



**AGREEMENT BETWEEN
THE CITY OF PEMBROKE PINES AND
WEEKLEY ASPHALT PAVING, INC.**

THIS AGREEMENT ("Agreement"), is entered into on _____ day of _____ 2022, by and between the **City of Pembroke Pines**, a Florida municipal corporation with a business address of 601 City Center Way, Pembroke Pines, Florida 33025 (hereinafter referred to as "CITY"), and **Weekley Asphalt Paving, Inc.**, a Florida Profit Corporation, with a business address of **20701 Stirling Road, Pembroke Pines, FL 33332** ("CONTRACTOR"). CITY and CONTRACTOR shall be collectively referred to herein as "Parties" and individually as "Party".

WHEREAS, CITY desires to engage CONTRACTOR to provide roadway, drainage, traffic and miscellaneous construction services and materials for the roadway from Dykes Road to NW 155th Avenue, SW 178th Avenue to SW 4th Street, and 99th Avenue and Johnson Street to Westview Boulevard; and,

WHEREAS, on February 14, 2020, the Broward County entered into a contract for Roadway, Draining, Traffic and Miscellaneous Construction services with CONTRACTOR, pursuant to Solicitation No. PNC2119323B1, for the provision of roadway, draining, traffic and miscellaneous construction services on an as-needed basis for a two (2) year term which expired on November 24, 2021, and was extended by the Parties until November 24, 2022; and,

WHEREAS, pursuant to CITY Code of Ordinances §35.18(C)(5), entitled "Utilization of Other Governmental Agencies' Contracts", CITY has evaluated Solicitation No. PNC2119323B1 and the resulting agreement and determined such terms and pricing may be utilized by CITY to obtain the materials and services herein required; and,

WHEREAS, pursuant to CITY Code of Ordinances §35.18(C)(5), the CITY desires to engage CONTRACTOR to provide Roadway, Drainage, Traffic & Miscellaneous Construction services utilizing the terms and pricing set forth in the Solicitation No. PNC2119323B1 and the resulting agreement; and,

WHEREAS, CONTRACTOR agrees to honor and extend the same terms and pricing set forth in Solicitation No. PNC2119323B1 and in the resulting agreement to CITY for the procurement of the materials and services herein required; and,

WHEREAS, the Parties wish to incorporate and supplement the terms and conditions set forth in Solicitation No. PNC2119323B1 and the resulting agreement, attached hereto and made a specific part hereof as Exhibit "A", with the terms and requirements set forth herein; and,

WHEREAS, at its meeting of _____, 2022, the CITY Commission approved this Agreement and authorized the proper CITY officials to execute this Agreement.



NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the Parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein as if set forth in full.
2. **Scope of Services.** The CONTRACTOR agrees to provide all labor, materials, and services as may be necessary to complete the Roadway, Drainage, Traffic & Miscellaneous Construction Services, from Dykes Road to NW 155th Avenue, SW 178th Avenue to SW 4th Street, and 99th Avenue and Johnson Street to Westview Boulevard, in accordance with the terms and pricing set forth in **Exhibit "A"**, and more particularly described in CONTRACTOR's proposal for CITY, attached hereto and made a specific part here of as **Composite Exhibit "B"**, and the specifications more particularly described in **Composite Exhibit "C"**, attached hereto and made a specific part hereof by this reference.
 - 2.1 CONTRACTOR shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed pursuant to this Agreement shall be done in a professional manner.
 - 2.2 CONTRACTOR shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. CONTRACTOR shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. CONTRACTOR shall at all times have a competent field supervisor available to enforce these policies and procedures at the CONTRACTOR's expense.
 - 2.3 CONTRACTOR shall provide CITY with seventy-two (72) hours written notice prior to the beginning of work pursuant to this Agreement and prior to any schedule change with the exception of changes caused by inclement weather.
 - 2.4 CONTRACTOR hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONTRACTOR, that CONTRACTOR has the professional expertise, experience and manpower to perform the services to be provided by CONTRACTOR pursuant to the terms of this Agreement.
 - 2.5 CONTRACTOR hereby represents to CITY that CONTRACTOR is properly licensed by the applicable federal, state, and local agencies to provide the services pursuant to this Agreement. Furthermore, CONTRACTOR agrees to maintain such licenses during the term of this Agreement. If CONTRACTOR's license is revoked, suspended, or terminated for any reason by any governmental agency, CONTRACTOR shall notify the CITY immediately.



2.6 CONTRACTOR shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to CONTRACTOR, its employees, agents or subcontractors, if any, with respect to the work and services described herein. A violation of any federal, state, or local law or regulation may be cause for breach, allowing the CITY to terminate this Agreement.

2.7 CONTRACTOR shall not subcontract any of its obligations under this Agreement without first obtaining the CITY's prior written consent. In the event the CITY does consent in writing to a subcontracting arrangement, CONTRACTOR shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Agreement. Any subcontract entered into by CONTRACTOR shall name the CITY as a third party beneficiary.

3. **Compensation and Method of Payment.** CITY agrees to compensate CONTRACTOR for all services performed by CONTRACTOR pursuant to this Agreement and in accordance with **Composite Exhibit "B"**, monthly, for work that has been completed, inspected and properly invoiced. The total amount paid to CONTRACTOR pursuant to this Agreement shall not exceed **EIGHT HUNDRED EIGHT THOUSAND FIVE HUNDRED FIFTY-EIGHT DOLLARS AND FIFTY-SIX CENTS (\$808,558.56)**, which includes an amount towards the Payment and Performance Bonds equal to **NINE THOUSAND FOUR HUNDRED THIRTY-EIGHT DOLLARS AND FIFTY-FIVE CENTS (\$9,438.55)**, and a contingency in the amount of **SEVENTY-THREE THOUSAND FIVE HUNDRED FIVE DOLLARS THIRTY-TWO CENTS (\$73,505.32)**.

3.1 This contingency or allowance authorizes the CITY to execute change orders up to the amount of the contingency without the need to obtain additional Commission approval. In addition, CITY shall utilize the Owner's Contingency to reimburse CONTRACTOR for the related permit, license, impact or inspection fees. Payments will be made to CONTRACTOR based on the actual cost of permits upon submission of paid permit receipts. **It is hereby understood and agreed that the CONTRACTOR shall not expend any dollars in connection with the Owner's Contingency or Allowance without the expressed prior written approval of the CITY's authorized representative.** Any Owner's Contingency funds or allowance that have not been utilized at the end of the project will remain with the CITY, the CONTRACTOR shall only be paid for the proposed project cost as approved by the City Commission along with any Owner Contingency expenses or allowances that were approved by the CITY's authorized representative. If the permit fees exceed the Owner's Contingency indicated, CITY will reimburse the contractor the actual amount of the permit fees required for project completion.



- 3.2 The total compensation amount may not be exceeded without a written amendment to this Agreement. A retainage of five percent (5%) will be deducted from monthly payments until the project is complete. Retainage monies will be released upon satisfactory completion and final inspection of the work. CONTRACTOR shall invoice CITY. Invoices must bear the project name, project number, bid number and purchase order number. CITY has up to thirty (30) days to review, approve and pay all invoices after receipt.
- 3.3 All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.
- 3.4 Method of Billing and Payment. The CITY shall within thirty (30) days, from the date of CITY's Public Services Director approves the Application for Payment, pay the CONTRACTOR the amount approved by the CITY's Public Services Director or his or her designee. Payment will be made to CONTRACTOR at:

Weekley Asphalt Paving, Inc.
20701 Stirling Road,
Pembroke Pines, FL 33332

4. **Changes to Scope.** CITY or CONTRACTOR may request changes that would increase, decrease, or otherwise modify the scope of services, to be provided pursuant to this Agreement and as described in **Composite Exhibit "B"** and **Composite Exhibit "C"**. These changes may affect the monthly compensation accordingly. Such changes or additional services must be in accordance with the provisions of CITY's Code of Ordinances and must be contained in a written amendment, executed by the Parties hereto prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work. In no event will the CONTRACTOR be compensated for any work which has not been described either herein, in a purchase order, or in a separate written agreement executed by the Parties hereto. CONTRACTOR shall continue work when seeking change order unless work has not been authorized herein, or by written amendment or change order, executed by the Parties hereto.
5. **Time of Commencement and Substantial Completion.** The work to be performed under this Agreement shall be commenced after CITY execution of the Agreement and not later than ten (10) days after the date that CONTRACTOR receives CITY's Notice to Proceed. The scope of work shall be completed within **ninety (90) calendar days** from issuance of CITY's Notice to Proceed, subject to any permitted extensions of time pursuant to this Agreement and any amendments and/or addenda thereto. For the purposes of this Agreement, the term



“completion” shall mean satisfactory completion and final inspection of the Property by the CITY.

6. **Payment and Performance Bond.**

6.1 Within fifteen (15) calendar days after Notice of Award and in any event prior to commencing work, the CONTRACTOR shall execute and furnish to CITY a payment and performance bond, each written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety shall hold a current certificate of authority from the Secretary of Treasury of the United States as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular No. 570. If the amount of the bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular and the excess risks must be protected by coinsurance, reinsurance, or other methods, in accordance with Treasury Circular 297, revised September 1, 1978 (31DFR, Section 223.10, Section 223.11). Further, the surety company shall provide CITY with evidence satisfactory to CITY, that such excess risk has been protected in an acceptable manner. The surety company shall have at least the following minimum qualification in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858:

B+ to A+

6.2 Two (2) separate bonds are required and both must be approved by the CITY. **The penal sum stated in each bond shall be 100% of the contract value.** The performance bond shall be conditioned upon the CONTRACTOR's performance of the work in the time and manner prescribed in the Agreement. The payment bond shall be conditioned upon the CONTRACTOR's promptly making payments to all persons who supply the CONTRACTOR with labor, materials and supplies used directly or indirectly by the CONTRACTOR in the prosecution of the work provided for in this Agreement and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save harmless the CITY to the extent of any and all payments in connection with the carrying out of said Agreement which the CITY may be required to make under the law. Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, it shall be the duty of the CONTRACTOR to record the aforesaid payment and performance bonds in the public records of Broward County, and CONTRACTOR shall be responsible for payment of all recording costs.



7. **Termination of Agreement.**

7.1 **Termination for Convenience.** This Agreement may be terminated by CITY for convenience, upon thirty (30) calendar days of written notice of such termination to CONTRACTOR, in which event CONTRACTOR shall be paid its compensation for services performed to termination date, including services reasonably related to termination.

7.2 **Termination for Cause; Default.** In addition to all other remedies available to CITY, this Agreement shall be subject to termination by CITY for cause. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated for cause, CONTRACTOR shall indemnify CITY against loss pertaining to such abandonment or termination. CITY reserves the right to recover any ascertainable actual damages incurred as a result of the failure of CONTRACTOR to perform in accordance with the requirements of this Agreement.

7.2.1 **Default Events.** The occurrence of any one or more of the following events shall constitute a default and breach of this agreement by CONTRACTOR:

7.2.1.1 The abandonment of the Property by CONTRACTOR for a period of more than seven (7) business days.

7.2.1.2 The abandonment, unnecessary delay, refusal of, or failure to correct deficiencies for a period of seven (7) calendar days after receipt by CONTRACTOR of written notice of such neglect or failure.

7.2.1.3 Assignment and/or transfer of this Agreement which is not expressly permitted here under or in writing by CITY.

7.2.1.4 The filing by or against CONTRACTOR of a petition to have CONTRACTOR adjudicated bankrupt (unless, the same is dismissed within sixty (60) days of such filing).

7.2.2 **Remedies in Default.** In the event of default by CONTRACTOR, CITY shall notify CONTRACTOR, in writing, of such abandonment, delay, refusal, failure, neglect, or default and direct CONTRACTOR to comply with all provisions of the Agreement. A copy of such written notice shall be mailed to the Surety on the Performance Bond. If the abandonment, delay, refusal, failure, neglect or default is not cured within seven (7) days of when notice was sent by CITY, CITY may declare a default of the Agreement and notify CONTRACTOR of such declaration



of default and terminate the Agreement. The Surety on the Performance Bond shall within ten (10) days of such declaration of default, rectify or cause to be rectified any mismanagement or breach of service in the Agreement and assume the work of CONTRACTOR and proceed to perform services under the Agreement, at its own cost and expense.

7.2.2.1 Upon such declaration of default, all payments remaining due CONTRACTOR at the time of default, less all sums due CITY for damages suffered, or expenses incurred by reason of default, shall be due and payable to Surety. Thereafter the Surety shall receive monthly payments equal to those that would have been paid by the CONTRACTOR had the CONTRACTOR continued to perform the services under the Agreement.

7.2.2.2 CITY may complete the Agreement, or any part thereof, either by day labor or re-letting a contract for the same, and procure the equipment and the facilities necessary for the completion of the Agreement, and charge the cost of same to CONTRACTOR and/or the Surety together with the costs incident thereto to such default.

7.2.2.3 In the event CITY completes the Agreement at a lesser cost than would have been payable to CONTRACTOR under this Agreement, if the same had been fulfilled by CONTRACTOR, CITY shall retain such differences. Should such cost to CITY be greater, CONTRACTOR shall pay the amount of such excess to the CITY.

7.2.2.4 Notwithstanding the other provisions in this Article, CITY reserves the right to terminate the Agreement at any time, whenever the service provided by CONTRACTOR fails to meet reasonable standards of the trade after CITY gives written notice to the CONTRACTOR of the deficiencies as set forth in the written notice within fourteen calendar (14) days of the receipt by CONTRACTOR of such notice from CITY.

8. **Insurance.**

8.1 CONTRACTOR shall indemnify and hold harmless the CITY, its trustees, elected and appointed officers, agents, assigns, employees, consultants, separate contractors, any of their subcontractors, sub-subcontractors, agents and employees from and against claims, demands, or causes of action whatsoever, and the resulting losses, damages, costs and expenses, including but not limited to attorneys' fees, including paralegal expenses, liabilities, damages, orders, judgments, or decrees, sustained by the CITY arising out of or resulting from the failure of the CONTRACTOR to take out and maintain insurance as required under this Agreement.



- 8.2 CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONTRACTOR allow any subcontractor to commence work on any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.
- 8.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.
- 8.4 Certificates of Insurance shall provide for thirty (30) days' prior written notice to the CITY in case of cancellation in the policy limits or coverage states. If the carrier cannot provide thirty (30) days' notice of cancellation, either the CONTRACTOR or their insurance broker must agree to provide notice.
- 8.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the CONTRACTOR shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.
- 8.6 **Required Insurance.** CONTRACTOR shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:
- Yes No
- ✓ ☐ 8.6.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:
1. Each Occurrence Limit - \$1,000,000
 2. Fire Damage Limit (Damage to rented premises) - \$100,000
 3. Personal & Advertising Injury Limit - \$1,000,000
 4. General Aggregate Limit - \$2,000,000



5. Designated Construction Project(s) General Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for the later of ten (10) years after the delivery of goods/services or final payment under the Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

- ✓ ☐ 8.6.2 Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee

If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption along with a written request for CITY to exempt CONTRACTOR, written on CONTRACTOR letterhead.

Yes No

- ✓ ☐ 8.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

If work under this Agreement includes transportation of hazardous materials, policy shall include pollution liability coverage equivalent to that provided by the latest version of the ISO pollution liability broadened endorsement for auto and the latest version of the ISO Motor Carrier Act endorsement, equivalents or broader language.

Yes No

- ✓ ☐ 8.6.4 Umbrella/Excess Liability Insurance in the amount of \$2,000,000.00 as determined appropriate by the CITY depending on the type of job and exposures contemplated. Coverage must be follow form of the General Liability, Auto Liability and Employer's



Liability. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

- ☐ * 8.6.5 Environmental/Pollution Liability insurance shall be required with a limit of no less than \$_____ per wrongful act. Coverage shall include: CONTRACTOR's completed operations, sudden, accidental and gradual pollution conditions. This coverage shall be maintained for a period of no less than the later of ten (10) years after the delivery of goods/services or final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

8.7 REQUIRED ENDORSEMENTS.

- 8.7.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the Liability Policies required herein.
- 8.7.2 Waiver of all Rights of Subrogation against the CITY.
- 8.7.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY.
- 8.7.4 CONTRACTOR's policies shall be Primary & Non-Contributory.
- 8.7.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.

8.8 Any and all insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.

8.9 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the CONTRACTOR has assumed in Section 7, herein.

9. **Indemnification.** The CONTRACTOR shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature to the extent caused in whole or in part by the negligence, recklessness, or intentional wrongful misconduct of CONTRACTOR or its employees, agents, partners, principals or subcontractors during the performance of this Agreement. The CONTRACTOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where



applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon.

9.1 Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

9.2 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR.

9.3 CONTRACTOR's aggregate liability shall not exceed the proceeds of insurance required to be placed pursuant to this Agreement, plus the compensation received by CONTRACTOR.

10. **Agreement Subject to Funding.** This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Pembroke Pines in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

11. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all actions or claims arising out of or related to this Agreement shall be in Broward County, Florida.

12. **Sovereign Immunity.** Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or §768.28, Florida Statutes, as may be amended from time to time.

13. **Independent Contractor.** This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the CONTRACTOR is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, State, or Federal policies, rules or regulations relating to the use of CONTRACTOR's funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by



CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

14. **Non-Discrimination & Equal Opportunity Employment.** During the performance of the Agreement, neither CONTRACTOR nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that CONTRACTOR will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.
15. **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
16. **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the Parties hereto.
17. **Public Records.** The City of Pembroke Pines is a public agency subject to Chapter 119, Florida Statutes. CONTRACTOR shall comply with Florida's Public Records Law. Specifically, CONTRACTOR shall:
 - 17.1 Keep and maintain public records required by the CITY to perform the service;
 - 17.2 Upon request from the CITY's custodian of public records, provide the CITY 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;
 - 17.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, CONTRACTOR shall destroy all copies of such confidential and



exempt records remaining in its possession after CONTRACTOR transfers the records in its possession to the CITY; and

17.4 Upon completion of the Agreement, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

17.5 The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a default and breach of this Agreement, for which, the CITY may terminate the Agreement in accordance with the terms herein.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
601 CITY CENTER WAY, 4th FLOOR
PEMBROKE PINES, FL 33025
(954) 450-1050
mgraham@ppines.com**

18. **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CITY designates the following as the respective places for giving of notice:

CITY: Charles F. Dodge, City Manager
City of Pembroke Pines
601 City Center Way, 4th Floor
Pembroke Pines, Florida 33025
Telephone No. (954) 450-1040

Copy To: Samuel S. Goren, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone No. (954) 771-4500
Facsimile No. (954) 771-4923

CONTRACTOR: Daniel Weekley, President
Weekley Asphalt Paving, Inc.



20701 Stirling Road,
Pembroke Pines, FL 33332
Telephone No. (954) 680-8005
Facsimile No. (954) 680-8671
E-mail: danweekley@weekleyasp.com

19. **Attorneys' Fees.** In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.
20. **Counterparts and Execution.** This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.
21. **Scrutinized Companies.** CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:
- 21.1 Any amount if, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or
- 21.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:
- 21.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or
- 21.2.2 Is engaged in business operations in Syria.
22. **Employment Eligibility.** CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.
- 22.1 **Definitions for this Section.**



- 22.1.1 “Contractor” means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. “Contractor” includes, but is not limited to, a vendor or consultant.
- 22.1.2 “Subcontractor” includes, but is not limited to, a vendor or consultant.
- 22.1.3 “Subcontractor” means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.
- 22.1.4 “E-Verify system” means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.
- 22.2 **Registration Requirement; Termination.** Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security’s E-Verify System to verify the employment eligibility of:
 - 22.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and
 - 22.2.2 All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Pembroke Pines. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security’s E-Verify System during the term of the contract is a condition of the contract with the City of Pembroke Pines; and
 - 22.2.3 The Contractor shall comply with the provisions of Section 448.095, Florida Statutes., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Agreement under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.



23. **Warranty.** CONTRACTOR warrants the work against defect for a period of one (1) year from the date of completion of work. In the event that defect occurs during this time, CONTRACTOR shall perform such steps as required to remedy the defects. CONTRACTOR shall be responsible for any damages caused by defect to the affected area. The one (1) year warranty period does not begin until substantial completion of the entire project.
24. **Protection of City Property.** At all times during the performance of this Agreement, CONTRACTOR shall protect CITY's property from all damage whatsoever on account of the work being carried on under this Agreement.
25. **Records and Audit.** CITY may, upon prior written notice and at a mutually agreed upon date for a period of up to three (3) years following the date of final performance of services by CONTRACTOR under this Agreement, review those books and records of CONTRACTOR which are related to CONTRACTOR's performance under this Agreement. CONTRACTOR agrees to maintain all such books and records at its relevant branch location for a period of three (3) years after final payment is made under this Agreement, or as otherwise required by applicable law.
26. **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.
27. **Waiver.** Failure of CITY to insist upon strict performance of any provision or condition of this Agreement, or to execute any right therein contained, shall not be construed as a waiver or relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.
28. **Compliance with Laws.** It shall be the CONTRACTOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, City, state, and federal agencies as applicable.
29. **Entire Agreement.** These terms, together with **Exhibit "A", Composite Exhibit "B", and Composite Exhibit "C"** are incorporated herein by reference set forth the entire understanding of the Parties and supersedes all prior agreements, whether written or oral, with request to such subject matter. All references to "Broward County", "County" or "Awarding Authority" in Exhibit "A" shall be construed as a reference to CITY, and all terms and conditions shall be deemed as having been available for use by the City of Pembroke Pines.

Conflict of Terms. In the event of any conflict or ambiguity by and between the terms set forth in **Exhibit "A", Composite Exhibit "B", and Composite Exhibit "C"**, with the terms of this Agreement, this Agreement shall prevail followed by Composite Exhibit "B", Composite Exhibit "C", and Exhibit "A."



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

CITY:

CITY OF PEMBROKE PINES, FLORIDA

ATTEST:

BY: _____

MARLENE D. GRAHAM, CITY CLERK

MAYOR FRANK C. ORTIS

APPROVED AS TO FORM:

BY: _____

CHARLES F. DODGE, CITY MANAGER

Print Name: _____

OFFICE OF THE CITY ATTORNEY

CONTRACTOR:

Weekley Asphalt Paving, Inc.

Signed By: _____

Name: Daniel D. Weekley

Title: President