

ADDENDUM TO CITY OF HOLLYWOOD'S ("BUYER")
BLANKET PURCHASE AGREEMENT TERMS AND CONDITIONS ISSUED TO OMB,
LLC. ("SELLER")

The Blanket Purchase Agreement ("BPA") is hereby amended as set forth below and except as modified herein the BPA between Seller and Buyer shall remain in full force and effect as originally written. In the event of a conflict between the terms of this Addendum and the BPA the terms of this Addendum shall take precedence. In consideration of the mutual promises and covenants below and in the BPA and other good and valuable consideration the sufficiency of which is hereby acknowledged by the parties, Buyer and Seller agree as follows:

1. Project Scope: Seller shall provide sidewalk construction services that includes new sidewalk construction and repairs to existing sidewalks at various locations citywide.

The services shall include the following:

- a. Replacement or repair of various existing damaged sidewalks and handicap ramps;
- b. Construction of new concrete sidewalks (width to be determined by the Project Engineer) with new handicap ramps at the locations designate above;
- c. Construction of new handicap ramps and the placement or repair to existing handicap ramps at the locations designated above;
- d. Miscellaneous road and rights-of-way maintenance work that includes but is not limited to minor asphalt and concrete repair or removal work, swale grading and traffic control device repair or replacement.
- e. All sidewalk construction and repair work shall be done in accordance with the specifications established by the City's Engineer.

2. Seller shall provide Buyer with a Payment and Performance Bond as well as Certificate of Insurance in the amounts determined by the Risk Manager.

3. Schedule: The Seller agrees to commence work upon issuance of the Blanket Purchase Agreement and execution of this Addendum. Seller shall complete all sidewalk construction and repairs by March 30, 2021.

In the event that Seller fails to complete the required sidewalk construction and repair services in accordance with the Schedule, Buyer shall have the right to terminate the Blanket Purchase Agreement and Seller shall reimburse Buyer for any costs associated with the having to retain another Seller to complete the required services.

Further, Buyer has the right to assess liquidated damages against Seller for its failure to complete the work in accordance with Paragraph 4 below.

4. Liquidated Damages: In the event that Seller fails to complete the required sidewalk construction and repair work within the time frame specified in Paragraph 3 above, Seller shall pay Buyer liquidated damages in the amount of \$500.00 per day for such delays in the installation and completion of the work.

5. Indemnification.

The Seller shall indemnify and hold harmless the City, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Seller and persons employed or utilized by the Seller in the performance of the services to be provided. These provisions shall survive the expiration or earlier termination of the Blanket Purchase Agreement and this Addendum. Nothing in this contract shall be construed in any way to affect the sovereign immunity of the City or the rights of the City as set forth in Section 768.28, Florida Statutes.

6. Payments. Payment to Seller shall not exceed \$199,375.95. Progress payments shall be based on the aggregate of the unit price amounts listed in the Seller's proposal. Prior to 4:30 p.m. on the first working day of the month, the Seller shall submit to the City's representative for review, an Application for Payment from filled out and signed by the Seller. The form shall be notarized and shall cover the work completed as of the date of the application. The Application for Payment shall be accompanied by a "Page 2" laying out the Schedule of Values attached as Exhibit "A" to this Addendum, and any other supporting documents as the City's representative may require. All Applications for Payment shall include an Affidavit of the Seller stating that all previous progress payments received on account of the work have been applied to discharge in full all of Seller's obligations reflected in prior Applications for Payment. The amount of retainage with respect to progress payments will be 10%. The Seller warrants and guarantees that title to all work, materials and equipment covered by any Application of Payment whether incorporated in the Project or not, will pass to the City at the time of payment free and clear of all liens, claims, security interests and encumbrances.

The City's representative will promptly review the Application for Payment and either approve and submit it for payment or notify Seller of the deficiencies such that the Seller may make the necessary corrections and resubmit in time for the month's payment. However, the City's representative may refuse to recommend the whole or any part of any payment, if in his/her opinion, it would be incorrect to make such representations. He/she may also refuse to recommend any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended to such extent as may be necessary in the City's representative's opinion to protect to the City from loss.

Payments are made only on the 15th day or first workday thereafter of each month. The City shall pay undisputed sums no later than the time provided by the Prompt Payment Act, Section 218.70, et. seq. Florida Statutes.

7. **Warranty and Guarantee:** Seller warrants and guarantees to the City that all work will be in accordance with the Blanket Purchase Agreement, this Addendum and the specifications established by the City Engineer and will not be defective. Prompt notice of defects shall be given to the Seller. All defective work, whether or not in place, may be rejected, corrected or accepted by the City based by tests and inspections. It is understood and agreed that if within one year after the date of completion of the work or such longer period of time as may be prescribed by any applicable guarantee, any work is found to be defective, the Seller shall promptly without cost to the City and in accordance with the City's written instructions, either correct such defective work, or if it has been rejected by the City, remove it from the site and replace it with non-defective work. If Seller fails to comply with the terms of the City's instructions, or in an emergency where delay would cause serious risk of loss or damage, the City may have the defective work corrected or the rejected work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by the Seller.

If the Seller fails within a reasonable time after written notice from the City to proceed to correct defective work or to remove and replace rejected work as required by the City, or if the Seller fails to perform the work in accordance with the Project Scope and specifications established by the City' Engineer, the City, may after seven days' written notice to Seller, correct and remedy any such deficiency. In exercising its rights, the City may proceed expeditiously. To the extent necessary to complete corrective and remedial action, the City may exclude the Seller from all or part of the site, take possession of all or part of the work, and suspend Seller's services related thereto, take possession of the Seller's tools, appliances, construction equipment and machinery at the site and incorporate in the work all materials and equipment stored at the site for which the City has paid the Seller but which are stored elsewhere. Seller shall allow the City, its representatives, agents and employees such access to the site as may be necessary to enable the City to exercise its rights under this Paragraph. All direct or indirect costs of the City in exercising such rights shall be charged against the Seller in an amount verified by the City's representative, and a Change Order shall be issued incorporating the necessary revisions and a reduction in the Contract Price. Such direct and indirect costs shall include, in particular but without limitations, compensation for additional professional services required and all costs of repair and replacement work of others destroyed or damaged by correction, removal or replacement of the Seller's defective work.

8. **Termination.** City may terminate this Agreement with or without cause upon seven day's written notice.

ADDENDUM TO CITY OF HOLLYWOOD’S (“BUYER”) BLANKET PURCHASE
AGREEMENT TERMS AND CONDITIONS ISSUED TO OMB, LLC. (“SELLER”)

ACKNOWLEDGED AND ACCEPTED BY:

BUYER:

By: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGED AND ACCEPTED BY:

SELLER:

By: _____

Name: _____

Title: _____

Date: _____

Approved by: _____
David Keller, Interim Finance Director

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
for the use and reliance of the City of Hollywood, Florida,
only.

Douglas R. Gonzales
City Attorney