



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F10

9/17/2019

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### Subject:

Approval Re: Interlocal Agreement with City of Melbourne for Stewart Road Reconstruction and Rehabilitation and Piggyback Contract with Asphalt Paving Systems, Inc.

### Fiscal Impact:

The County and City of Melbourne will cost share (50/50 percent) the project costs estimated at \$410,317.66. The County's portion of \$205,158.83 will be funded from Road and Bridge Countywide Reconstruction/Resurfacing Fund 1180/262040.

### Dept/Office:

Public Works

### Requested Action:

It is requested the Board of County Commissioners approve and authorize the Chair to execute the Interlocal Agreement with the City of Melbourne for Stewart Road Reconstruction and Rehabilitation and the Piggyback Contract with Asphalt Paving Systems contingent upon review by the County Attorney and Risk Management. It is further requested the Board approve any necessary Budget Change Requests associated with this action.

### Summary Explanation and Background:

The City of Melbourne and the County desire to improve Stewart Road from Aurora Road to Lake Washington Road to address the condition of the pavement which has deteriorated beyond its useful service life. These improvements include the reconstruction and rehabilitation of Stewart Road. Specifically, the project consists of full depth reclamation to produce a stabilized base course and new asphalt on Stewart Road from Aurora Road north to Stewart Lane. The project also consists of milling and resurfacing the remaining portion of Stewart Road from Stewart Lane to Lake Washington Road. The County and City agree that one year after completion of the project, the City will accept ownership and maintenance responsibilities of Stewart Road along with the associated drainage.

The City of Melbourne has agreed to costshare with the County on this project. The City and County will each provide fifty percent of the construction costs, estimated at \$410,317.66 with each entity being responsible for \$205,158.83.

The County will serve as the lead agency to perform all work, including the authority to enter into appropriate contracts. As such, it is requested the Board approve and authorize the Chair to execute the Piggyback Contract with Asphalt Paving Systems, Inc. to perform full depth reclamation paving services on the project. The Piggyback Contract further amends and modifies the existing Lee County Contract with Asphalt Paving Systems, Inc. to meet County and City needs at the same pricing.

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The terms and conditions of this partnership are established in the attached Interlocal Agreement. The City approved the Interlocal Agreement substantially in form at their September 11, 2019 Council meeting. Contingent upon review by the County Attorney and Risk Management, the Chair will execute the Interlocal Agreement for Stewart Road and the Piggyback Contract.

**Clerk to the Board Instructions:**

Original documents will be provided to the Clerk to the Board by the Public Works Department. Please return fully executed Interlocal Agreement to the Public Works Department for further recordation with the Clerk of Courts. Please return fully executed Piggyback Contract to the Public Works Department. Original documents will be provided to the Clerk to the Board.



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

September 18, 2019

MEMORANDUM

TO: Corrina Gumm, Interim Public Works Director

RE: Item F.10., Approval of Interlocal Agreement with the City of Melbourne for Stewart Road Reconstruction and Rehabilitation and Piggyback Contract

The Board of County Commissioners, in regular session on September 17, 2019, approved and authorized the Chair to execute the Interlocal Agreement with the City of Melbourne for Stewart Road Reconstruction and Rehabilitation and the Piggyback Contract with Asphalt Paving Systems contingent upon review by the County Attorney and Risk Management; and approved any necessary Budget Change Requests associated with this action. Enclosed is one executed Agreement and one executed Contract.

**Upon execution by all parties, please return a fully-executed Agreement and a fully-executed Contract to this office for inclusion in the official minutes.**

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

/kp

Encls. (2)

cc: Finance  
Budget

**INTERLOCAL AGREEMENT**  
(Stewart Road Reconstruction and Rehabilitation)

This Interlocal Agreement (the "Agreement"), is made by and between Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "County" and the City of Melbourne, a Florida municipal corporation, hereinafter referred to as "City".

**Whereas**, between Aurora Road and Lake Washington Road, the County has jurisdiction and functional authority over a portion of Stewart Road and the City has jurisdiction and functional authority over the other portion of Stewart Road; and

**Whereas**, the County and the City wish to engage in the reconstruction and rehabilitation of Stewart Road between Aurora Road and Lake Washington Road; and

**Whereas**, the County and City maintain the drainage system adjacent to Stewart Road between Aurora Road and Lake Washington Road; and

**Whereas**, the County and the City agree that the County will provide all services needed to complete the reconstruction and rehabilitation on Stewart Road between Aurora Road and Lake Washington Road.

**Now Therefore**, the County and City covenant and agree that they have full power and authority to enter into this Agreement and bind their respective governmental entities as follows:

**Section 1- Recitals**

The above recitals are true and correct and by this reference are hereby incorporated into and made an integral part of this Agreement.

**Section 2 - Statutory Authority**

This Agreement shall be considered an Interlocal Agreement pursuant to authority Chapter 163, Florida Statutes.

**Section 3 - Project**

The County agrees to complete the reconstruction and rehabilitation of Stewart Road between Aurora Road and Lake Washington Road as described in the attached Exhibit "A," incorporated herein by reference (hereinafter the "Project") and the City shall contribute toward completion of the Project as set forth in Section 4 below.

This agreement shall function to provide County authorization to contract or issue work orders for performance of all activities related to this Agreement on City owned and maintained portions of the Project.

Prior to the commencement of the Project, the County completed a drainage pipe condition assessment and restored the grass shoulder on the County-maintained portion of Stewart

Road. The County will provide the City with a statement from the County's Public Works Director, or designee, affirming that the current drainage system (located adjacent to the west roadbed but within the Stewart Road right of way between Aurora Road and Stewart Lane) is in good and operational condition at the time of conveyance.

#### **Section 4 - Financial Contribution of the Project**

The County and City shall cost share (50 percent/50 percent) of the costs associated with the Project, subject to the requirements and conditions set forth herein. The estimated total Project cost, including the reconstruction estimated at \$318,572.71 and resurfacing estimated at \$91,744.95, totals \$410,317.66 (the "Project Cost Estimate"). Notwithstanding anything in this Agreement, any costs associated with or arising from the drainage system are not included in the Project Costs and it is neither anticipated nor intended for the City to contribute toward costs associated with the drainage system.

If construction change orders become necessary, the County will advise the City immediately and in writing. Any proposed change orders for the Project must be promptly reviewed and approved by the County and City in writing prior to acceptance. If the City does not provide review comments within 48 hours to the County, the County may proceed in the best interest of the Project and approve the change order which will be split evenly between the County and City. If a change order approved by the County and City results in cost overruns beyond the Project Costs, the parties agree to split the additional costs evenly between the County and the City, provided those overruns do not exceed \$50,000.00 (shared equally) beyond the Project Costs. If construction change orders exceed the \$50,000 cumulative amount, City approval shall be required for any additional funding contribution by the City.

Change orders that expand the scope of the Project as defined in Section 3 of this Agreement shall be paid for solely by the party requesting the change order.

The City shall deposit with the County the amount of \$205,158.83, which is fifty percent of the Project Cost Estimate of \$410,317.66 within fifteen business days of the recordation of this Interlocal Agreement. The County will retain City's payment in a reimbursement fund with a separate cost center established for the Project and will only use that payment to pay City's portion of the Project Costs.

Any City contributed funds not expended by the County as part of the Project shall be reimbursed without interest to the City within forty-five days of Project completion, but in no event later than August 1, 2020. The County shall be responsible for paying all contractors in full. The County will likewise pay its share of the Project Costs.

#### **Section 5 - Lead Agency**

The County agrees to construct the Project, and the City agrees that the County shall be the lead agency to perform all work on the Project. It is anticipated the County will engage a contractor to complete the Project and the County shall have the authority to enter into appropriate contracts to perform work on the Project. All contracts must be in compliance with Florida Statutes. County shall be responsible for obtaining all required federal, state and local

permits, as applicable, prior to commencement of construction on the Project. The County agrees to cooperate with the City in enforcing the construction contracts, including but not limited to assignment of County contract rights to enforce surety bonds, performance and payment bonds, insurance claims, warranties and guarantees to the extent requested by the City. Upon request, the County shall assign any claim arising under the contracts related to the Project to the City.

### **Section 6 - Construction Review Meetings**

The City shall have the right to have a representative present at any construction-related meetings, such as preconstruction conference, site meetings, and progress meetings which shall be set at such time and place as the County deems appropriate. The County shall promptly provide advance notice of date, time and location of any construction-related meeting, unless an emergency meeting is required, in which case all best efforts shall be made to contact the City's designated Project representative.

The City shall have the opportunity to conduct inspections during the Project and report any findings to the County. If at any time, any defects shall be found prior to final completion of the Project, the City shall provide written notice to the County giving the County a cure period to correct such defects. Prior to the release of any performance bonds, the City and County shall conduct a final inspection.

### **Section 7 – Ownership and Maintenance**

The County and the City agree that one year after completion of the Project, the City will accept ownership and maintenance responsibilities of Stewart Road from Aurora Road to Lake Washington Road, along with associated drainage system. The delay in transferring responsibilities is intended to reflect the release of the one-year performance bond of the contractor (s) on the Project.

The County shall prepare a county deed and resolution and any other documents necessary to effectuate the conveyance and transfer of the portion of Stewart Road between Aurora Road and Lake Washington Road to the City. Conveyance of such interests will be completed at the closing as described in Section 8 below.

### **Section 8 – Closing**

One year after acceptance of the Project, the City and the County shall schedule a closing to take place within thirty days, unless otherwise extended by the mutual consent of the City Manager and the County Manager. At closing, the County shall deliver to the City all of the following:

- (i) County Deed. An instrument of conveyance of Stewart Road adequate to convey appropriate ownership interest, jurisdiction and maintenance responsibilities for Stewart Road between Aurora Road and Lake Washington Road to the City.
- (ii) Construction plans. Any construction plans in the County's possession for Stewart Road between Aurora Road and Lake Washington Road.

- (iii) Drainage. A statement from the County Public Works Director, or designee, affirming that the drainage system (located adjacent to the roadbed but within the Stewart Road right of way) is in good and operational condition.
- (iv) Public right of way. County will assign City any interests acquired in Stewart Road pursuant to Section 95.361, Florida Statutes.
- (v) Permits. Assignment of and copies of authorizations and permits issued by the County on record allowing for each culverts and crossings over the drainage system appurtenant to Stewart Road between Aurora Road and Lake Washington Road. Assignment and copies of authorizations and permits for all utilities located within the right of way.

### **Section 9 - Notices**

All notices required under this Agreement shall be in writing and delivered to the parties by mail or electronic delivery, as follows:

- City Representative  
Shannon Lewis  
City Manager  
900 E. Strawbridge Avenue  
Melbourne, FL 32901  
Shannon.Lewis@mlbfl.org

With a copy to:  
Vincent Peluso  
City Engineer  
900 E. Strawbridge Avenue  
Melbourne, FL 32901  
vincent.peluso@mlbfl.org

- County Representative  
John Denninghoff  
Assistant County Manager  
2725 Judge Fran Jamieson Way, Suite C-301  
Viera, FL 32940  
John.Denninghoff@brevardfl.gov

With a copy to:  
Tammy Thomas-Wood  
Support Services Manager  
2725 Judge Fran Jamieson Way, Suite A-201  
Viera, Florida 32940  
Tammy.Thomas-Wood@brevardfl.gov

### **Section 10 - Indemnification**

To the extent allowed by law and subject to the provisions set forth in Sec. 768.28, Florida Statutes, each party is responsible for the negligent or wrongful acts or omissions of its own employees, agents or other representatives while acting within the scope of their employment or otherwise within their authorized capacity, arising from the activities encompassed by this Agreement. Nothing contained within this Agreement requires either party to indemnify the other party for any losses, damages or injuries caused by or otherwise arising from the negligent or wrongful act or omission of its employees, agents or representatives. Neither party, by execution of this Agreement, will be deemed to have waived its statutory right/defense of sovereign immunity, or to have increased its limits of liability under Sec. 768.28, Florida Statutes, as may be amended from time to time. Each party shall retain all rights, defenses, and remedies under Florida law in the event of any claims, suits or other disputes arising from its performance of the obligations under this Agreement. Nothing in this Agreement shall be interpreted to create any causes of action for any third parties not a party to this Agreement.

### **Section 11 – Right to Audit Records**

In performance of this Agreement, the County shall keep books, records, and accounts of all activities related to this Agreement in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the County in conjunction with this Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the City. The County shall retain all documents, books and records for a period of five years after termination of this Agreement, unless such records are exempt from section 24(a) of Article I of the State Constitution and Chapter 119, Florida Statutes. All records or documents created by or provided to the City by the County in connection with this Agreement are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to the City in a format compatible with the information technology systems of the City.

### **Section 12 - Attorney's Fees**

In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs.

### **Section 13 - Venue and Non-Jury Trial**

Venue for any action brought by any party to this agreement to interpret, construe or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be non-jury.

### **Section 14 – Default**

Either party to this Agreement, in the event of any act of default by the other, shall have all remedies available to it under the laws of the State of Florida

**Section 15 - Severability**

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can still be accomplished.

**Section 16 - Entirety**

This Agreement represents the understanding and agreement of the parties in its entirety. There shall be no amendments to the Agreement unless such amendments are in writing and signed by both parties.

**Section 17 - Applicable Law**

This Agreement and the provisions herein shall be construed, controlled and interpreted according to the laws of Florida.

**Section 18 - Binding Effect**

Each party represents to the other it has undertaken all necessary actions to execute this Agreement and has the legal authority to enter this Agreement and to undertake all obligations imposed on it.

**Section 19 - Breach**

In the event the City determines that the County has breached any term or provision of this Agreement, the City shall provide written notice of such breach to the County. The County shall have forty-five days after receipt of such notice to cure such breach. The City may extend the time to cure any breach beyond forty-five days provided the County commences reasonable action to cure within the forty five-day cure period and continuously pursues the cure to completion.

**Section 20 - Effective Date and Recording**

Pursuant to Chapter 163, Florida Statutes, it will be a condition precedent to effectiveness of this Interlocal Agreement that the Agreement is recorded with the Clerk of the Circuit Court in and for Brevard County, Florida. As such, upon full execution of the Agreement, the County shall record a fully executed original of this Agreement in the Public Records of Brevard County, Florida, and shall return a recorded Agreement to the City Representative listed in Section 8.

In witness whereof, the parties have hereunto set their hands and seals on the day and year written below.

ATTEST:



Cathleen A. Wysor, City Clerk

City of Melbourne:

By:   
Shannon Lewis, City Manager

As approved by the Council on: **SEP 11 2019**

ATTEST:



Scott Ellis, Clerk

Board of County Commissioners  
of Brevard County, Florida

By:   
Kristine Isnardi, Chair

As approved by the Board on: 9/17/19

Reviewed for Legal Form and Content



Assistant County Attorney

## Exhibit "A"

### Scope of Project

The project consists of Full Depth Reclamation to produce a stabilized base course, testing, new asphalt, temporary painted pavement markings, thermoplastic pavement markings, installation of signal loop assemblies, mobilization and maintenance of traffic on Stewart Road from Aurora Road north to Stewart Lane.

The full depth reclamation will consist of a 12-inch mix including full depth reclamation, asphalt emulsion, cement, milling of 3 1/2 inches. The September 19, 2019 estimate from Asphalt Paving Systems reflects 6,667 square yards. The asphalt to be installed after full depth reclamation will be 3.5 inches thick. The estimated quantities are 734 Tons of SP 12.5, 2 inches thick and 550 Tons of FC 12.5, 1 1/2 inches thick.

The project also consists of Milling and Paving of Stewart Road from Stewart Lane to Lake Washington Road. The depth of the milling consists of 1 1/2 inches, and the asphalt to be installed after milling will be 600 Tons of FC 12.5, 1 1/2 inches thick.

Pavement markings paint and thermoplastic, traffic loop assemblies, and testing are lump sum items.

## **Piggyback Contract for Alternate Paving Methods**

**This Contract**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "County", and Asphalt Paving Systems, Inc., a New Jersey for profit corporation registered to do business in the State of Florida, located at 9021 Wire Road, Zephyrhills, FL 33540, hereinafter referred to as "Contractor".

### **Witnesseth:**

**Whereas**, the County requires alternate paving services; and

**Whereas**, Contractor has previously entered into a competitively bid Contract with Lee County, Florida for the same services (hereinafter "Lee County Contract"), which is attached hereto and incorporated herein as "Attachment A"; and

**Whereas**, the County granted permission to piggyback the Lee County Contract during regular session on April 23, 2019; and

**Whereas**, the County desires to utilize the Lee County Contract with Contractor for the performance of such services in accordance with the terms of the "Attachment A".

**Now, therefore**, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

The Lee County Contract entered into on September 5, 2017 including any attachments, exhibits, amendments or renewals to the same is attached hereto and incorporated by referenced as "Attachment A." All of the terms and conditions set out in the Lee County Contract are fully binding on the parties and said terms and conditions are incorporated herein. Notwithstanding the requirement that the Lee County Contract is fully binding on the parties, the County and Contractor have agreed to further amend and modify "Attachment A" as follows:

### Terms and References

- A. All references to the "Lee County" or "County" found within "Attachment A" or referenced within "Attachment A" shall for the purposes of this Contract reference Brevard County and be replaced with the words "Brevard County."
- B. Contract to run concurrent with Lee County Contract and any extension to Lee County Contract shall apply to this Contract, unless terminated beforehand as provided for in this Contract.

- C. This Contract shall be interpreted and construed in accordance with the laws of the State of Florida with Venue for any action brought shall be in the Courts of the 18<sup>th</sup> Judicial Circuit of the State of Florida, in Brevard County. Any trial to enforce this contract shall be a non-jury trial. Each party shall bear its own attorney's fees.

Employment Eligibility Verification (E-Verify)

A. The Contractor:

(1) shall utilize the United States Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract; and

(2) shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the United States Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Contract; and

(3) agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the County consistent with the terms of the Contractor's enrollment in the program. This includes maintaining a copy of proof of the Contractor's and subcontractors' enrollment in the E-Verify Program.

B. Compliance with the terms of this section is made an express condition of this Contract and the County may treat a failure to comply as a material breach of this Contract.

C. A contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E-verify program, the contractor hires or employs a person who is not eligible for employment.

D. Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

Insurance and Public Construction Performance and Payment Bond

A. Contractor shall provide a Certificate of Insurance naming Brevard County, Florida as an "additional insured".

B. From time to time the County may engage in joint paving projects with other municipalities in Brevard County, Florida on transportation facilities owned by

County and local municipality. Upon request and issuance of a work order to Contractor for a joint paving project:

- a. Contractor shall provide a Certificate of Insurance naming local municipality as an additional insured.
- b. Contractor shall provide a payment and performance bond, as applicable in accordance with the Lee County Contract, that lists both the County and local municipality as owner.

#### Notices

- A. Contractor agrees that all notices required or permitted under this Contract shall addressed to the County as follows:

Tammy Thomas-Wood, Support Services Manager  
Brevard County Public Works Department  
2725 Judge Fran Jamieson Way  
Building A, Suite 201  
Viera, Florida 32940

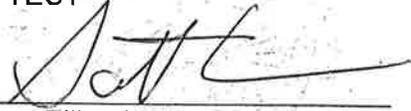
- B. Either party may at any time designate a different address by giving written notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

#### Severability

If any of the provisions contained in this Contract or Lee County Contract are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

In Witness Whereof, the parties have hereunto set their hands and seals on the day and year first above written.

ATTEST

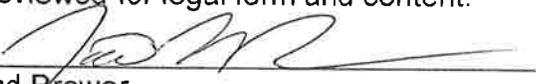
  
\_\_\_\_\_  
Scott Ellis, Clerk

Brevard County Florida Board Of County Commissioners

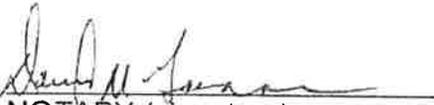
By:   
\_\_\_\_\_  
Kristine Isnardi, Chair

As Approved by the Board on 9/17/19

Reviewed for legal form and content:

  
\_\_\_\_\_  
Jad Brewer  
Assistant County Attorney

ATTEST

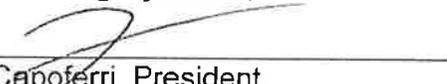
  
\_\_\_\_\_  
NOTARY (signature)

Date: September 13, 2019

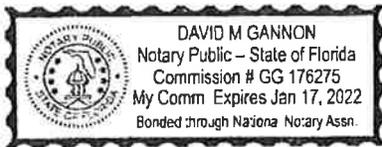
David Gannon  
Name (Typed or Printed)

(SEAL)

**Asphalt Paving Systems, Inc.**

By:   
\_\_\_\_\_  
Robert Capoferri, President

Date: September 13, 2019



**AGREEMENT FOR  
ALTERNATIVE PAVING METHODS**

**THIS AGREEMENT FOR ONGOING ALTERNATIVE PAVING PROJECTS** ("Agreement") is made and entered into as of the date of execution by both parties, by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Asphalt Paving Systems, Inc., a New Jersey corporation authorized to do business in the State of Florida, whose address is 9021 Wire Road, Zephyrhills, FL 33540, and whose Federal tax identification number is 22-3787755, hereinafter referred to as "Contractor".

**WITNESSETH**

**WHEREAS**, the County intends to purchase construction services related to Alternative Paving Methods from the Contractor for specific projects as determined by the County (the "Purchase"); and,

**WHEREAS**, the County issued a solicitation, B170265/ANB on April 7, 2017; and,

**WHEREAS**, the County evaluated the responses received and found the Contractor qualified to provide the necessary products and services; and,

**WHEREAS**, the County posted a Notice of Intended Decision Bid Action on June 6, 2017; and,

**WHEREAS**, the Contractor is one of a pool of firms approved to provide products and services for the Purchase, the County shall award projects as needed, and the Contractor understands and agrees that no work is guaranteed under this Agreement; and,

**WHEREAS**, the Contractor has reviewed the products and services to be supplied pursuant to this Agreement and is qualified, willing and able to provide all such products and services in accordance with its terms.

**NOW, THEREFORE**, the County and the Contractor, in consideration of the mutual covenants contained herein, do agree as follows:

**I. PRODUCTS AND SERVICES**

- A. The Contractor agrees to diligently provide all products and services for the Purchase in accordance with the Scope of Services made part of this Agreement as Exhibit A, attached hereto and incorporated herein. Contractor shall comply strictly with all of the terms and conditions of B170265/ANB, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.

## **II. TERM AND DELIVERY**

- A. This Agreement shall commence immediately upon execution by both the County and the Contractor, and shall continue for a period of one (1) year on an "as needed" basis. The Agreement may be renewed for up to three (3) additional one (1) year periods upon mutual written agreement of the County and the Contractor.
- B. A Purchase Order must be issued by the County before commencement of any work or purchase of any goods related to this Agreement.
- C. Products and services must be delivered in accordance with Supplemental Task Authorizations and Change Orders. The schedule must commence on the date of the purchase order.

## **III. COMPENSATION AND PAYMENT**

- A. The County must pay the Contractor in accordance with the terms and conditions of this Agreement for providing all products and services as set forth in Exhibit A, and further described in Exhibit B, Fee Schedule, attached hereto and incorporated herein. Said total amount to be all inclusive of costs necessary to provide all products and services as outlined in this Agreement, and as supported by the Contractor's submittal in response to B170265/ANB, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.
- B. Notwithstanding the preceding, Contractor must not make any deliveries or perform any work under this Agreement until receipt of a purchase order from the County. Contractor acknowledges and agrees that no minimum order or amount of product or work is guaranteed under this Agreement and County may elect to issue no purchase orders. If a purchase order is issued, the County reserves the right to amend, reduce, or cancel the purchase order in its sole discretion.
- C. All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of nonappropriation of funds by the County for the services provided under this Agreement, the County will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Contractor on fifteen (15) days' prior written notice, but failure to give such notice will be of no effect and the County will not be obligated under this Agreement beyond the date of termination.

#### **IV. METHOD OF PAYMENT**

- A. The County must pay the Contractor in accordance with the Local Government Prompt Payment Act, §218.70, et seq. F.S., as amended from time to time, upon receipt of the Contractor's invoice and written approval of same by the County indicating that the products and services have been provided in conformity with this Agreement.
- B. The Contractor must submit an invoice for payment to the address indicated on the purchase order on a monthly basis for those specific products and services as described in Exhibit A (and the corresponding fees as described in Exhibit B) that were provided during that invoicing period.
- C. For partial shipments or deliveries, progress payments must be paid monthly in proportion to the percentage of products and services delivered on those specific line items as approved in writing by the County.

#### **V. ADDITIONAL PURCHASES**

- A. No changes to this Agreement or the performance contemplated hereunder will be made unless the same are in writing and signed by both the Contractor and the County.
- B. If the County requires the Contractor to perform additional services or provide additional product(s) related to this Agreement, then the Contractor shall be entitled to additional compensation based on the Fee Schedule as amended to the extent necessary to accommodate such additional work or product(s). The additional compensation must be agreed upon before commencement of any additional services or provision of additional product(s) and must be incorporated into this Agreement by written amendment. The County will not pay for any additional service, work performed or product provided before a written amendment to this Agreement.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Contractor, the Contractor will not be entitled to additional compensation.

#### **VI. LIABILITY OF CONTRACTOR**

- A. The Contractor will indemnify and hold harmless Lee County Government from liabilities, damages, losses, and costs, including but not limited to attorney's reasonable fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Agreement.

B. This section shall survive the termination or expiration of this Agreement.

**VII. CONTRACTOR'S INSURANCE**

- A. Contractor must procure and maintain insurance as specified in Exhibit C, Insurance Requirements, attached hereto and made a part of this Agreement.
- B. Contractor must, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Agreement, insurance coverage (including endorsements) and limits as described in Exhibit C. These requirements, as well as the County's review or acceptance of insurance maintained by Contractor, are not intended to and must not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Agreement. Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of B+ Class VII or better. No changes are to be made to these specifications without prior written specific approval by County Risk Management.

**VIII. PERFORMANCE AND PAYMENT BOND(S)**

The Contractor must procure performance and payment bond(s) in accordance with Exhibit D.

**IX. RESPONSIBILITIES OF THE CONTRACTOR**

- A. The Contractor must be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Contractor under this Agreement. The Contractor must, without additional compensation, correct any errors or deficiencies in its products, or if directed by County, supply a comparable replacement product or service.
- B. The 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 firm other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- C. The Contractor must comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and must not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

D. Contractor specifically acknowledges its obligations to comply with §119.0701, F.S., as amended from time to time, with regard to public records, and must:

- 1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
- 2) upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 Florida Statutes or as otherwise provided by law;
- 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901; [publicrecords@leegov.com](mailto:publicrecords@leegov.com); <http://www.leegov.com/publicrecords>.**

E. The Contractor is, and will be, in the performance of all work, services and activities under this Agreement, an independent contractor. Contractor is not an employee, agent or servant of the County and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement will be at all times, and in all places, subject to the Contractor's sole direction, supervision and control. The Contractor must exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County will be that of an independent contractor and not as employees of the County. The

Contractor will be solely responsible for providing benefits and insurance to its employees.

**X. OWNERSHIP OF PRODUCTS**

It is understood and agreed that all products provided under this Agreement will become the property of the County upon acceptance by the County.

**XI. TIMELY DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES**

- A. The Contractor must ensure that all of its staff, contractors and suppliers involved in the production or delivery of the products are fully qualified and capable to perform their assigned tasks.
- B. The personnel assigned by the Contractor to perform the services pursuant to this Agreement must comply with the terms set forth in this Agreement.
- C. The Contractor specifically agrees that all products must be delivered within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" is deemed to be any unforeseeable and unavoidable cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the control of the parties.

**XII. COMPLIANCE WITH APPLICABLE LAW**

This Agreement will be governed by the laws of the State of Florida. Contractor must promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations, and rules relating to the services to be performed hereunder and in effect at the time of performance. Contractor must conduct no activity or provide any service that is unlawful or offensive.

**XIII. TERMINATION**

- A. The County shall have the right at any time upon fifteen (15) days' written notice to the Contractor to terminate this Agreement in whole or in part for any reason whatsoever. In the event of such termination, the County will be responsible to Contractor only for fees and compensation earned by the Contractor, in accordance with Section III, prior to the effective date of said termination. In no event shall the County be responsible for lost profits of Contractor or any other elements of breach of contract.
- B. After receipt of a notice of termination, except as otherwise directed, the Contractor must stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or sub-contracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all

Contractors and subcontracts; and settle all outstanding liabilities and claims.

- C. The County's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or acceptance and are in addition to the Contractor's obligations under this Agreement.

#### **XIV. DISPUTE RESOLUTION**

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.
- B. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- D. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- E. Unless otherwise agreed in writing, the Contractor will be required to continue all obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.

#### **XV. STOP WORK ORDER**

The County may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Agreement. Any order must be identified specifically as a stop work order issued pursuant to this clause. This order shall be effective as of the date the order is delivered to the Contractor. Upon receipt of such an order, the Contractor must immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. The Contractor must not resume work unless specifically so directed in writing by the County. The County may take one of the following actions:

1. Cancel the stop work order; or

2. Terminate the work covered by the order; or
3. Terminate the Agreement in accordance with provisions contained in Section XIII.

In the event the County does not direct the Contractor to resume work, the stop work order may be converted into a notice of termination for convenience pursuant to Section XIII. The notice period for such termination shall be deemed to commence on the date of issuance of the stop work order. In the event the County does not direct the Contractor to resume work within ninety (90) days, the Contractor may terminate this Agreement.

#### **XVI. CONTRACTOR WARRANTY**

- A. All products provided under this Agreement must be new (unless specifically identified otherwise in a Supplemental Task Authorization) and of the most suitable grade for the purpose intended.
- B. If any product delivered does not meet performance representations or other quality assurance representations as published by manufacturers, producers or distributors of the products or the specifications listed in this Agreement, the Contractor must pick up the product from the County at no expense to the County. The County reserves the right to reject any or all materials if, in its judgment, the item reflects unsatisfactory workmanship or manufacturing or shipping damage. In such case, the Contractor must refund to the County any money which has been paid for same.
- C. Contractor shall secure from the applicable third party manufacturers, and assign and pass through to the County, at no additional cost to the County, such warranties as may be available with respect to the equipment, parts and systems provided through the Purchase.

#### **XVII. MISCELLANEOUS**

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- B. The Contractor must not assign any interest in this Agreement and must not transfer any interest in same (whether by assignment or novation) without the prior written consent of the County, except that claims for the money due or to become due to the Contractor from the County under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the County. Notice of any such

transfer or assignment due to bankruptcy must be promptly given to the County.

- C. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.
- D. The failure of the County to enforce one or more of the provisions of the Agreement may not be construed to be and is not a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
- E. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
- F. Neither the County's review, approval or acceptance of, nor payment for, the products and services required under this Agreement must be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- G. If the Contractor is comprised of more than one legal entity, each entity must be jointly and severally liable hereunder.
- H. Any notices of default or termination shall be sufficient if sent by the parties via United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

Vendor's Representative:

County's Representatives:

Name: Robert Capoferri  
 Title: President  
 Address: 9021 Wire Road  
Zephyrhills, FL  
33540  
 Telephone: 813-788-0010  
 Facsimile: 813-788-0020  
 E-mail: Ponderosamark@hotmail.com  
JackieAPS@outlook.com  
DGannon@gmail.com

Names:	<u>Roger Desjarlais</u>	<u>Mary Tucker</u>
Titles:	<u>County Manager</u>	<u>Director of Procurement Management</u>
Address:	<u>P.O. Box 398</u>	
	<u>Fort Myers, FL 33902</u>	
Telephone:	<u>239-533-2221</u>	<u>239-533-8881</u>
Facsimile:	<u>239-485-2262</u>	<u>239-485-8383</u>
E-Mail:	<u>rdesjarlais@leegov.com</u>	<u>mtucker@leegov.com</u>

- I. Any change in the County's or the Contractor's Representative will be promptly communicated by the party making the change.
- J. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- K. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:
  - 1. Supplemental Task Authorization(s)
  - 2. Agreement
  - 3. County's Purchase Order
  - 4. Solicitation # B170265/ANB
  - 5. Contractor's Submittal in Response to Solicitation # B170265/ANB

[The remainder of this page intentionally left blank.]

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date last below written.

WITNESS:

**Asphalt Paving Systems, Inc.**

Signed By: Kenneth Messina

Signed By: \_\_\_\_\_

Print Name: Kenneth Messina  
Secretary

Print Name: Robert Capoferri

Title: President

Date: 7/12/2017

**LEE COUNTY**

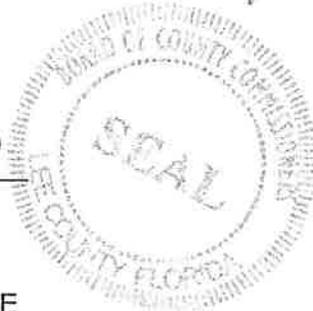
BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: John Manning  
CHAIR

DATE: 9/5/17

ATTEST:  
CLERK OF THE CIRCUIT COURT  
Linda Doggett, Clerk,

BY: Melissa Butler  
**DEPUTY CLERK**



APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY:

BY: S. C. Lira  
OFFICE OF THE COUNTY ATTORNEY

## EXHIBIT A SCOPE OF SERVICES

Contractor shall provide Alternative Paving services in accordance with Lee County Solicitation No. B170265/ANB and Supplemental Task Authorizations issued under this Agreement, if any.

### A. Supplemental Task Authorizations

The term Supplemental Task Authorization refers to a written document executed by both parties under this Agreement setting forth and authorizing a limited number of services, tasks, or work for a specific project identified by the County. Such services, tasks, or work is consistent with and has previously been described by Solicitation No. B170265/ANB and this Agreement.

### B. Award of Supplemental Task Authorizations

As provided by Solicitation No. B170265/ANB, individual projects may be awarded, and authorized via Supplemental Task Authorizations, to any of the firms approved by the Board of County Commissioners under that solicitation. Award shall be made as follows:

1. **Each project/task order will not exceed \$500,000.00.**
  - 1.1. Any project/task order **\$50,000.00 or less** may be awarded to the vendor holding a valid contract under this bid, with the lowest unit prices, able to meet the required schedule.
  - 1.2. Any project/task order **\$50,000.01, but less than \$500,000.00** must be quoted by a **minimum of 3 awarded vendors** holding a valid contract under this Bid.
  - 1.3. Any project/task order **over \$100,000.00** must provide a payment and performance bond.
  - 1.4. No vendor will be paid more than **\$4,000,000.00 per year.**
  - 1.5. **Notice to Proceed (NTP)**
    - 1.5.1. All project/task order **\$50,000.00 or less** will **use the purchase order** as the notice to proceed. The start date and date or the number of day to complete the project must be included on the purchase order. If the start date is left off the purchase order then the date of the purchase order approval will default as the NTP start date.
    - 1.5.2. Projects **\$50,000.01 but less than \$500,000.00** will have a **formal NTP issued through the Procurement Management Division.**
  - 1.6. The County retains the right to select any vendor to whom a multiple-vendor award has been made.
  - 1.7. The County retains the right to separately and competitively bid any and all job estimates greater than \$500,000.00.
    - Any project/task with a total cost of **\$50,000.00 or less** may be awarded to the firm holding a valid contract under this bid, with the lowest unit prices, able to meet the required project schedule.
    - Any project/task with a total cost of **\$50,000.01, but less than \$500,000.00** must be quoted by a **minimum of three (3) of the**

**EXHIBIT A**  
**SCOPE OF SERVICES**

**approved firms** holding a valid contract under Solicitation No. B170265/ANB. When quotes are requested, the Contractor's submittal must be based on the unit prices provided by Exhibit B, or lower prices. The quote must not list any prices that are higher. Award of the project shall be made to the firm holding a valid contract under this bid, with the lowest quoted price, able to meet the required project schedule.

C. Performance of Work under this Agreement

All work shall be provided and performed in accordance with the Technical Specifications of Solicitation No. B170265/ANB and as further described in any Supplemental Task Authorizations issued under this Agreement.

D. PRICING

Consumer Price Index (CPI): Contract prices for equipment and/or service will remain firm through the first contract year. Contractors must request price adjustments, in writing, 30 days prior to the renewal date. If a contractor fails to request a CPI price adjustment 30 days prior to the contract renewal date, no price increase will be accepted. Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-U) for All Urban Consumers, All Items, Miami Area. No retroactive contract price adjustments will be allowed.

**EXHIBIT B  
FEE SCHEDULE**

Payment for actual work completed shall be made in accordance with the terms of this Agreement and any Supplemental Task Authorizations issued hereunder. All project pricing shall be determined by the rates established by the Contractor's Response to Solicitation No. B170265/ANB, which appear below. All quotes received by the County from the Contractor must reflect pricing at or below the rates listed in this Exhibit B.

			<b><i>Asphalt Paving Systems, Inc.</i></b>	
<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>Quantity</u>	<u>Price</u>
101-1	Mobilization	%	1	5.00%
102-1	Maintenance of Traffic	%	1	5.00%
104-12	Staked Silt Fence	50-500	LF	\$2.00
104-12	Staked Silt Fence	501-1000+	LF	\$1.25
110-1-1	<i>Clearing and Grubbing</i>	1	AC	\$7,500.00
110-1	Curb and Gutter Removal	25-250	LF	\$30.00
110-1	Curb and Gutter Removal	251-500+	LF	\$15.00
110-2	Miscellaneous Concrete Removal	50-500	SY	\$8.00
110-2	Miscellaneous Concrete Removal	501-1000+	SY	\$5.00
110-3	Existing Pipe Removal	10-200	LF	\$25.00
110-3	Existing Pipe Removal	201-500+	LF	\$18.00
110-4	Removal of Existing Pavement	20-500	SY	\$7.00
110-4	Removal of Existing Pavement	501-1000+	SY	\$5.00
120-1	Roadway Excavation	201-500	CY	\$25.00
120-1	Roadway Excavation	501-1000+	CY	\$20.00

**EXHIBIT B  
FEE SCHEDULE**

120-4	Swale Grading	20-200	LF	\$20.00
120-4	Swale Grading	201-500+	LF	\$12.50
120-6	Embankment (Truckload)	1-200	CY	\$40.00
120-6	Embankment (Truckload)	201-500+	CY	\$30.00
280-2	Asphaltic Base Course	20-200	TN	\$175.00
280-2	Asphaltic Base Course	201-500	TN	\$120.00
280-2	Asphaltic Base Course	501-1000+	TN	\$95.00
327-1	Milling of Existing Asphalt (2" +/-)	50,000 +	SY	\$3.50
327-2	Milling of Existing Asphalt (2" +/-)	10,000 to 50,000	SY	\$5.50
331-1	Type III Asphaltic Concrete	20-200	TN	\$180.00
331-1	Type III Asphaltic Concrete	201-500	TN	\$135.00
331-1	Type III Asphaltic Concrete	501-1000+	TN	\$105.00
333-1	Asphaltic Concrete Type "S-1"	20-200	TN	\$180.00
333-1	Asphaltic Concrete Type "S-1"	201-500	TN	\$135.00
333-1	Asphaltic Concrete Type "S-1"	501-1000+	TN	\$105.00
333-2	Asphaltic Concrete Type "S-3"	20-200	TN	\$180.00
333-2	Asphaltic Concrete Type "S-3"	201-500	TN	\$135.00
333-2	Asphaltic Concrete Type "S-3"	501-1000+	TN	\$105.00
425-1	Adjusting Manholes (Metal Riser Rings)	1-5	EA	\$250.00
425-1	Adjusting Manholes (Metal Riser Rings)	6-10	EA	\$200.00
425-1	Adjusting Manholes (Metal Riser Rings)	11-20+	EA	\$125.00
425-2	Adjusting Valve Boxes (Metal Riser Rings)	1-5	EA	\$150.00
425-2	Adjusting Valve Boxes (Metal Riser Rings)	6-10	EA	\$100.00

**EXHIBIT B  
FEE SCHEDULE**

425-2	Adjusting Valve Boxes (Metal Riser Rings)	11-20+	EA	\$85.00
430-2	18" RCP CD - CLASS III	1-200	LF	\$125.00
430-2	18" RCP CD - CLASS III	201-500+	LF	\$70.00
520-1	Type "A" Curb	10-25	LF	\$60.00
520-1	Type "A" Curb	26-50+	LF	\$45.00
520-2	Type "B" Curb	10-25	LF	\$60.00
520-2	Type "B" Curb	26-50+	LF	\$45.00
520-3	Type "D" Curb	10-25	LF	\$60.00
520-3	Type "D" Curb	26-50+	LF	\$45.00
520-4	Type "E" Curb	10-25	LF	\$55.00
520-4	Type "E" Curb	26-50+	LF	\$40.00
520-5	Type "F" Curb	10-25	LF	\$55.00
520-5	Type "F" Curb	26-50+	LF	\$40.00
522-2	Concrete Sidewalk - (6" thickness)	20-100	SY	\$100.00
522-2	Concrete Sidewalk - (6" thickness)	101-250+	SY	\$60.00
527-2	Detectable Warning Surfaces (Inset) *	10-50	SF	\$50.00
527-2	Detectable Warning Surfaces (Inset) *	51-100+	SF	\$35.00
527-3	Det. Warning Surf. (Screwdown Retro-Fit)	10-50	SF	\$50.00
527-3	Det. Warning Surf. (Screwdown Retro-Fit)	51-100	SF	\$35.00
575-1	Sodding (Bahia)	100-500	SY	\$5.25
575-1	Sodding (Bahia)	501-1000+	SY	\$2.75
575-2	Sodding (Floritam)	100-500	SY	\$5.85
575-2	Sodding (Floritam)	501-1000+	SY	\$2.75

**EXHIBIT B  
FEE SCHEDULE**

660-2102	<i>Loop Assembly, F&amp;I - Type B</i>	1	AS	\$2,750.00
706-1	Reflective Pavement Markings (RPM's)	20-60	EA	\$7.50
706-1	Reflective Pavement Markers (RPM's)	61-100+	EA	\$6.00
710-1	6" Solid Traffic Stripe (paint)	1-200	LF	\$4.50
710-1	6" Solid Traffic Stripe (paint)	201-500	LF	\$1.00
710-1	6" Solid Traffic Stripe (paint)	501-1000+	LF	\$0.50
710-2	12" Solid Traffic Stripe (paint)	1-25	LF	\$10.00
710-2	12" Solid Traffic Stripe (paint)	26-50	LF	\$4.00
710-2	12" Solid Traffic Stripe (paint)	51-100+	LF	\$2.75
710-3	18" Solid Traffic Stripe (paint)	1-25	LF	\$12.00
710-3	18" Solid Traffic Stripe (paint)	26-50	LF	\$6.00
710-3	18" Solid Traffic Stripe (paint)	51-100+	LF	\$4.00
710-4	24" Solid Traffic Stripe (paint)	1-25	LF	\$12.00
710-4	24" Solid Traffic Stripe (paint)	26-50	LF	\$5.50
710-4	24" Solid Traffic Stripe (paint)	51-100+	LF	\$4.50
710-5	6" Skip Traffic Stripe (paint)	1-200	LF	\$2.50
710-5	6" Skip Traffic Stripe (paint)	201-500	LF	\$0.95
710-5	6" Skip Traffic Stripe (paint)	501-1000+	LF	\$0.55
710-6	6" Dotted Guide Lines (paint)	1-50	LF	\$1.50
710-6	6" Dotted Guide Lines (paint)	51-100	LF	\$1.25
710-6	6" Dotted Guide Lines (paint)	101-150+	LF	\$0.95
710-7	Directional Arrows (Paint)	1	EA	\$75.00
710-8	Pavement Messages (Paint)	1	EA	\$90.00

**EXHIBIT B  
FEE SCHEDULE**

710-9	8" Solid Traffic Stripe (Paint)	1-200	LF	\$5.00
710-9	8" Solid Traffic Stripe (Paint)	201-500	LF	\$1.25
710-9	8" Solid Traffic Stripe (Paint)	501-1000+	LF	\$0.75
711-1	6" Solid Stripe/Extru. Thermo	1-200	LF	\$10.00
711-1	6" Solid Stripe/Extru. Thermo.	201-500	LF	\$4.25
711-1	6" Solid Stripe/Extru. Thermo.	501-1000+	LF	\$1.25
711-2	12" Solid Stripe/Extru. Thermo	1-25	LF	\$20.00
711-2	12" Solid Stripe/Extru. Thermo.	26-50	LF	\$11.00
711-2	12" Solid Stripe/Extru. Thermo.	51-100+	LF	\$4.50
711-3	18" Solid Stripe/Extru. Thermo	1-25	LF	\$25.00
711-3	18" Solid Stripe/Extru. Thermo.	26-50	LF	\$12.00
711-3	18" Solid Stripe/Extru. Thermo.	51-100+	LF	\$5.50
711-4	24" Solid Stripe/Extru. Thermo	1-25	LF	\$7.25
711-4	24" Solid Stripe/Extru. Thermo.	26-50	LF	\$6.25
711-4	24" Solid Stripe/Extru. Thermo.	51-100+	LF	\$5.25
711-5	6" Skip Traffic Stripe/Extru. Thermo	1-200	LF	\$4.00
711-5	6" Skip Traffic Stripe/Extru. Thermo.	201-500	LF	\$2.25
711-5	6" Skip Traffic Stripe/Extru. Thermo.	501+	LF	\$2.00
711-6	6" Dotted Guide Lines/Extru. Thermo	20-50	LF	\$3.00
711-6	6" Dotted Guide Lines/Extru. Thermo.	51-100	LF	\$2.50
711-6	6" Dotted Guide Lines/Extru. Thermo.	101+	LF	\$2.25
711-7	Directional Arrows / Extru. Thermo.	1	EA	\$110.00
711-7A	Preformed Arrow	1	EA	\$100.00

**EXHIBIT B  
FEE SCHEDULE**

711-7B	Preformed Symbol (Bike)	1	EA	\$200.00
711-8	Pavement Messages / Extru. Thermo.	1	EA	\$225.00
711-9	8" Solid Traffic Stripe / Extru. Thermo	20-200	LF	\$15.00
711-9	8" Solid Traffic Stripe / Extru. Thermo	201-500	LF	\$10.00
711-9	8" Solid Traffic Stripe / Extru. Thermo	501+	LF	\$5.00
711-10	Remove Existing Pavement Markings	20-300	SF	\$5.00
711-10	Remove Existing Pavement Markings	300+	SF	\$5.00
APM-001	Single Micro Surface 18-22 lbs	10,000 to 50,000	SY	\$2.65
APM-001	Single Micro Surface 18-22 lbs	50,001 +	SY	\$2.40
APM-002	Doudle Micro Surface 28-32 lbs	10,000 to 50,000	SY	\$3.80
APM-002	Doudle Micro Surface 28-32 lbs	50,001 +	SY	\$3.60
APM-003	Single Chip Seal -#89 Granite	10,000 to 50,000	SY	\$2.90
APM-003	Single Chip Seal -#89 Granite	50,001 +	SY	\$2.40
APM-004	Double Chip Seal - #57 w/#89 Granite	10,000 to 50,000	SY	\$4.20
APM-004	Double Chip Seal - #57 w/#89 Granite	50,001 +	SY	\$3.90
APM-005	Full Depth Reclamation / 6"-9"	10,000 to 50,000	SY	\$7.00
APM-005	Full Depth Reclamation /6"-9"	50,001 +	SY	\$6.25
APM-006	Full Depth Reclamation /9-12	10,000 to 50,000	SY	\$7.50
APM-006	Full Depth Reclamation /9-12	50,001 +	SY	\$6.75
APM-006a	Cement for Reclamation	1	TN	\$155.00
APM-006b	Emulsion for Reclamation	1	Gal	\$2.55
APM-007	RAP PLACEMENT	10,000 to 50,000	SY	\$8.00
APM-007	RAP PLACEMENT	50,001 +	SY	\$7.25

**EXHIBIT B  
FEE SCHEDULE**

APT-001	Crack Filling / Sealing	1-1000	Gal	\$20.00
APT-001	Crack Filling / Sealing	1001-3000	Gal	\$19.00
APT-001	Crack Filling / Sealing	3001+	Gal	\$18.00
SLUR-001	Slurry Seal	10,000 to 50,000	SY	\$2.70
SLUR-001	Slurry Seal	50,001 +	SY	\$2.45
	<b>HOT-IN-PLACE (With Virgin Top Course) Asphalt Recycling</b>			
HIPR- Recy	Asphalt Recycling	10,000 to 50,000	SY	No Bid
HIPR-AGENT	Recycling Agent	10,000 to 50,000	Gal	No Bid
HIPR- Recy	Asphalt Recycling	50,001 +	SY	No Bid
HIPR-AGENT	Recycling Agent	50,001 +	Gal	No Bid
<b>324 HOT-IN-PLACE (100%) Asphalt Recycling</b>				
HIPR Base	Base Course HIPR	10,000 to 50,000	SY	No Bid
HIPR Base	Base Course HIPR	50,001 +	SY	No Bid
HIPR Complete	2" Complete HIPR	10,000 to 50,000	SY	No Bid
HIPR Complete	2" Complete HIPR	50,001 +	SY	No Bid
HIPR-AGENT-100%	Asphalt Recycling Agent	10,000 to 50,000	Gal	No Bid
HIPR-AGENT-100%	Asphalt Recycling Agent	50,001 +	Gal	No Bid
	<b>MOT/MOB</b>	%	1	No Bid
	<b>Night Work MOT/MOB (additional %)</b>	%	1	No Bid

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

**Minimum Insurance Requirements:** *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence  
\$2,000,000 general aggregate  
\$1,000,000 products and completed operations  
\$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL)  
\$500,000 bodily injury per person  
\$1,000,000 bodily injury per accident  
\$500,000 property damage per accident

- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident  
\$500,000 disease limit  
\$500,000 disease - policy limit

\*The required minimum limit of liability shown in a and b may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

**Verification of Coverage:**

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

- a. The certificate holder shall read as follows:

Lee County Board of County Commissioners  
P.O. Box 398  
Fort Myers, Florida 33902B

- b. *"Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials"* will be named as an "Additional Insured" on the General Liability policy, including Products and Completed Operations coverage.

**Special Requirements:**

1. An appropriate "Indemnification" clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to insure that all subcontractors comply with all insurance requirements.

**EXHIBIT D**  
**PERFORMANCE AND PAYMENT BONDS**

For each Supplemental Task Authorization authorizing work for a cost of \$100,000.00 or more, the Contractor must procure a performance and payment bond in accordance with this Agreement and B170265/ANB.

- A. In accordance with Chapter 255.05, Florida Statutes, as may be amended from time to time, and Lee County Ordinance 95-2-102, as may be amended from time to time, a public performance and payment bond is to be issued in a sum equal to one-hundred (100%) percent of the total awarded Supplemental Task Authorization amount by a surety company considered satisfactory by Lee County and otherwise authorized to transact business in the State of Florida.
- B. Any bonding company submitting a performance and payment bond to Lee County Government must be licensed to transact a fidelity and surety business in the State of Florida.
- C. A public performance and payment bond must be properly executed by the Surety Company and Contractor and recorded with the Lee County Clerk of Court within seven (7) calendar days after notification by Lee County of the approval to award the Supplemental Task Authorization. The Contractor is responsible for all fees and charges associated with the performance and payment bond, including the cost of recording.
- D. A clean irrevocable letter of credit or cash bond may be accepted by the County in lieu of the public performance and payment bond.





**ZURICH**<sup>®</sup>

## **Additional Insured – Automatic – Owners, Lessees Or Contractors**

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO019140601	04/01/2017	04/01/2018	04/01/2017		N/A	N/A

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**Named Insured:** ASPHALT PAVING SYSTEMS, INC.

**Address (including ZIP Code):** 500 N. Egg Harbor Road, P.O. Box 530, Hammonton, NJ 08037

This endorsement modifies insurance provided under the:

### **Commercial General Liability Coverage Part**

**A. Section II – Who Is An Insured** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:**

This insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

- a. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

C. The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – **Commercial General Liability Conditions:**

The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
2. We receive written notice of a claim or "suit" as soon as practicable; and
3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. For the purposes of the coverage provided by this endorsement:

1. The following is added to the Other Insurance Condition of Section IV – **Commercial General Liability Conditions:**

**Primary and Noncontributory insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions:**

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

E. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III – **Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Paragraph A. of this endorsement; or
2. Available under the applicable Limits of Insurance shown in the Declarations, whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms and conditions of this policy remain unchanged.



BOARD OF COUNTY COMMISSIONERS

August 13, 2019

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District One

Cecil L. Pendergrass  
District Two

Larry Kiker  
District Three

Brian Hamman  
District Four

Frank Mann  
District Five

Roger Desjarlais  
County Manager

Richard Wm. Wesch  
County Attorney

Donna Marie Collins  
Hearing Examiner

Mr. Robert Capoferri  
Asphalt Paving Systems, Inc.  
500 N. Egg Harbor Road  
Hammonton, NJ 08037

SUBJECT: Renewal of Annual Contract No. B170265ANB C-7804  
Alternative Paving Methods

Dear Mr. Capoferri:

This is to inform you that Lee County agrees to renew the above subject contract for an additional one (1) year period, from 9/5/2019 through 9/4/2020.

We are hereby extending the annual contract for an additional one year period under the same terms and conditions as the original award.

If you have any questions regarding this letter, please contact me at (239) 533-8871.

Sincerely,

*Kimberly Urban*

Kimberly Urban  
Contracts Analyst  
Procurement Management Division

C: FinanceOnBase@leeclerk.org  
Project File



BOARD OF COUNTY COMMISSIONERS

March 25, 2019

239-533-8871

John E. Manning  
District One

Cecil L. Pendergrass  
District Two

Larry Kiker  
District Three

Brian Hamman  
District Four

Frank Mann  
District Five

Roger Desjarlais  
County Manager

Richard Wm. Wesch  
County Attorney

Donna Marie Collins  
Hearing Examiner

Mr. Robert Capoferri  
Asphalt Paving Systems, Inc.  
500 N. Egg Harbor Rd.  
Hammonton, NJ 08037

Subject: Renewal of Annual Contract B170265ANB C-7804  
Alternative Paving Methods

Dear Mr. Capoferri:

The above-referenced annual contract will expire on September 4, 2019, unless renewed. Lee County is requesting that this annual contract be renewed for an additional one year period (9/5/2019 – 9/4/2020). Therefore, we are requesting that you choose one of the following options and return this letter to Lee County Procurement Management, Attn: Kimberly Urban, P.O. Box 398, Ft. Myers, FL 33902-0398, (Fax: 239-485-8383 or email [kurban@leccgov.com](mailto:kurban@leccgov.com)), within 15 calendar days from receipt.

a. I want to continue performing under this annual contract for an additional one year period under the same terms and conditions as agreed upon in the above-referenced quotation.

*As a condition of this renewal, the vendor agrees to provide Lee County with an updated insurance certificate upon expiration of the original certificate on file with the County.*

b. I am not interested in extending this contract for an additional one-year period. Why? \_\_\_\_\_

Vendor:

\_\_\_\_\_  
Signature

Robert Capoferri, President

\_\_\_\_\_  
Title

3/27/19

\_\_\_\_\_  
Date

Lee County:

\_\_\_\_\_  
Signature of Authorized Official

Procurement Management Director

\_\_\_\_\_  
Title

8-7-19

\_\_\_\_\_  
Date