

**CONSTRUCTION CONTRACT FOR  
Pavement, Concrete and Striping  
IFB # PS-ST-13-14-116**

THIS CONSTRUCTION CONTRACT ("Contract") is entered on June 18, 2014, by and between the **City of Lake Worth**, a Florida municipal corporation ("City") and **Asphalt Paving Systems, Inc.**, with its principal address at 9021 Wire Road, Zephyrhills, FL 33540 ("Contractor").

**RECITALS**

WHEREAS, the City is a municipal corporation organized and existing pursuant to the Charter and the Constitution of the State of Florida;

WHEREAS, the City issued **Invitation for Bid #PS-ST-13-14-116** (including, but not limited to, the addenda, Plans & Drawings, Special Terms and General Conditions and Terms issued therewith) ("IFB") for the maintenance and construction of roadways, sidewalks and driveways, concrete curbing, green area grading and sodding, ADA concrete ramps, thermoplastic striping and signage.

WHEREAS, the Contractor submitted a unit price bid to perform the work generally described and set out in the IFB;

WHEREAS, the City desires to accept Contractor's bid in order for Contractor to render the services to the City as provided herein;

WHEREAS, the Contractor further warrants that it is experienced and capable of performing the tasks hereunder in a professional and competent manner;

WHEREAS, the City finds awarding the IFB to the Contractor as described herein serves a valid public purpose.

NOW THEREFORE, the City hereby engages the services of the Contractor, and in consideration of the mutual promises herein contained, the sufficient of which is hereby acknowledged by both parties, the parties agree as follows:

Article 1. RECITALS & DEFINITIONS.

1.1 The foregoing recitals are incorporated into this Contract as true and correct statements.

1.2 **Contract Documents.** The Contract Documents are incorporated herein by reference as if originally set forth in this Contract, and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the IFB, the bid submitted by the Contractor and any duly executed and issued Change Orders, Work Directive Changes, Field Orders and amendments relating thereto and all Work Orders, for each specific project. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, at once and before proceeding shall obtain a written interpretation or clarification. In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

- |                  |                               |
|------------------|-------------------------------|
| First Priority:  | Duly executed Change Orders;  |
| Second Priority: | Work Order (for each project) |
| Third Priority:  | Drawings/Specifications       |
| Fourth Priority: | This Contract                 |
| Fifth Priority:  | Special Terms (in the IFB)    |

Sixth Priority:	General Conditions and Terms (in the IFB)
Seventh Priority	Remainder of the IFB
Eighth Priority	Contractor's Bid

The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

1.3 Contract Administrator. Whenever the term Contract Administrator is used herein, it is intended to mean Hirut Darge, Purchasing Agent. In the administration of this Contract, as contrasted with matters of policy, all parties may rely upon written instructions or written determinations made by the Contract Administrator. However, any amendment to this Contract or the Contract Documents shall require a written amendment signed by the City and the Contractor.

1.4 Contract Price. The Contract Price shall be based upon the unit prices attached in the Contractor's Bid and then multiplied by the units as set forth in each Work Order, which shall be payable in accordance with paragraph 3 of this Contract.

1.5 Scope of Services/Work. The Scope of Services/Work under this Contract shall be as specifically described in the Contract Documents.

Article 2. CONTRACT TIME; LIQUIDATED DAMAGES.

2.1 Contract Time. Final completion of the work and all punch-list items (if any) shall be within the time frame as set forth in each Work Order for each project.

**2.2 Liquidated Damages. The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss if the work described in the Contract Documents not completed within the times specified in paragraph 2.1 above. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraphs 2.1.**

Article 3. PAYMENT PROCEDURES & DOCUMENTATION

3.1 The Contractor shall submit an itemized bill to the Contract Administrator for approval prior to receiving compensation. Billing shall include an itemized summary of total costs billed and shall be made at such intervals as agreed to by the parties. All billings shall include a description of the status of efforts, a brief itemization of costs associated with each task or project phase and the total task or project costs to date. Upon final completion and acceptance of the services/work in accordance with the Contract Documents, the City shall pay any and all remainder of the Contract Price.

3.2 The Contractor shall be paid within thirty (30) days receipt of approved invoice for services.

3.3 The Contractor shall permit the City, or any authorized representatives of the City, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the Contractor's performance under this Contract including, but not limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed

documentation for all such work performed or to be performed under this Contract.

3.4 Copies or original documents prepared by the Contractor in relation to work associated with this Contract shall be provided to the City. Data collected, stored, and/or provided shall be in a form acceptable to the City and agreed upon by the City.

3.5 Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the Contractor pursuant to or in connection with this Contract shall be the exclusive property of the City.

#### Article 4. SUBCONTRACTORS

To the extent reasonably necessary to enable the Contractor to perform its duties hereunder, the Contractor shall be authorized to engage the services of any subcontractors, agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance its duties under this Contract. All costs of the services of, or expenses incurred by, such subcontractors, agents or assistance shall be paid by the CONTRACTOR.

#### Article 5. CONTRACTOR'S REPRESENTATIONS

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

5.1 Contractor has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work.

5.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the Contract Price, within the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

5.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

5.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

5.5 Contractor has given Contract Administrator written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the resolution thereof is acceptable to the Contractor.

5.6 The Contractor represents to the City that the services to be performed under this Contract shall be in accordance with accepted and established trade practices and procedures recognized in the Contractor's trade in general and that the Contractor's services shall conform to the highest standards and in accordance with this Contract.

5.7 The Contractor represents that it is licensed to do business in the State of Florida and further warrants its capability and experience to perform the tasks and services provided for herein in a professional and competent manner.

5.8 The Contractor shall not make changes to the scope of services/work or perform any additional work or provide any additional material except as agreed to in writing with the City prior to any change or additional services/work being commenced. Additional services/work, labor or materials provided without written authorization shall be done at the Contractor's sole risk and without payment.

#### Article 6. INDEMNITY & INSURANCE.

6.1 The parties recognize that the Contractor is an independent contractor. The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision (at all levels of trial, appeal and mediation). This includes claims made by the employees of the Contractor against the City and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

6.2 Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

6.3 It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. Contractor expressly agrees that it will not claim,

and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

6.4 The Contractor shall, at its own expense, procure and maintain throughout the term of this Contract, with insurers acceptable to the City, the types and amounts of insurance set forth below. The Contractor shall not commence services until the required insurance is in force and evidence of insurance acceptable to the City has been provided to, and approved by, the City. An appropriate Certification of Insurance shall be satisfactory evidence of insurance and shall name the City as an additional insured for all insurance except Workers' Compensation. Until such insurance is no longer required by this Contract, the Contractor shall provide the City with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance. The Contractor shall maintain during the life of this Contract the following types of insurance:

**Commercial general liability**, including public and contractual liability insurance in the amount of \$1,000,000.00 per occurrence (\$2,000,000.00 aggregate) to protect the Contractor from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the Contractor or by anyone directly or indirectly employed by or contracting with the Contractor.

**Workers' Compensation Insurance and Employer's Liability Insurance** for all employees as required by Florida Statutes

**Comprehensive automobile liability** in the amount of \$1,000,000 per occurrence to protect the Contractor from claims for damage for bodily or personal injury, including wrongful death, as well as claims of property damages which may arise from any operations under this Contract, whether such operations be by the Contractor or by anyone directly or indirectly employed by or contracting with the Contractor.

6.5 The insurance provided by the Contractor shall apply on a primary basis. Any insurance, or self-insurance, maintained by the City shall be excess of, and shall not contribute with, the insurance provided by the Contractor. Except as otherwise specified, no deductible or self-insured retention is permitted.

6.6 Compliance with these insurance requirements shall not limit the liability of the Contractor. Any remedy provided to the City by the insurance provided by the City shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of the Contractor) available to the City under this Contract or otherwise.

6.7 Neither approval nor failure to disapprove insurance furnished by the Contractor shall relieve the Contractor from responsibility to provide insurance as required by this Contract.

6.8 The Contractor's failure to obtain, pay for, or maintain any required insurance shall constitute a material breach upon which the City may immediately terminate or suspend this Contract. In the event of any termination or suspension, the City may use the services of another contractor without the City incurring any liability to the Contractor.

#### Article 7. REIMBURSEMENT OF ENGINEER EXPENSES.

Should the completion of this Contract be delayed beyond the specified or adjusted time limit,

Contractor shall reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for herein.

Article 8. TERMINATION.

8.1 If the City's Contract Administrator deems that the Contractor is in default for failure to supply an adequate working force, or service of proper quality, or has failed in any other respect to satisfactorily perform the services specified in this Contract, the Contract Administrator may give written notice to the CONTRACTOR specifying defaults to be remedied within five (5) days. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the Contractor does not remedy defaults within five (5) days or commence steps to remedy default to the reasonable satisfaction of the Contract Administrator, the City may secure such services from another Contractor and the City may withhold any money due or which may become due to the Contractor for such task related to the claimed default; or, the City may elect to immediately terminate this Contract.

8.2 Notwithstanding paragraph 8.1, the City reserves the right and may elect to terminate this Contract at any time. At such time, the Contractor shall be compensated only for those services/work which has been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down or other costs incurred due to termination of this Contract under Article 8.

Article 9. MISCELLANEOUS.

9.1 The City and Contractor each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

9.2 Additional work, changes to the Contract Price, or Contract Time, is subject to the City's prior written approval. The Contract Administrator has no authority to approve such changes and has no authority to waive the requirement of prior written authorization for extra work, changes in the Contract Time, or change orders, unless allowed by the City's purchasing code as it relates to each Work Order.

9.3 Headings and References & Exhibits: The headings contained in this Contract are inserted or convenience of reference only and shall not be a part or control or affect the meaning hereof. All references herein to Articles are to the Articles of this Contract. All references herein to Exhibits are to the exhibits hereto, each of which shall be incorporated into and deemed to be a part of this Contract.

9.4 Counterparts: This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

9.5 Entire Contract; Amendment and Waiver: This Contract (together with the Exhibits hereto) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered

simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Contract.

9.6 Successors and Assigns: This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9.7 Governing Law; Consent to Jurisdiction: This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and (ii) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

9.8 Third Party Beneficiary rights: This Contract shall create no rights or claims whatsoever in any person other than a party herein.

9.9 Severability: If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

9.10 Effective date: The effective date of this Contract is the date the Contract is approved by the City Commission.

9.11 Public Records: The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and specifically agrees to:

A. Keep and maintain all public records that ordinarily and necessarily would be required by the City to keep and maintain in order to perform the services under this Contract.

B. Provide the public with access to said public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

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

D. Meet all requirements for retaining said public records and transfer, at no cost, to the City all said public records in possession of the Contractor upon termination of this Contract and destroy any duplicate public records that are exempt or confidential and exempt from Chapter 119, Florida Statutes, disclosure requirements. All records stored electronically must

be provided to the City in a format that is compatible with the information technology systems of the City.

9.12 Preparation: This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

9.13 PALM BEACH COUNTY IG: In accordance with Palm Beach County ordinance number 2011-009, the CONSULTANT acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

9.14 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date personally delivered to the address indicated below or delivered by nationally recognized overnight courier to the address indicated below or on the third (3<sup>rd</sup>) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office to the address indicated below. Should the City or the Contractor have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the Contractor to the City to the CITY shall be given to the City address as follows:

Michael Bornstein, City Manager  
City of Lake Worth  
7 North Dixie Hwy  
Lake Worth, Florida 33460

All notices, demands or requests from the City to the Contractor shall be given to the Contractor address as follows:

Asphalt Paving Systems, Inc.,  
9021 Wire Road  
Zephyrhills Florida 33540

9.15 The Contractor shall not be entitled to an increase in the agreed to sum or payment or compensation of any kind from the City, as set forth, in each Work Order, for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of periods of suspension or delay, disruption, interference or hindrance from any circumstances beyond the Contractor's control. The Contractor's sole remedy in the event of a delay arising out of or related to circumstances beyond the Contractor's control shall be an extension of the Contract Time as reasonably determined by the City.

9.16 Except as provided in Article 6 regarding Indemnification, all parties shall be responsible for their own attorney's fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract. Further, TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT



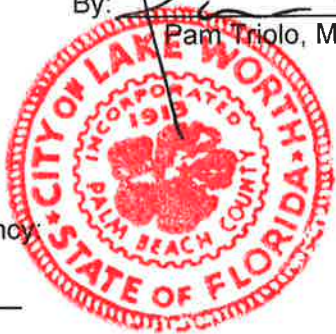
9.17 All work and services provided by the Contractor under this Contract shall be in accordance with all applicable laws including without limitation all federal, state, and local laws, ordinances, rules and regulations.

9.18 In the event the City has executed or executes an Interlocal Agreement with Palm Beach County regarding open cuts on County controlled/maintained roads the Contractor agrees to be bound by all of the terms of and conditions of that Agreement, including but not limited to, the requirement to obtain certain insurance and name the County as an additional insured.

IN WITNESS WHEREOF, the City and Contractor have caused this Construction Contract for the maintenance and construction of roadways, sidewalks and driveways, concrete curbing, green area grading and sodding, ADA concrete ramps, thermoplastic striping and signage to be executed as of the day and year shown above.

CITY OF LAKE WORTH, FLORIDA

By: [Signature]  
Pam Triolo, Mayor



ATTEST

[Signature]  
Pamela J. Lopez, City Clerk

Approved as to form and legal sufficiency:

[Signature]  
Glen J. Torcivia, City Attorney

CONTRACTOR: **ASPHALT PAVING SYSTEMS, INC.**

By: [Signature]

Print Name: ROBERT CAPOFERRI

Title: PRESIDENT

[Corporate Seal]

STATE OF FLORIDA )  
COUNTY OF PASCO )

The foregoing instrument was acknowledged before me this 29TH day of MAY, 2014 by ROBERT CAPOFERRI, as PRESIDENT of Asphalt Paving Systems, Inc., a corporation authorized to do business in the State of Florida, and who is personally known to me or who has produced the following DRIVER'S LICENSE as identification.

Notary Public

[Signature]



Print Name: MARK S ROTHBACH  
My commission expires: 10/17/2015

