

PAVING AGREEMENT

The **CITY OF HAINES CITY, FLORIDA**, (“City”) a Florida municipal corporation, hereby contracts with **General Asphalt of Lakeland LLC**, (“Contractor”) a *Name of State* corporation authorized to do business in the State of Florida, to perform all work (“Work”) in connection with the Multi-Year Paving Contract (Bid Documents #22-03 (“Project”) as said Work is set forth in the Project Plans and Specifications and other Contract Documents hereafter specified.

City and Contractor, for the consideration herein set forth, agree as follows:

Section 1. Contract Documents

- A. The Contract Documents consist of this Agreement, the Exhibits described in Section 6 herein, the Legal Advertisement, the Bidding Documents including Addendum No. **#1 through #2**, and any duly executed and issued Change Orders and amendments thereto. All of the foregoing Contract Documents are incorporated by reference and made a part of this Agreement (all of said documents including the Agreement sometimes being referred to herein as the “Contract Documents” and sometimes as the “Agreement” and sometimes as the “Contract”). A copy of the Contract Documents shall be maintained by Contractor at the Project sites at all times during the performance of the Work.
- B. Contractor shall comply with Florida Department of Transportation (“FDOT”) Standard Specifications for Road and Bridge Construction July 2021

Section 2. Scope of Work

Contractor agrees to furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely, and fully perform and complete in a good and workmanlike manner the Work required by the Contract Documents. Contractor is responsible for any and all permitting that may be necessary for the paving work. Contractor is responsible of the raising of all valves and manholes to street level when and where it is necessary. Contractor is responsible for street striping and marking when and where it is necessary.

Section 3. Contract Amount

In consideration of the faithful performance by Contractor of the covenants in this Agreement to the full satisfaction and acceptance of the City, City agrees to pay, or cause to be paid to Contractor the following amount (herein "Contract Amount") in accordance with the terms of this Agreement up to, ***\$2,308,912.87***.

Section 4. Bonds

Contractor shall provide Performance and Payment Bonds, as Exhibit A in the form prescribed in Sub-section A23 of the Invitation to Bid # 22-03, in the amount of One Hundred Percent (100%) of the Contract Amount, the costs of which are to be paid by Contractor. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to City; provided, however, the surety shall meet the requirements of the Department of the Treasury Fiscal Bonds and as Acceptable Reinsurance Companies' circular. This circular may be accessed via the web at <https://www.fiscal.treasury.gov/fsreports/ref/suretybnd/c570.htm>. Should the Contract Amount be less than \$500,000, the requirements of Section 287.0935, F. S. shall govern the rating and classification of the surety.

- A. If the surety for any bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, the Contractor shall, within five (5) calendar days thereafter, substitute all its cost and experience another bond and surety, both of which shall be subject to the Owner's approval.

Section 5. Contract Time and Liquidated Damages

A. Time of Performance

This Agreement is for a Three (3) year term with a One (1) year renewal option. The "Commencement Date" shall be established in the written Notice to Proceed to be issued by the Project Manager, as hereinafter defined. Contractor shall commence the Work within **thirty (30)** calendar days from the Commencement Date. No Work shall be performed at the Project sites prior to the Commencement Date. Any Work performed by Contractor prior to the Commencement Date shall be at the sole risk of Contractor. Contractor shall achieve Substantial Completion on or before **May 1, 2025** from the Commencement Date (herein "Contract Time"). The date of Substantial Completion of the Work (or designated portions thereof) is the date certified by the City Engineer or his Designee when construction is sufficiently complete, in accordance with the Contract Documents, so Owner can occupy and utilize the Work (or designated portions thereof) for the use for which it is intended. Contractor shall achieve Final Completion on or before **September 30, 2025**. Final Completion shall occur when the Agreement is completed in its entirety, is accepted by the City as complete and is so stated by the City as completed. As used herein and throughout the Contract Documents, the phrase "Project Manager" refers to the City's duly authorized representative and shall mean the City Engineer, as applicable, acting directly or through duly authorized representatives. At the City discretion multiple work orders may be submitted during the agreement period.

B. Liquidated Damages in General

The City and Contractor recognize that, since time is of the essence for this Agreement, the City will suffer financial loss if Contractor fails to achieve Substantial Completion within the time specified above, as said time may be adjusted as provided for herein. In such event, the total amount of the City's damages, will be difficult, if not impossible, to definitively ascertain and quantify. Should contractor fail to achieve Substantial Completion within the number of calendar days established herein, the City shall be entitled to assess, as liquidated damages, but not as a penalty, *One Thousand Five Hundred Eighty-Four Dollars (\$1,584.00)* which is consistent with FDOT standards for each calendar day thereafter until Substantial Completion is achieved. Further, in the event Substantial Completion is reached, but the Contractor fails to reach Final Completion within the required time period, the City shall also be entitled to assess and Contractor shall be liable for all actual damages incurred by the City as a result of Contractor failing to timely achieve Final Completion. The Project shall be deemed to be substantially completed on the date the Project Manager (or at his/her direction, the City Engineer) issues a Certificate of Substantial Completion pursuant to the terms thereof. Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the City's actual damages at the time of contracting if Contractor fails to Substantially or Finally Complete the Work within the required time periods.

C. Computation of Time Periods

When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday or legal holiday.

D. Determination of Number of Days of Default

For all contracts, and work orders regardless of whether the Contract Time is stipulated in calendar days or working days, the City will count default days in calendar days.

E. Right of Collection

The City has the right to apply any amounts due Contractor under this Agreement or any other agreement between the City and Contractor, as payment on such liquidated damages due under this Agreement in Owner's sole discretion. Notwithstanding anything herein to the contrary, the City retains its right to liquidated damages due under this Agreement even if Contractor, at the City's election and in its sole discretion, is allowed to continue and to finish the Work, or any part of it, after the expiration of the Contract Time including granted time extensions.

F. Completion of Work by Owner

In the event Contractor defaults on any of its obligations under the Agreement and Owner elects to complete the Work, in whole or in part, through another contractor or its own forces, the Contractor and its surety shall continue to be liable for the liquidated damages under the Agreement until Owner achieves Substantial and Final Completion of the Work. The City will not charge liquidated damages for any delay in achieving Substantial or Final Completion as a result of any unreasonable action or delay on the part of the City.

G. Final Acceptance by the City

The City shall consider the Agreement complete when the Contractor has completed in its entirety all of the Work and the City has accepted all of the Work and notified the Contractor in writing that the Work is complete. Once the Owner has approved and accepted the Work, Contractor shall be entitled to final payment in accordance with the terms of the Contract Documents.

H. Recovery of Damages Suffered by Third Parties

Contractor shall be liable to the City to the extent the City incurs damages from a third party as a result of Contractor's failure to fulfill all of its obligations under the Contract Documents. The City's recovery of any delay related damages under this Agreement through the liquidated damages does not preclude the City from recovering from Contractor any other non-delay related damages that may be owed to it arising out of or relating to the Agreement.

Section 6. Exhibits Incorporated

The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement:

- Exhibit A: Performance and Payment Bond Forms
- Exhibit B: Bidding Documents including Addendum No.
- Exhibit C: Project Plans and Specifications

Section 7. Notices

A. All notices required or made pursuant to this Agreement by the Contractor to the Owner shall be made in writing and shall be deemed duly served if delivered by U.S. Mail, E-mail or facsimile, addressed to the following:

City of Haines City
Attn: James Keene
620 East Main Street
Haines City, FL 33845

COMPANY NAME:
Attn: _____

- B. All notices required or made pursuant to this Agreement by City to Contractor shall be made in writing and shall be deemed duly served if delivered by U.S. Mail, E-mail or facsimile, addressed as indicated above:
- C. Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

Section 8. Public Records Contract Provision

The parties acknowledge that CITY is a “public agency” and CONTRACTOR is a “contractor” as defined in Section 119.0701, Florida Statutes, and that CONTRACTOR must comply with public records laws, and specifically to:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract 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 public agency in a format that is compatible with the information technology systems of the public agency.

Section 9. Public Entity Crimes

By its execution of this Agreement, Contractor acknowledges that it has been informed by the City of the terms of Section 287.133(2)(a), Florida Statutes, which reads as follows:

“A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s.287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

Section 10. Modification

No modification or change to the Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

Section 11. Successors and Assigns

Subject to other provisions hereof, the Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Agreement.

Section 12. Governing Law

The Agreement shall be interpreted under and its performance governed by the laws of the State of Florida.

Section 13. No Waiver

The failure of the City to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

Section 14. Entire Agreement

Each of the parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by the Agreement.

Section 15. Severability

Should any provision of the Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

Section 16. Change Order Authorization

The Project Manager shall have the authority on behalf of the City to execute all Change Orders and Work Directive Changes to the Agreement to the extent provided for under the City's Purchasing Policy and accompanying administrative procedures. The parties expressly acknowledge and agree that any proposed modification, revision or addition to the scope of the Work (as set forth herein) shall constitute a material change to this Agreement. If the Contractor wishes to make a material change to the scope of the Work after the effective date of this Agreement, then the Contractor shall promptly submit to the City a written cost estimate therefor. No such request shall be binding on the City unless and until it has been agreed to in a Change Order signed by both the City and the Contractor. Any such change to the scope of the Work (as set forth in the Change Order) shall be governed by the terms and conditions of this Agreement and by such Change Order as may be executed by the parties from time to time.

Section 17. Order of Precedence

In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Bidding Documents including Addendum No. # *through* # shall take precedence over the terms of all other Contract Documents except the terms of any Change Order(s) shall take precedence over the previously-executed contract documents. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Supplemental Conditions, if any, or the Construction Agreement and the General Terms and Conditions, the conflict shall be resolved by

imposing the more strict or costly obligation under the Contract Documents upon the Contractor at the City's discretion.

Section 18. Pre-Suit Mediation.

Disputes arising under this Agreement must first be mediated by a Florida Supreme Court-certified Civil Mediator in accordance with Chapter 44, Florida Statutes. The parties agree that the mediation shall occur within thirty (30) days of the date mediation is requested by either party. The Mediator shall be agreed upon, but if the parties are unwilling or unable to agree, the parties agree that a Civil Mediator from Central Florida Mediation Group, LLC shall be selected by striking names from the mediators in that Group. The parties agree to mediate in good faith, be bound by the Mediation Settlement Agreement (if a settlement is reached), pay Mediator fees promptly and share them on an equal basis unless otherwise agreed upon by the parties. Litigation may not be commenced until after mediation has been (i) declared an impasse by the Mediator, or (ii) terminated in writing by one or both of the parties. The confidentiality provisions of the Mediation Confidentiality and Privilege Act (Section 44.403, Florida Statutes) shall apply to any such pre-suit mediation.

Section 19. Litigation and Attorney's Fees.

In the event any party to this Agreement should bring suit to enforce or interpret any provision hereof, prevailing party shall be entitled to recover reasonable attorney's fees, paralegal's fees, and costs incurred, whether the same be incurred in litigation at the trial level, or upon appeal

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers appearing below.

THE CITY OF HAINES CITY

ATTEST:

City of Haines City, Florida,
a municipal corporation.

Erica Anderson, CMC,
City Clerk

Morris L. West, Mayor

Approved As To Form And Legality:

Fred Reilly, City Attorney
Date: _____, 2022

COMPANY NAME:

By: _____

Print name: _____

Title: _____

Date: _____, 2022

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