releases from any subcontractor, laborer or material supplier.

5.14 Contractor's Employees Compensation

5.14.1 General Prevailing Rate.

SUCCESSOR AGENCY has ascertained that both Federal and State prevailing wage requirements of the California Labor Code including Sections 1770, 1771.5, 1773, 1777.5, and 1776, the Davis-Bacon and Related Acts (DBRA) are required to execute this Contract. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the CONTRACTOR and the SUBCONTRACTORS shall pay not less than the higher wage rate. The SUCCESSOR AGENCY will not accept the lower State wage rates not specifically included in the Federal wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the CONTRACTOR and SUBCONTRACTORS, the CONTRACTOR and SUBCONTRACTORS shall pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question. A copy of the prevailing rate of per diem wages shall be posted at the job site. THIS IS A FEDERALLY FUNDED PROJECT AND THE DAVIS-BACON ACT WILL BE ENFORCED.

SECTION 5 - AGREEMENT (Continued)

- 5.14.2 Forfeiture for Violation.** CONTRACTOR shall, as a penalty to the SUCCESSOR AGENCY, forfeit one hundred dollars (\$100.00) for each calendar day or portion thereof for each worker paid (either by the CONTRACTOR or any subcontractor under it) less than the greater of the Federal or State minimum wage rate associated with the duties of the employee in question, in accordance with the State prevailing wage requirements of the California Labor Code, including Sections 1770, 1771.5, 1773, 1777.5, and 1776, and the Federal wage requirements per the Davis-Bacon and Related Acts (DBRA).
- 5.14.3 Travel and Subsistence Pay.** Section 1773.8 of the Labor Code of the State of California and the Davis-Bacon and Related Acts (DBRA), regarding the payment of travel and subsistence payments, is applicable to this Contract and CONTRACTOR shall comply therewith.
- 5.14.4 Apprentices.** Section 1777.5, 1777.6 and 1777.7 of the Labor Code of the State of California and the Davis-Bacon and Related Acts (DBRA), regarding the employment of apprentices is applicable to this Contract and the CONTRACTOR shall comply therewith if the prime contract involves thirty thousand dollars (\$30,000.00) or more or twenty (20) working days, or more; or if contracts of specialty contractors not bidding for work through the general or prime contractor are two thousand dollars (\$2,000.00) or more for five (5) working days or more.
- 5.14.5 Workday.** In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and CONTRACTOR shall not require more than eight (8) hours of labor in a day from any person employed by him hereunder except as provided in paragraph (5.14.2) above. CONTRACTOR shall conform to Article 3, Chapter 1, Part 7 (Sections 1810 et seq.) of the Labor Code of the State of California and shall forfeit to the SUCCESSOR AGENCY as a penalty, the sum of twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by CONTRACTOR or any subcontractor for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in any one week in violation of said Article. CONTRACTOR shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by CONTRACTOR in connection with the Project.
- 5.14.6 Record of Wages: Inspection.** CONTRACTOR agrees to maintain accurate payroll records showing the name, address, social security number, work classification, straight-time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by it in connection with the Project and agrees to require that each of its subcontractors does the same. The applicable contractor or subcontractor or its agent having authority over such matters shall certify all payroll records as accurate. CONTRACTOR further agrees that its payroll records and those of its subcontractors shall be available to the employee or employee's representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards and shall comply with all of the provisions of Labor Code Section 1776 and the Davis-Bacon and Related Acts (DBRA), in general. The contractor shall submit copies of certified payroll reports **and cancelled checks** for laborers every week to the SUCCESSOR AGENCY. *If the certified payroll reports are not submitted, the contractor will be notified that compliance is required within five (5) working days or contract work must cease. The City will not be responsible for any delay or acceleration charges or any incurred costs or damages as*

SECTION 5 - AGREEMENT (Continued)

a result of the work stoppage due to contractor's failure to comply. Work shall be cease in an orderly, safe fashion with all vehicle access restored, should this not accrue, City will correct the deficiencies and deduct the cost from funds due to the contractor. In addition, no progress payment will be made until the copies of certified payroll reports are submitted.

5.15 **Surety Bonds.** CONTRACTOR shall, upon entering into performance of this Agreement, furnish bonds in the amount of one hundred percent (100%) of the Contract price bid, to guarantee the faithful performance of the work, and the other in the amount of one hundred percent (100%) of the Contract price bid to guarantee payment of all claims for labor and materials furnished. This Contract shall not become effective until such bonds are supplied to and approved by the SUCCESSOR AGENCY.

5.16 **Insurance.**

5.16.1 COMMENCEMENT OF WORK. CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the SUCCESSOR AGENCY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the SUCCESSOR AGENCY of any material change, cancellation, or termination at least thirty (30) days in advance. CONTRACTOR is also aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation, or undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this Contract.

5.16.2 WORKERS COMPENSATION INSURANCE. For the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable for the protection of its employees during the progress of the work. The insurer shall waive its rights of subrogation against the SUCCESSOR AGENCY, its officers, officials, agents, employees, and volunteers and shall issue a certificate to the policy evidencing the same.

5.16.3 INSURANCE AMOUNTS. CONTRACTOR shall maintain the following insurance for the duration of this Agreement:

(a) Commercial general liability in an amount not less than \$2,000,000 per occurrence; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the SUCCESSOR AGENCY.

(b) Automobile liability in an amount not less than \$1,000,000 combined single limit; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to SUCCESSOR AGENCY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the SUCCESSOR AGENCY.

SECTION 5 - AGREEMENT (Continued)

- (c) Excess liability coverage shall be provided for any underlying policy that does not meet the insurance requirements set forth herein. (**claims made and modified occurrence policies are not acceptable**) Insurance companies must be acceptable to SUCCESSOR AGENCY and have a Best's Guide Rating of A-Class VII or better, as approved by the SUCCESSOR AGENCY.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 5.16.3 (a) shall designate SUCCESSOR AGENCY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to SUCCESSOR AGENCY proof of insurance and endorsement forms that conform to city's requirements, as approved by the SUCCESSOR AGENCY.

An Additional Insured Endorsement for the policy under section 5.16.3 (b) shall designate SUCCESSOR AGENCY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to SUCCESSOR AGENCY proof of insurance and endorsement forms that conform to SUCCESSOR AGENCY's requirements, as approved by the SUCCESSOR AGENCY.

An Additional Insured Endorsement for the policy under section 5.16.3 (c) shall designate SUCCESSOR AGENCY, its officers, officials, employees, agents, and volunteers as additional insured's under the excess liability policy. CONTRACTOR shall provide to SUCCESSOR AGENCY proof of insurance stating the excess liability policy follows form, additional insured endorsement forms, and the schedule of underlying policies with policy numbers that conform to SUCCESSOR AGENCY's requirements, as approved by the SUCCESSOR AGENCY.

In the event any of CONTRACTOR'S underlying policies do not meet policy limits within the insurance requirements, CONTRACTOR shall provide the schedule of underlying policies for an excess liability policy, state that the excess policy follows form on the insurance certificate, and an additional insured endorsement for the excess liability policy designating SUCCESSOR AGENCY, its officers, officials, employees, agents, and volunteers as additional insured's.

SUCCESSOR AGENCY or its representatives shall at all times have the right to inspect and receive the original or a certified copy of all said policies of insurance, including certificates. CONTRACTOR shall pay the premiums on the insurance hereinabove required.

- 5.17 Risk and Indemnification.** All work covered by this Contract done at the site of construction or in preparing or delivering materials to the site shall be at the risk of CONTRACTOR alone. CONTRACTOR agrees to save, indemnify and keep SUCCESSOR AGENCY, its Officers, Agents, Employees, Engineers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their directors, Officers, Agents and Employees harmless against any and all liability, claims, judgments, costs and demands, including demands arising from injuries or death of persons (CONTRACTOR'S employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by CONTRACTOR, save and except claims or litigation arising through the sole negligence or sole willful misconduct of SUCCESSOR AGENCY and

SECTION 5 - AGREEMENT (Continued)

will make good to reimburse SUCCESSOR AGENCY for any expenditures, including reasonable attorneys' fees SUCCESSOR AGENCY may incur by reason of such matters, and if requested by SUCCESSOR AGENCY, will defend any such suits at the sole cost and expense of CONTRACTOR.

5.18 Termination.

5.18.1 This Contract may be terminated in whole or in part in writing by the SUCCESSOR AGENCY for its convenience, provided that the CONTRACTOR is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Termination of contract shall conform to Section 8 of the California, Department of Transportation Standard Specifications.

5.18.2 If termination for default or convenience is effected by the SUCCESSOR AGENCY, an equitable adjustment in the price provided for in this Contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the CONTRACTOR at the time of termination may be adjusted to cover any additional costs to the SUCCESSOR AGENCY because of the CONTRACTOR'S default. The equitable adjustment for any termination shall provide for payment to the CONTRACTOR for services rendered and expenses incurred in accordance with Section 8 of the California, Department of Transportation Standard Specifications.

5.18.3 Upon receipt of a termination action under paragraph (5.18.1) or (5.18.2) above, the CONTRACTOR shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the SUCCESSOR AGENCY all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONTRACTOR in performing this Contract whether completed or in process.

5.18.4 Upon termination under paragraphs (5.18.1) and (5.18.2) above, the SUCCESSOR AGENCY may take over the work and may award another party an agreement to complete the work under this Contract.

5.19 Warranty. The CONTRACTOR agrees to perform all work under this Contract in accordance with the SUCCESSOR AGENCY's designs, drawings and specifications.

The CONTRACTOR guarantees for a period of one (1) year from the date of the notice of completion of the work that the completed work is free from all defects due to faulty materials, equipment or workmanship and that he shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs or any damage to other parts of the system resulting from such defects. The SUCCESSOR AGENCY shall promptly give notice to the CONTRACTOR of observed defects. In the event that the CONTRACTOR fails to make adjustments, repairs, corrections or other work made necessary by such defects, the SUCCESSOR AGENCY may do so and charge the CONTRACTOR the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

SECTION 5 - AGREEMENT (Continued)

The CONTRACTOR'S obligations under this clause are in addition to the CONTRACTOR'S other express or implied assurances of this Contract or state law and in no way diminish any other rights that the SUCCESSOR AGENCY may have against the CONTRACTOR for faulty materials, equipment or work.

5.20 Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, each party shall be responsible for their own attorneys' fees, costs and necessary expenses. If any action is brought against the CONTRACTOR or any subcontractor to enforce a Stop Notice or Notice to Withhold, which named the SUCCESSOR AGENCY as a party to said action, the SUCCESSOR AGENCY shall be entitled to all attorneys' fees, costs and necessary disbursements arising out of the defense of such action by the SUCCESSOR AGENCY. The SUCCESSOR AGENCY shall be entitled to deduct its costs for any Stop Notice filed, whether court action is involved or not.

5.21 Notices. Any notice required or permitted under this Contract may be given by ordinary mail at the address set forth below. Any party whose address changes shall notify the other party in writing.

To: SUCCESSOR AGENCY:
*CITY OF GARDEN GROVE
As Successor Agency To The
Garden Grove Agency For
Community Development
Public Works Department
Attention: Digna de los Reyes
11222 Acacia Parkway
Garden Grove, CA 92842
(714) 741-5179
(714) 741-5578 - Fax*

TO: CONTRACTOR:
*EXCEL PAVING COMPANY
Attention: C. P. Brown
2230 Lemon Avenue
Long Beach, CA 90806
(562) 599-5841
(562) 591-7485 - Fax*

SECTION 5 - AGREEMENT (Continued)

IN WITNESS THEREOF, these parties have executed this Construction Agreement on the day and year shown below.

Date: _____

"SUCCESSOR AGENCY"
**CITY OF GARDEN GROVE AS SUCCESSOR AGENCY
TO THE GARDEN GROVE AGENCY FOR COMMUNITY
DEVELOPMENT**

By: _____
**Matthew J. Fertal
Director**

ATTEST:

Secretary

Date: _____

"CONTRACTOR"
PALP, INC. DBA EXCEL PAVING COMPANY
CONTRACTOR'S State License No. 688659 A
(Expiration Date: May 31, 2014)

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Garden Grove City Attorney

Date _____

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required.

FAITHFUL PERFORMANCE BOND

Bond No. _____
Premium _____

NOTICE: TO WHOM IT MAY CONCERN: those we, PALP, Inc. dba EXCEL PAVING COMPANY, (Contractor) as Principal, and _____ as Surety, are held and firmly bound unto the City of Garden Grove As Successor Agency To The Garden Grove Agency For Community Development, (Successor Agency) in the sum of **One Million, Two Hundred Fifty-Six Thousand, One Hundred Thirteen and No Cents Dollars and 00/100 (\$ 1,256,113.00)**, Lawful money of the United States, for the payment of which we bind heirs, our executors, administrators, successors, and ourselves jointly and severally.

That the Surety's office is located at _____, telephone no. _____; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone no. are as follows:

License No.: _____

Address: _____

Telephone No.: _____

That the following clause must be completed if, in fact, a non-resident agent for the Surety is a party to the transaction:

Name of non-resident agent: _____

Non-resident agent's office address: _____

Telephone No.: _____

THE CONDITION OF THIS OBLIGATION IS SUCH, that:

1. The Principal has agreed entered into a contract attached hereto, dated the 9th day of October, 2012, with the CITY OF GARDEN GROVE As Successor Agency To The Garden Grove Agency For Community Development, (Successor Agency) for **Harbor Boulevard Street Improvements from Palm Street to Lampson Avenue, Project No. 7245.**
2. If the Principal shall well and truly perform, or cause to be performed, each and all of the requirements and obligations of the contract to be performed by the Principal, as set forth in the contract, then this bond shall be null and void; otherwise, it shall remain in full force and effect. In the event that suit is instituted to recover on this bond, the Surety will pay reasonable attorneys' fees.
3. Further, the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the contract documents or of work performed shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alteration, or modification of the contract documents, or of work to be performed.

LABOR AND MATERIAL BOND

Bond No. _____
Premium _____

NOTICE: TO WHOM IT MAY CONCERN: those we, PALP Inc., dba EXCEL PAVING COMPANY, (Contractor) as Principal, and _____, as Surety, are held and firmly bound unto the City of Garden Grove As Successor Agency To The Garden Grove Agency For Community Development, (Successor Agency), California in the sum **One Million, Two Hundred Fifty-Six Thousand, One Hundred Thirteen and No Cents Dollars and 00/100 (\$ 1,256,113.00)**, lawful money of the United States, for the payment of the sum, we bind heirs, our executors, administrators, successors, and ourselves jointly and severally.

That the Surety's office is located at _____, telephone no. _____; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone no. are as follows:

License No.: _____
Address: _____
Telephone No.: _____

That the following clause must be completed if, in fact, a non-resident agent for the Surety is a party to the transaction:

Name of non-resident agent: _____
Non-resident agent's office address: _____
Telephone No.: _____

THE CONDITION OF THIS OBLIGATION IS SUCH, that:

1. The Principal has entered into a contract attached hereto, dated 9th day of October, 2012, with the CITY OF GARDEN GROVE As Successor Agency To The Garden Grove Agency For Community Development, (Successor Agency) for **Harbor Boulevard Street Improvements from Palm Street to Lampson Avenue, Project No. 7245.**
2. If the Principal, its heirs, executors, administrators, successors, or assigns, or subcontractors, shall fail to pay for any materials, provisions, provender, or other supplies or teams, implements, or machinery used in, upon, for, or about, the performance of the improvement, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to work or labor, and provided that the claimant shall have complied with the provision of the code, the Surety or Sureties will pay for same in the amount not exceeding the sum specified in this bond; otherwise, the above obligation shall be void. In case suit is brought upon this bond, the Surety will pay reasonable attorneys' fees.
3. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the contract documents, or of work performed, shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alteration, or modification of the contract documents, or of work to be performed.

LABOR AND MATERIAL BOND (Continues)

4. This bond shall inure to the benefit of any and all persons, companies, and corporations entitled to the claims under Civil Code 3181 et seq., so as to give a right of action to them or their assignees in any suit brought upon this bond.

Executed this ____ day of _____, 20____.

Principal	Principal
	By: _____
	Surety
	By: _____
	Attorney-in-Fact
	_____ California Resident Agent
	By: _____
	Non-resident Agent - Attorney-in-Fact

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On this ____ day of _____, 20____, before me, a Notary Public in and for said County and State, personally appeared _____ known to me to be the Attorney-in-Fact of the _____, of _____ (Corporation) _____, and acknowledged that it executed the attached bond to the (State)

City of Garden Grove As Successor Agency To The Garden Grove Agency For Community Development, (Successor Agency) as such Attorney-in-Fact and as the free act and deed of the corporation, and that the bond was executed on behalf of the corporation by authority of its Board of Directors.

IN WITNESS WHEREOF, I have herewith set my hand and affixed my Official Seal, the day and year in this certificate first above written.

(Acknowledgment by Non-resident Agent as Attorney-in-Fact must be attached.)

Notary Public in and for said County and State
My Commission expires: _____