

**Agreement
Between
Owner and Contractor**

This Agreement is entered into between the City of Deerfield Beach, 150 NE 2nd Avenue, Deerfield Beach, Florida, 33441 as OWNER, and

(CONTRACTOR'S NAME) Weekley Asphalt Paving, Inc.

(CONTRACTOR'S ADDRESS) 20701 Stirling Road, Pembroke Pines, FL 33332

as CONTRACTOR, made as of the 15th day of January 2019

(PROJECT) 2019 Citywide Street Resurfacing, ITB #2018-19/03

1. This Agreement shall consist of the Contract Documents, of which this is a part. The Contract Documents shall consist of this Agreement, the entire Bid packet and all documents contained therein, including, but not limited to, the General Terms and Conditions, the Special Terms and Conditions, the Scope of Work, the Specifications, the Exhibits, the Insurance Requirements and all Response Attachments submitted by the CONTRACTOR (except those provisions of the Bid not accepted by the OWNER) and any addendum issued by the CITY. All said documents and provisions contained therein shall be binding contractual provisions.
2. OWNER shall pay CONTRACTOR \$ 2,874,196.82 (Two Million Eight Hundred Seventy-Four Thousand One Hundred Ninety-Six Dollars and Eighty-Two Cents) for completion of the streets identified in Exhibit A of ITB #2018-19/03 in accordance with the Contract Documents.
Pursuant to Section III.37 of the General Terms and Conditions of the Contract Documents, Owner shall have the right to request additional quantities of street resurfacing. CONTRACTOR agrees to provide such additional quantities at the unit pricing identified in Contractor's bid. In the event OWNER desires additional quantities, OWNER may execute one or more Work Authorizations for such additional quantities, which work authorizations shall be deemed to automatically incorporate the terms and conditions of this Agreement. The total contract price for the completion of the streets identified in Exhibit A of ITB #2018-19/03 and for all Work Authorizations shall not exceed \$5,000,000 (Five Million Dollars).
3. The completion time for all work related to the ITB shall be substantially completed within two hundred and fifteen (215) calendar days and final completion within two hundred and forty (240) calendar days from the receipt of a Purchase Order and Notice to Proceed.
4. CONTRACTOR shall ensure that all subcontractors material men, laborers, or other providers of goods and services are paid in full for services properly rendered. This shall be the full responsibility of the CONTRACTOR and a requirement for payment.

5. Based upon application for payment submitted to the OWNER, by CONTRACTOR, the OWNER shall make progress payments on account of the contract sum as set forth below or elsewhere in the contract documents.
- 5.1 No progress payments shall be made more often than thirty (30) day cycles. The first thirty (30) day cycle shall begin thirty (30) calendar days after Commencement of construction and continue thereafter in thirty (30) day intervals provided that application for payment be made within three (3) days of the commencement of each period. The OWNER shall then have seven (7) days to review the application for payment and either approve or deny the application or authorize a payment of a lesser amount. The OWNER shall, within twenty (20) days, make the payment set forth in the application for payment, less retain age per the contract documents, which shall be retained by the OWNER to assure final completion of the work according to the Contract Documents.
- 5.2 Each application for payment shall be based upon the schedule of values submitted by the Contractor in accordance with the contract documents. The schedule of values shall fairly allocate the contract sum among the various portions of the work and be prepared by the CONTRACTOR, but must be approved in writing by the OWNER. In case the OWNER and CONTRACTOR cannot agree on a schedule of values, the OWNER shall determine the schedule of values to be used.
- 5.3 Applications for payment shall indicate the percentage of completion of each portion of the work as of the end of the period covered by the application for payment. The OWNER may require additional substantiation with regard to said percentage of completion, which shall be immediately provided by the CONTRACTOR.
- 5.4 The OWNER may subtract from the certificate of payment any amounts which the OWNER deems to represent, work not completed in strict compliance with the contract documents.
- 5.5 Ten percent (10%) retainage shall be withheld from each payment. Upon completion of fifty percent (50%) of all work as determined by the OWNER, the percent retainage can be reduced to five percent (5%) as per Florida Statutes. However, OWNER may still withhold amounts representing work, which OWNER deems incomplete or inconsistent with the contract documents or unsatisfactory, or the amount of any unsettled claims or withheld amounts.

5.6 All applications for payment shall contain an affidavit from CONTRACTOR that all subcontractors, laborers, material men, and other providers of services have been paid in full for services to date. The OWNER may also request other assurances from the CONTRACTOR, including, but not limited to full or partial releases or waiver of liens.

6. Payment upon substantial completion shall be made by the OWNER to the CONTRACTOR when substantial completion has been achieved and the CONTRACTOR has executed an affidavit that all subcontractors, material men, laborers, suppliers of goods and services and any other agents or employees engaged by subcontractors have been fully paid and no sums are due and owing to any other parties on account of work performed, and that work is substantially complete in accordance with the contract documents indicating that substantial completion has been achieved. As a prerequisite to payment, the Contractor shall supply the necessary releases and waivers of liens to assure the Owner that all subcontractors, material men, providers of goods and services and all other persons engaged in the project have been paid in full.
7. Final payment shall be made upon execution of a certificate for payment which reaffirms (by affidavit) the fact that all subcontractors, material men, laborers, suppliers of goods and services and any other agents or employees engaged by subcontractors have been fully paid and no sums are due and owing to any other parties on account of work performed and that there are no valid claims of liens by any parties participating in the work in any way and that the work is complete in all respects in accordance with the contract documents. The OWNER shall make final payment upon receipt of a certificate for payment, which concludes that the applications for final payment are correct and that final completion has been achieved. All necessary releases and waivers of liens as specified above must be submitted to the satisfaction of the Owner.
8. The OWNER shall not be liable for any prejudgment interest for any amounts not paid to contractors for amounts in excess of those amounts contained in the application for payment.
9. **AUDIT RIGHT AND RETENTION OF RECORDS:** OWNER shall have the right to audit the books, records, and accounts of CONTRACTOR and its subcontractors that are related to this Project. CONTRACTOR and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CONTRACTOR and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CONTRACTOR or its subcontractor, as applicable, shall make same available at no cost to OWNER in written form.

CONTRACTOR and its subcontractors shall preserve and make available, at reasonable times for examination and audit by OWNER, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is applicable to CONTRACTOR's and its subcontractors' records, CONTRACTOR and its subcontractors shall comply with all requirements thereof; 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 Chapter 119 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.
- e. If Contractor does not comply with this section, the OWNER shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

No confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR or its subcontractors. Any incomplete or incorrect entry in such books, records,

and accounts shall be a basis for OWNER's disallowance and recovery of any payment upon such entry.

CONTRACTOR shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 9.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954-480-4215, WEB.CLERK@DEERFIELD-BEACH.COM, CITY OF DEERFIELD BEACH, CITY CLERK'S OFFICE, 150 NE 2ND AVENUE, DEERFIELD BEACH, FL 33441).

10. In addition, the enumeration of the contract documents contained in Section #1 above, the contract documents shall also include the following documents:

Pricing shall be based on the CONTRACTOR'S response to the Invitation to Bid, 2019 Citywide Street Resurfacing, ITB #2018-19/03.

IN WITNESS WHEREOF the parties have caused these presents to be executed.

Witnesses:

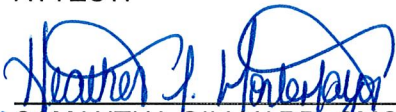


CITY OF DEERFIELD BEACH


By: 
BURGESS HANSON, CITY MANAGER

Date: 2/28/19

ATTEST:


for SAMANTHA GILLYARD, CMC, CITY CLERK

APPROVED AS TO FORM:

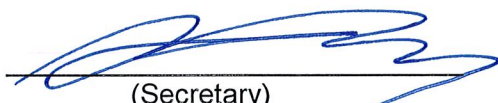

for ANDREW MAURODIS, CITY ATTORNEY

CONTRACTOR MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE INCORPORATED OR NON-INCORPORATED FORMAT, AS APPLICABLE.

[If incorporated sign below.]

CONTRACTOR

ATTEST:



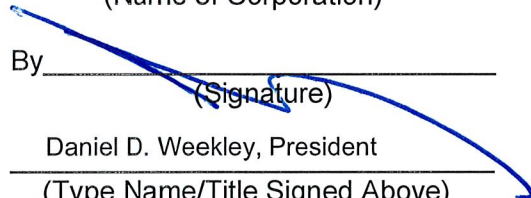
(Secretary)

Wayne D. Weekley

(Corporate Seal)

Weekley Asphalt Paving, Inc.

(Name of Corporation)

By  _____
(Signature)

Daniel D. Weekley, President

(Type Name/Title Signed Above)

6 day of February, 2019.

[If non-incorporated sign below.]

CONTRACTOR

WITNESSES:

(Name)

By _____
(Signature)

(Type Name Signed Above)

____ day of _____, 20____.

CITY REQUIRES TWO (2) FULLY EXECUTED CONTRACTS FOR DISTRIBUTION.