

AGREEMENT

This is an Agreement (“Agreement”) dated _____, 2015, between the City of Dania Beach, Florida, a municipal corporation (the “City”), with its principal place of business located at 100 West Dania Beach Boulevard, Dania Beach, Florida 33004, and Asphalt Paving Systems, Inc., a Foreign Corporation authorized to conduct business in Florida (the “Contractor), with its principal place of business located at 500 N. Egg Harbor Road, Hammonton, New Jersey 08037.

WHEREAS, the City requires services which Contractor is capable of providing, under the terms and conditions described in this Agreement; and

WHEREAS, the Contractor is able and prepared to provide such services as City shall require, under those terms and conditions set forth in the City of Lake Worth, Florida, Construction Contract for Pavement, Concrete and Striping (IFB No. PS-ST-13-14-116).

In consideration of the mutual terms, conditions, promises, covenants and payments set forth in this Agreement, the sufficiency and receipt of which are acknowledged, City and Contractor agree as follows:

ARTICLE 1.0 **SERVICES AND RESPONSIBILITIES**

1.1 The Contractor’s responsibilities to the City under this Agreement is to provide microsurfacing and asphalt repair of selected local city streets, as further described in the Scope of Services in Exhibit “A”, a copy of which is attached to, made a part of and is incorporated into this Agreement by this reference.

1.2 The cost for such services shall not exceed the amount of Two Hundred Forty-Five Thousand Dollars (\$245,000.00).

1.3 Contractor represents to City with full knowledge that the City is relying upon these representations when entering into this Agreement with Contractor, that Contractor has the expertise, experience and work force sufficient to timely perform the services to be provided by Contractor, pursuant to the terms of this Agreement, and the terms in the Invitation for Bid from the City of Lake Worth (IFB No. PS-ST-13-14-116) which is made a part of and incorporated into this Agreement by this reference.

1.4 The Contractor further represents to the City that it is properly licensed under all applicable federal, state and local agencies to provide the services specified under this Agreement. If any of the Contractor’s licenses are revoked, suspended or terminated for any reason by any governmental agency, Contractor shall notify the City immediately.

1.5 Contractor guarantees all services and shall immediately correct any defects or any deficiencies associated with those services, which may appear upon written notification by the City.

ARTICLE 2.0
TERMS AND CONDITIONS

2.1 TERM: The term of this Agreement shall be for a two (2) year period.

2.2 RENEWAL: In the event City determines the Contractor to be in full compliance with this Agreement and Contractor's performance to be satisfactory, then City, at its sole option, may renew this Agreement for two (2) additional one (1) year periods, provided, however, that City provides written notification within sixty (60) days prior to the date of its termination, of its intention to renew the Agreement.

2.3 In the event the services are scheduled to end either by expiration or by termination by the City (at the City's sole discretion), the Contractor shall continue the services, if requested by the City, until new services can be provided by an alternate Contractor chosen by the City. At no time shall this transitional period extend for more than one hundred twenty (120) days beyond the expiration date of the existing Agreement. The Contractor will be reimbursed for those services at the rate in effect when this transitional period clause is invoked by the City.

ARTICLE 3.0
TERMINATION OR SUSPENSION OF AGREEMENT

3.1 **TERMINATION BY THE CONTRACTOR**

A. The Contractor may terminate this Agreement if the services is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, Subcontractor, Sub-subcontractor, their agents or employees, or any other persons performing portions of the services under this Agreement with the Contractor, for any of the following reasons:

1. issuance of an order of a court or other public authority having jurisdiction, or
2. an act of government, such as a declaration of national emergency, making services unnecessary.

B. If one of the above reasons exists, the Contractor may, upon five (5) additional days' written notice to the City, terminate this Agreement and recover from the City the payment for services that were provided.

3.2 **TERMINATION BY THE CITY FOR CAUSE**

A. The City may terminate this Agreement if the Contractor:

1. refuses or fails to supply enough properly skilled workers, proper equipment, materials, or fails to adhere to the schedule established as adjusted from time to time, pursuant to the terms of this Agreement;

2. fails to comply with laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction, including the City;
3. commits any act or omission that evidences a lack of integrity or honesty or which reflects negatively on the City, including by not limited to the company or its owners, officers and agents being charged with any act of moral turpitude or any environmental violation;
4. fails to obtain or maintain all insurance coverage required by the Request for Proposals or under this Agreement; or
5. otherwise is guilty of substantial breach of a provision under this Agreement or the Request for Proposals;

B. When the City terminates this Agreement, the Contractor shall not be entitled to receive any further payment until the services are completed and approved by the City.

1. All damages, costs and charges incurred by City shall be deducted from any monies due or which may become due to Contractor. In case of damages and expenses so incurred by the City shall exceed the unpaid balance, then Contractor shall be liable and shall pay to the City the amount of such excess.
2. If, after Notice of Termination or Suspension of Contractor's right to proceed, it is determined for any reason that Contractor was not in default, the rights and obligations of the City and Contractor shall be the same as if the Notice of Termination had not been issued, pursuant to the Termination for Convenience clause as set forth below.

3.3 TERMINATION BY THE CITY FOR CONVENIENCE

This Agreement may be terminated for convenience by the City upon fifteen (15) days' advance written notice to Contractor, and the Contractor's surety, if any (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, Contractor shall be paid for all acceptable services performed prior to the termination and shall not be entitled to any other costs, fees or payments.

3.4 SUSPENSION OF AGREEMENT BY CITY FOR CAUSE

The City may order the Contractor in writing to suspend, delay or interrupt the services, in whole or in part, for such period of time as deemed necessary by the City, if the Contractor fails to maintain all insurance coverage required under this Agreement. Any delay in the services caused by a lapse in coverage shall be deemed non-excusable, shall not be grounds for a time extension, and shall be subject to any other applicable provisions under the Request for Proposals and under this Agreement concerning Contractor delay.

3.5 **SUSPENSION BY THE CITY FOR CONVENIENCE**

1. The City may, without cause, order the Contractor in writing to suspend, delay or interrupt the services, in whole or in part, for such period of time as the City may determine, and the Contractor shall be entitled to an appropriate time extension.

2. If such suspension exceeds thirty (30) consecutive days, Contractor may also be entitled to an adjustment in the contract sum for increases in cost of performance of the Contract, resulting directly from the suspension, delay, or interruption, including reasonable profit on such increased cost; provided however, that no adjustment will be made to the extent:

- A. that performance is, was, or would have been so suspended, delays or interrupted by another cause for which Contractor is responsible;
- B. that the Contractor fails to adequately document the costs increase;
- C. that the Contractor would have incurred the cost increase regardless of the suspension, delay or interruption; or
- D. that an equitable adjustment is made or denied under another provision under this Agreement.

ARTICLE 4.0
COMPENSATION AND METHOD OF PAYMENT

4.1 The Contractor will be compensated on a monthly basis.

4.2 Payment will be made to Contractor at the following address:

Asphalt Paving Systems, Inc.
Attn: Mr. Robert Capoferri
Post Office Box 530
Hammonton, New Jersey 08037

4.3 City's acceptance of services shall constitute a waiver of all claims by the City, except for any or all claims arising from the guarantee in this Agreement, unsettled liens, lawsuits, deficiencies or faulty services appearing after final payment is made to the Contractor for such services. The acceptance of payment shall constitute a waiver of all claims against City by the Contractor.

4.4 Contractor shall, before any final payment is made by City, provide City copies of releases of all liens from any and all subcontractors, materials' providers and the like, who or which supplied or furnished any labor, services or materials that were used in the performance of the services. Contractor shall then furnish the City with a "No Lien Affidavit", if applicable. Final payment shall be made upon submission by the Contractor of evidence satisfactory to the City that all payrolls, materials' bills and other costs incurred by the Contractor in connection with the services, have been paid in full, and after all guarantees and specifications for products, materials, or both, incorporated into the services that appear in this Agreement, have been furnished to and found acceptable by the City.

ARTICLE 5.0
CHANGES IN SCOPE OF SERVICES

5.1 City or Contractor may request changes that increase, decrease or otherwise modify the services, as described in this Agreement. These changes may affect the compensation, and, if so, they must be described in a written Amendment to this Agreement, executed by the authorized agents of both of the parties, prior to any deviation from the terms of this Agreement. In no event will Contractor deviate or permit deviation from, the services described in Exhibit "A" attached to this Agreement without the City's advance written consent.

ARTICLE 6.0
PROTECTION OF CITY'S PROPERTY

6.1 At all times during the performance of this Agreement, the Contractor shall protect the City's property and the property of others, from all damage whatsoever on account of Contractor's performance of the requested services.

ARTICLE 7.0
INDEMNIFICATION

7.1 Contractor shall, in addition to any other obligation to indemnify the City and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the City, including its agents, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), or costs arising out of any actual or alleged:

(a) bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, or any other damage or loss arising out of or resulting or claimed to have resulted in whole or in part from any actual or alleged act or omission of the Contractor, anyone directly or indirectly employed by any of it, or anyone for whose acts any of them may be liable in the performance of the services;

(b) any violation of law, statute, ordinance, governmental administrative order, rule, regulation, or infringement of patent rights by Contractor in the performance of the services;

(c) liens, claims, actions made by the Contractor or any other authorized party performing the services;

(d) claims of whatsoever nature related to collection practices or any actions of a contradictory nature pursuant to contract or in an attempt to collect monies due or claimed to be due to the City.

ARTICLE 8.0
INSURANCE

8.1 The Contractor shall not commence any services under the Agreement until Contractor has obtained all insurance required under this Article, and not until such time that the coverages are approved by the Risk Manager of the City. The Contractor shall not allow any employee of it or any Subcontractor to commence any services on any subcontract until the Subcontractor and all coverages required of any Subcontractor have been obtained and approved by the Risk Manager of the City. In addition, the Contractor shall be responsible for any and all policy deductibles and self-insured retentions.

8.1.1 ALL CERTIFICATES OF INSURANCE MUST CLEARLY IDENTIFY THE AGREEMENT TO WHICH THEY PERTAIN, INCLUDING A BRIEF DESCRIPTION OF THE SUBJECT MATTER OF THE AGREEMENT. INSURANCE POLICIES FOR REQUIRED COVERAGES SHALL BE ISSUED BY COMPANIES AUTHORIZED TO DO BUSINESS UNDER THE LAWS OF THE STATE OF FLORIDA AND ANY SUCH COMPANIES' FINANCIAL RATINGS MUST BE NO LESS THAN A-VII IN THE LATEST EDITION OF THE "BEST'S KEY RATING GUIDE", PUBLISHED BY A.M. BEST GUIDE. IN THE EVENT THAT THE INSURANCE CARRIER'S RATING SHALL DROP, THE INSURANCE CARRIER SHALL IMMEDIATELY NOTIFY THE CITY IN WRITING.

8.1.2 Coverages shall be in force until all services required to be performed under the terms of the Agreement is satisfactorily completed as evidenced by the formal written acceptance by the City. In the event insurance certificates provided to City indicate that the insurance shall terminate and lapse during the period of the Agreement, then in that event, the Contractor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed Certificate of Insurance as proof that equal and like coverages for the balance of the period of the Agreement. **THE CONTRACTOR AND ANY SUBCONTRACTOR SHALL NOT PERFORM OR CONTINUE ANY SERVICES PURSUANT TO THE AGREEMENT, UNLESS ALL COVERAGES REMAIN IN FULL FORCE AND EFFECT. ANY DELAY IN THE SERVICES CAUSED BY A LAPSE IN COVERAGE SHALL BE NON-EXCUSABLE, SHALL NOT BE GROUNDS FOR A TIME EXTENSION, AND WILL BE SUBJECT TO ANY OTHER APPLICABLE PROVISIONS DESCRIBED IN THE AGREEMENT OR ELSEWHERE IN THE RFP DOCUMENTS CONCERNING THE CONTRACTOR'S DELAY.**

The following are requirements that must be met regarding the Contractor's delivery of Certificates of Insurance for all coverages required under the Request for Proposals and this Agreement:

8.13 **“Official” Certificates of Insurance must be delivered to the City’s Risk Manager and copies to the City Clerk’s office. If the “Official” certificates are not delivered before or on the fourteenth (14th) business day after the issuance by the City of the “Notice of Apparent Low Respondent”, then the City has the right to consider the awarded Agreement to the Contractor as void and the City has the right to negotiate a contract with the next lowest responding Contractor. “Special Provisions”, as referenced below under each type of insurance requirements shall be fully confirmed on or attached to the “Official” certificates.**

INSURANCE REQUIREMENTS

8.2 The below coverages are minimum limit requirements. Umbrella or Excess Liability policies are acceptable to provide the total required liability limits, as long as the Risk Manager of the City reviews and approves in writing the insurance limits on each of the policies. The City must approve any changes to these specifications and has the right to review and amend coverage requirements. The Contractor shall be held responsible for any modifications, deviations, or omissions in these insurance requirements.

8.2.1 GENERAL LIABILITY INSURANCE is to include bodily injury, broad form property damage, products and completed operations, blanket contractual liability with limits of no less than One Million Dollars (\$1,000,000.00) per occurrence, and Two Million Dollars (\$2,000,000.00) annual aggregate. Annual Aggregate shall apply “Per Job”.

SPECIAL PROVISIONS AS TO GENERAL LIABILITY INSURANCE: (to be confirmed on or attached to the Official Certificate of Insurance)

- 30 Days’ Notice of Cancellation or modification to City (if not available on the insurance policies, then Contractor has responsibility for notification); and
- “The City of Dania Beach, Florida” is named as an Additional “Named” Insured; The products and completed operations coverage shall apply for the City as additional “named” insured for a period of no less than five (5) years following the completion of the Project. Contractor’s products and completed operations policy shall have no time limitation on the coverages for the City’s additional “named” insured status. Additional insured coverage shall be no more restrictive than Insurance Services Office (ISO) form CG 2037 (07 04);
- Contractor’s insurance shall be primary and non-contributory;
- Waiver of Subrogation in favor of the City;

8.2.2 WORKERS’ COMPENSATION INSURANCE shall be maintained by Contractor and any Subcontractors during the term of the Agreement, and it is to apply to all “statutory employees” of the Contractor (as that phrase is defined by Chapter 440, Florida Statutes), in compliance with the “Workers’ Compensation Law” of the State of Florida and all applicable federal laws, for the benefit of the Contractor, its employees, and Subcontractors.

- In the case any services are sublet as otherwise addressed in the Agreement or RFP Documents, the Contractor shall require any Subcontractors similarly to provide Workers’ Compensation Insurance for all of the latter’s employees, in

addition to any coverage afforded by the Contractor, by furnishing statutory limits Part A.

- Employer's Liability Part B shall be in an amount of no less than One Million Dollars (\$1,000,000.00) each accident, and One Million Dollars (\$1,000,000.00) annual aggregate.

In no event shall the Contractor be permitted to utilize in the prosecution of the services, the following:

i) any employee, subcontractor or subcontractor employees, who is exempted or purported to be exempt from Workers' Compensation insurance coverage; or

ii) any employee, subcontractor or subcontractor employees, who will be covered by an employee leasing arrangement.

**SPECIAL PROVISIONS AS TO WORKERS' COMPENSATION INSURANCE:
(to be confirmed on or attached to the Official Certificate of Insurance)**

- 30 Days' Notice of Cancellation or modification to City (if not available on the insurance policies, then Contractor has responsibility for notification); and
- Waiver of Subrogation in favor of the City.

8.2.3 AUTOMOBILE LIABILITY INSURANCE shall be maintained with combined single limits of no less than One Million Dollars (\$1,000,000.00) per occurrence, and no less than Two Million Dollars (\$2,000,000.00) annual aggregate, to include coverage for owned, hired, and non-owned vehicles.

**SPECIAL PROVISIONS AS TO AUTOMOBILE LIABILITY INSURANCE:
(to be confirmed on or attached to the Official Certificate of Insurance)**

- "The City of Dania Beach, Florida" is named as an Additional "Named" Insured;
- 30 Days' Notice of Cancellation or modification to City (if not available on the insurance policies, then Contractor has responsibility for notification); and
- Waiver of Subrogation in favor of City.

8.2.4 If subcontractor for any portion of any services, then such subcontractor shall provide all insurance coverages as the Contractor.

8.3 The Contractor shall hold the City, its agents and employees, harmless on account of claims for damages to persons, property or premises arising out of the operations to complete the Project. The City reserves the right to require Contractor to provide and pay for any other insurance coverage the City deems necessary, depending upon the possible exposure to liability. Current Certificates of Insurance shall be provided and on file with the City at all times.

ARTICLE 9.0
INDEPENDENT CONTRACTOR

9.1 This Agreement does not create an employee/employer relationship between the parties. Contractor agrees that it is not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act, minimum wages' laws and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the Florida Workers' Compensation Act, and the Florida unemployment insurance law. The Contractor shall retain sole and absolute discretion and exercise its judgment as to the manner and means of carrying out Contractor's activities and responsibilities toward completion of services. Administrative procedures applicable to services rendered under this Agreement shall be those of Contractor, which policies of Contractor shall not conflict with City, H.U.D., or United States policies, rules or regulations relating to the use of Contractor's funds provided for in this Agreement. The Contractor agrees that it is a separate and independent enterprise from the City, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the services. This Agreement shall not be construed as creating any joint employment relationship between the Contractor and the City and the City will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages, overtime premiums or both.

ARTICLE 10.0
BANKRUPTCY

10.1 It is agreed that if the Contractor is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective the date and at the time the bankruptcy petition is filed. Upon such filing of Bankruptcy, Contractor will automatically be in default of this Agreement and the provisions of Article 9 will be enforced at City's discretion.

ARTICLE 11.0
DEFAULT OF AGREEMENT AND REMEDIES

11.1 In case of any default by Contractor, the City shall notify the Contractor in writing of such default and direct Contractor to comply with all terms and conditions of this Agreement. If Contractor does not timely cure such default within seven (7) days after notice was sent by City, City may declare a default of this Agreement, and may notify the Contractor of such declaration of default in writing, and terminate the Agreement.

ARTICLE 12.0
DISPUTE RESOLUTION

12.1 **VENUE; FEES.** All claims, counterclaims, disputes and other matters in question between City and Contractor arising out of, relating to or pertaining to this Agreement, or the breach of it, or the services of it, or the standard of performance required in it, shall be addressed by resort to non-binding mediation as authorized under the laws and rules of Florida; provided, however, that in the event of any dispute between the parties, the parties agree to first

negotiate with each other for a resolution of the matter or matters in dispute and, upon failure of such negotiations to resolve the dispute, the parties shall resort to mediation.

If mediation is unsuccessful, any such matter may be determined by litigation in a court of competent jurisdiction in Broward County, Florida, or the Federal District Court of the Southern District of Florida and appropriate appellate courts for such venue and jurisdiction. In any litigation, the parties agree to each waive any trial by jury of any and all issues. In the event of any litigation which arises out of, pertains to, or relates to this Agreement, or the breach of it, or the standard of performance required in it, the prevailing party shall be entitled to recover reasonable attorneys' fees from the non-prevailing party.

12.2 Operations During Dispute.

In the event that a dispute, if any, arises between the City and the Contractor relating to this Agreement, or its performance or compensation, the Contractor agrees to continue to render service in full compliance with all terms and conditions of this Agreement as required by the City.

ARTICLE 13.0 **MISCELLANEOUS**

13.1 Legal Representation. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement. Further, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply to this Agreement due to the joint contributions to it of both parties.

13.2 Signature of this Contract by the Contractor shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the Contractor's most favored customer for the same or substantially similar service. The rates and costs shall be adjusted to exclude any significant sums should the City determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate presentation of fees paid to outside contractors. The City shall exercise its rights under this clause within three (3) years following final payment.

ARTICLE 14.0 **ASSIGNMENTS AND AMENDMENTS.**

14.1 This Agreement, and any interests in it, shall not in whole or in part be assigned, subcontracted, transferred in any way or otherwise encumbered, under any circumstances, by Contractor without the prior written consent of City. For purposes of this Agreement, any change of ownership of or controlling interest in Contractor shall constitute an assignment which requires City approval. Violation of the terms of this paragraph shall constitute a breach of this Agreement by Contractor and City may, in its discretion, cancel this Agreement and all rights of Contractor under this Agreement will terminate.

14.2 It is further agreed that no modification, amendment or alteration of the terms or conditions contained in this Agreement shall be effective unless contained in a written document executed by the authorized agents of the parties.

ARTICLE 15.0
NO CONTINGENT FEES.

15.1 Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or Contractor, other than a bona fide employee working solely for Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the City shall have the right to terminate the Agreement without liability and, in its discretion, to deduct from the Agreement price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 16.0
NOTICES

16.1 Whenever any party desires to give notice to the other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended. The places for giving of notice shall remain as set forth below until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the Contractor and the City designate the following as the respective persons and places for giving of notice:

City: Robert Baldwin, City Manager
City of Dania Beach, Florida
100 West Dania Beach Boulevard
Dania Beach, Florida 33004

Copies to: Thomas J. Ansbrosio, City Attorney
City of Dania Beach, Florida
100 West Dania Beach Blvd.
Dania Beach, FL 33004

Contractor: Asphalt Paving Systems, Inc,
500 N. Egg Harbor Road
Hammononton, New Jersey 08037
and
Asphalt Paving Systems, Inc.
Attn: Mr. Robert Capoferri
Post Office Box 530
Hammononton, New Jersey 08037

ARTICLE 17.0
PUBLIC RECORDS

17.1 The successful Firm acknowledges that the public shall have access, at all reasonable times, to certain documents and information pertaining to City contracts, pursuant to the provisions of Chapter 119, Florida Statutes.

17.1.1 The successful Firm agrees to maintain public records in successful Firm's possession or control in connection with its performance under the Agreement, and to provide the public with access to public records in accordance with the record maintenance, production and cost requirements set forth in Chapter 119, Florida Statutes, or as otherwise required by law. Firm shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.

17.1.2 Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with the Agreement are and shall remain the property of City. In the event of termination of the Agreement by either party, any reports, photographs, surveys, other data, documents and public records prepared by, or in the possession or control of, the successful Firm, whether finished or unfinished, shall become the property of City and shall be delivered by successful Firm to the City Manager, at no cost to the City, within seven (7) days of termination of the Agreement. All such records stored electronically by Firm shall be delivered to the City in a format that is compatible with the City's information technology systems. Upon termination of the Agreement, Firm shall destroy any duplicate public records that are confidential and are exempt from public records disclosure. Any compensation due to the successful Firm shall be withheld until all documents are received as provided to the City. The successful Firm's failure or refusal to comply with the provisions of this Article shall result in the immediate termination of the Agreement by the City.

ARTICLE 18.0
BINDING AUTHORITY

18.1 Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and is authorized to bind and obligate such party with respect to all provisions contained in this Agreement.

ARTICLE 19.0
HEADINGS

19.1 Headings in this Agreement are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

ARTICLE 20.0
SEVERABILITY

20.1 If any provision of this Agreement or application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, and shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

ARTICLE 21.0
ALL PRIOR AGREEMENTS SUPERSEDED

21.1 This Agreement incorporates and includes all prior negotiations, correspondence, conversations and understandings applicable to the matters contained in this Agreement, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written.

21.2 The Contractor understands and agrees that the City, during any fiscal year, is not authorized to expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year and that any contract, verbal or written, made in violation of this subsection is null and void and that consequently, no money may be paid on such contract beyond such limits. Nothing contained in this Agreement shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executed only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Contractor shall not proceed with services under this Agreement without City's written verification that the funds necessary for Contractor compensation and other necessary expenditures are budgeted as available within the appropriate fiscal year budget.

ARTICLE 22.0
EXTENT OF AGREEMENT

22.1 This Agreement represents the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral.

ARTICLE 23.0
WAIVER

23.1 Failure of the City to insist upon strict performance of any provision or condition of this Agreement, or to enforce any right contained in it, shall not be construed as a waiver or relinquishment for the future of any such provision, condition or right, but the same shall remain in full force and effect.

ARTICLE 24.0
GOVERNING LAW; CONSENT TO JURISDICTION

24.1 The law of the State of Florida shall govern the agreement. The agreement is not subject to arbitration. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating to the agreement. Venue of any action to enforce the agreement shall be in Broward County, Florida. The parties expressly waive all rights to trial by jury for any disputes arising from or in any way connected with the agreement. The parties understand and agree that this waiver will be a material term of the agreement.

24.2 All claims, counterclaims, disputes and other matters in question between City and Firm arising out of, relating to or pertaining to the Agreement, the breach of it, the services of it, or the standard of performance required in it, shall be addressed by resort to non-binding mediation as authorized under the laws and rules of Florida; provided, however, that in the event of any dispute between the parties, the parties agree to first negotiate with each other for a resolution of the matter or matters in dispute and, upon failure of such negotiations to resolve the dispute, the parties shall resort to mediation. If mediation is unsuccessful, any such matter may be determined by litigation in a court of competent jurisdiction in Broward County, Florida, or the Federal District Court of the Southern District of Florida and appropriate appellate courts for such venue and jurisdiction. In any litigation, the parties agree to each waive any trial by jury of any and all issues. The parties understand and agree that this waiver is a material Agreement term.

ARTICLE 25.0
INTEREST

25.1 Payments due and unpaid under the Contract Documents shall bear an interest charge equal to eighteen percent (18%) per annum from the date payment is due and are not subject to prejudgment interest, if any matter related to payment becomes an issue litigated between the parties.

ARTICLE 26.0
CONFLICT

26.1 In the event there is a conflict between any of the terms in any of the documents contained in any Exhibit to this Agreement and any terms of this Agreement, the terms of this Agreement shall prevail.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY:

CITY OF DANIA BEACH, FLORIDA,
a Florida municipal corporation

ATTEST:

LOUISE STILSON, CMC
CITY CLERK

MARCO A. SALVINO, SR.
MAYOR

APPROVED FOR FORM AND
CORRECTNESS:

ROBERT BALDWIN
CITY MANAGER

THOMAS J. ANSBRO
CITY ATTORNEY

CONTRACTOR:

ASPHALT PAVING SYSTEMS, INC.
a Foreign Corporation Authorized to
Conduct Business in Florida

Signature

PRINT Name

Signature

PRINT Name

Signature

PRINT Name

TITLE

STATE OF FLORIDA
COUNTY OF _____

BEFORE me on _____, 2015, personally appeared _____, as _____ of ASPHALT PAVING SYSTEMS, INC, a Foreign corporation authorized to conduct business in Florida, on behalf of the corporation, who acknowledged execution of the foregoing Agreement for the use and purposes mentioned in it, and that the instrument is the act and deed of the Contractor. Such person is personally known to me or produced _____ as identification.

NOTARY PUBLIC
State of Florida

My Commission Expires:

EXHIBIT "A"

Scope of Services - Street Micosurfacing

ITEM	STREET NAME	FROM	TO	LENGTH	WIDTH	TOTAL UNITS
1	NE 2nd Place	NE 3rd Ave	NE 2nd Ave	601	20.0	1,335.56
2	NE 3rd Ave	NE 2nd PL	NE 2nd St	519	20.0	1,153.33
3	NE 2nd St	Fronton Blvd	Gulfstream Rd	2,280	20.0	5,066.67
4	NE 2nd Ave	NE 1st St	E Dania Beach Blvd	580	20.0	1,288.89
5	SW 7th Ave	SW 1st St	NW 1st St	1,336	20.0	2,968.89
6	SW 1st St	SW 7th Ave	SW 5th Ave	570	24.0	1,520.00
7	SW 1st St	SW 3rd Ave	SW 1st Ave	596	20.0	1,324.44
8	SE 6th Ave	SE 2nd Ave	Federal Highway	638	20.0	1,417.78
9	SE 7th St	SE 2nd Ave	Federal Highway	135	30.0	450.00
				506	20.0	1,124.44
10	SE 14th St	SE 2nd Ave	Federal Highway	686	20.0	1,524.44
11	SE 15th St	SE 2nd Ave NE 2nd St	Federal Highway	678	20.0	1,506.67
12	SW 3rd St	SW 2nd Ave	Federal Highway	475	25.0	1,319.44
				185	20.0	411.11
13	SW 4th St	SW 2nd Ave	Federal Highway	696	20.0	1,546.67
14	SW 5th St	SW 2nd Ave	Federal Highway	724	20.0	1,608.89
15	SW 2nd Ave	Stirling	Dixie Highway	3,300	20.0	7,333.33
16	SW 6th St	SW 2nd Ave	Federal Highway	655	20.0	1,455.56
17	SW 7th St	SW 2nd Ave	Federal Highway	685	20.0	1,522.22
18	SW 11th St	SW 2nd Ave	Federal Highway	654	20.0	1,453.33
19	SW 13th St	SW 2nd Ave	Federal Highway	630	20.0	1,400.00
20	SW 2nd Ave	Sheridan St	Dixie Highway	2,100	20.0	4,666.67
21	SW 14th St	SW 2nd Ave	Federal Highway	686	20.0	1,524.44
				19,915.00		44,923