

**SECTION 00500**

**AGREEMENT**

**DIAMONDHEAD ROADWAY IMPROVEMENTS – PHASE 3 REBID**

**for  
THE CITY OF DIAMONDHEAD**

THIS AGREEMENT is dated as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2021, by and between THE CITY OF DIAMONDHEAD, hereinafter called the OWNER, and WARREN PAVING, INC., hereinafter called the CONTRACTOR.

The OWNER and the CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1. WORK**

The CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents for the Diamondhead Roadway Improvements. The Work is generally described as follows:

The Contract Work consists of asphalt overlay on approximately 3.5 miles of roadway, cold plane milling on approximately 0.75 miles of roadway, and roadway base repairs. The project work shall include construction of all roads and furnishing of all equipment required to complete, test, and make ready all roadways for use by the Owner, and establishment of vegetation, as specified in the Contract Documents.

**ARTICLE 2. ENGINEER**

The Project has been designed by Digital Engineering & Imaging Inc., who is hereinafter called the ENGINEER and who will assume all duties and responsibilities and have the rights and authority assigned to the ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**ARTICLE 3. CONTRACT TIME**

- 3.1 The Work will be substantially completed within 45 calendar days from the date when the Contract Time commences to run, as provided in Paragraph 2.03 of the General Conditions.
- 3.2 Liquidated Damages will apply to this Project. The OWNER and the CONTRACTOR recognize that time is of the essence of this Agreement and that the OWNER will suffer financial loss if the Work is not completed within the time specified in Paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the

General Conditions. The OWNER AND CONTRACTOR also recognize the delays, expense, and difficulties involved in proving the actual losses suffered by the OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, the OWNER and the CONTRACTOR agree that, as liquidated damages for delay (but not as a penalty), the CONTRACTOR shall pay to the OWNER the amount of Three Hundred and 00/100 dollars (\$300.00) for each calendar day that expires after the Contract Time specified in Paragraph 3.1 for Substantial Completion, until the Work is substantially complete.

#### **ARTICLE 4. CONTRACT PRICE**

4.1 The OWNER shall pay the CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds at the lump sum or unit prices presented in the approved Bid Form Schedule of Prices. The Total Base Bid Sum presented in the approved Bid Form Schedule of Prices is agreed to be:

Four hundred thirty eight thousand, five hundred seventy eight dollars and twenty cents (\$ 439,578.20).

4.2 The parties expressly agree that the Contract Price is a stipulated sum.

#### **ARTICLE 5. PAYMENT PROCEDURES**

The CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions and Section 01152, "Requests for Payment," under the General Requirements Division. Applications for Payment will be processed by the ENGINEER as provided in same.

5.1 Progress payments shall be made monthly. The OWNER shall make monthly progress payments on the basis of the CONTRACTOR's Applications for Payment, as recommended by the ENGINEER, on or about the thirtieth (30th) day following receipt by the OWNER. Progress payments will be based upon estimated quantities of completed contract unit price items or upon estimated percentages of completion of the schedule of lump sum values of labor and materials incorporated into the Work on the last day of each month, or other mutually agreed regular monthly date ending the progress payment period.

5.2 Retainage will be withheld from progress payments. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as the ENGINEER shall determine, or the OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:

A. 95% of Work completed, with the balance being retainage.

B. 95% (with the balance being retainage) of material and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to the OWNER as provided in paragraph 14.02 of the General Conditions).

- C. On projects in which the Contract Price is Two Hundred Fifty Thousand Dollars (\$250,000.00) or greater, or on any contract with a subcontractor, regardless of amount, five percent (5%) shall be retained until the work is at least fifty percent (50%) complete, on schedule and satisfactory in the ENGINEER's opinion, at which time fifty percent (50%) of the retainage held to date shall be returned for distribution to the appropriate subcontractors and suppliers. After 50% completion, projects of this magnitude shall have a retainage withheld at the rate of two and one-half percent (2½%), provided that the project is on schedule and satisfactory in the ENGINEER's opinion.
- D. Securities in Lieu of Retainage: Mississippi Law provides that in all public contracts the CONTRACTOR may withdraw the whole or any portion of the amount retained from payments due the CONTRACTOR by depositing an acceptable security with the City of Diamondhead Comptroller in an amount equal to the amount of retainage to be withdrawn. Securities may be in the form of:
1. U.S. Treasury Bonds
  2. U.S. Treasury Notes
  3. U.S. Treasury Certificates of Indebtedness
  4. U.S. Treasury Bills
  5. State of Mississippi Bond or Notes
  6. Bonds of any political subdivision of the State of Mississippi
  7. Certificates of deposit issued by commercial banks located in Mississippi and meeting additional criteria
  8. Certificates of deposit issued by savings and loan associations located in the State of Mississippi and meeting additional criteria

The City Comptroller can advise Contractors of procedures for depositing securities. A letter of release from the Contractor's surety and a copy or copies of the City Comptroller's securities receipt covering the deposit of securities must be available before retainage will be released. Substitution of securities may be necessary from time to time because of maturities and increased withdrawal of retainage. Evidence of these transactions must be on file with the City Comptroller in the amount of securities required. The City Comptroller will accept additional securities for a project and accept the substitution for securities already on deposit, but will not release securities without written notification to do so by resolution of the OWNER's governing council.

- 5.3 Retainage will be released on progress payments as prescribed in Section 00700 Paragraph 14.07, General Conditions, and Section 01152 "Requests for Payment," under the General Requirements Division. The balance of retainage, less such amounts as the ENGINEER shall determine, or the OWNER may withhold, for incomplete items in accordance with paragraph 14.02 of the General Conditions, will be released upon any of the following occurrences:
1. Occupancy by the OWNER.
  2. Substantially complete as recommended by the ENGINEER and approved by the OWNER; or
  3. Final Acceptance.

Final Acceptance and Final Payment shall be made upon the final completion of all Work and upon completion of the lists of items (if any) to be completed or corrected which accompanied the Certificate of Substantial Completion. The CONTRACTOR may request a final inspection and may make a final Application for Payment, as provided above, and shall be approved upon issuance of the OWNER's Certificate of Final Acceptance. Final Acceptance of the Work, based upon the Certificate of Final Acceptance, shall be by resolution of the OWNER's governing council.

## **ARTICLE 6. CONTRACTOR'S REPRESENTATIONS**

In order to induce the OWNER to enter into this Agreement, the CONTRACTOR makes the following representations:

- 6.1 that the CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, all local conditions and law and regulations that in any manner may affect the cost, progress, performance, or finishing of the Work; and
- 6.2 that the CONTRACTOR has studied carefully all the reports of explorations, tests of subsurface physical conditions, and drawings of physical conditions which are identified in the Supplementary Conditions, as provided in Paragraph 4.02 of the General Conditions, and accepts the determination set forth in Paragraph SC-4.2.1 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which the CONTRACTOR is entitled to rely; and
- 6.3 that the CONTRACTOR has obtained and carefully studied (or assumed responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to in Paragraph 6.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or which otherwise may affect the cost, progress, performance, or furnishing of the Work as the CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.02 of the General Conditions. In exercising its responsibility with respect to subsurface conditions and physical conditions at the site, the CONTRACTOR has or will obtain or perform at no additional cost to the OWNER such additional examinations, investigations, explorations, tests, reports, studies, or similar information or data as may be required by the CONTRACTOR for such purposes; and
- 6.4 that the CONTRACTOR has given the ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that the CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by the ENGINEER is acceptable to the CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**ARTICLE 7. CONTRACT DOCUMENTS**

In addition to this Agreement, the Contract Documents shall include the Plans, consisting of Sheets 1 through 200, and the Specifications, consisting of Divisions 00 through 16 and Appendices, dated March 2021, and bearing the general title given below:

**CITY OF DIAMONDHEAD  
DIAMONDHEAD ROADWAY IMPROVEMENTS – PHASE 3 REBID**

There are no Contract Documents other than those listed above in this Article 7. The Contract may only be amended, modified or supplemented as provided for in the General Conditions and approved by the City of Diamondhead Council.

**ARTICLE 8. MISCELLANEOUS PROVISIONS**

- 8.1 The terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions, as modified in the Supplementary Conditions.
- 8.2 No assignment by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound, and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and, unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 8.3 The OWNER and the CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 8.4 The CONTRACTOR shall pay promptly, before final payment, any and all claims or liens incurred in and about this Work and shall execute a final receipt form.
- 8.5 This Agreement shall be governed by the laws of the State of Mississippi.

**SECTION 00300**

**BID FORM**

**TO: CITY OF DIAMONDHEAD  
HANCOCK COUNTY, MISSISSIPPI**

Date Submitted: May 5, 2021

The undersigned, as Bidder, hereby declares that he has examined the site of the work and informed himself fully in regard to all conditions pertaining to the place where the work is to be done; that he has examined the Plans and Specifications for the work and the Contract Documents relative thereto; that he has read all the General Conditions and Special Provisions furnished; and, that he has satisfied himself relative to the Work to be performed.

The Bidder proposes and agrees, if this Proposal is accepted, to contract with the above named Owner, in the form of a contract specified, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and labor necessary to complete the construction of the project entitled:

**DIAMONDHEAD ROADWAY IMPROVEMENTS – PHASE 3 REBID  
For  
THE CITY OF DIAMONDHEAD, HANCOCK COUNTY, MISSISSIPPI**

in full and complete accordance with the shown, noted, described, and reasonably intended requirements of the Plans, Specifications, and Contract Documents to the full and entire satisfaction of the Owner, with a definite understanding that no money will be allowed for extra work except as set forth in the attached General Conditions and Contract Documents.

It is agreed that the description under each item, being briefly stated, implies, although it does not mention, all incidentals and that the prices stated are intended to cover all such work, materials, and incidentals as constitute the Bidder's obligations as described in the Specifications and any details not specifically mentioned, but evidently included in the Contract shall be compensated for in the item which most logically includes it.

The bid items listed on the Proposal sheet are generalized only for the purpose of comparing bids. Any differences between these items described and actual quantities and items required for construction shall not be taken as a basis for claims by the Contractor for extra compensation. The compensation will be based upon the lump sum or unit prices and actual construction quantities indicated in the Contract Documents, which include all Plans, Specifications, Bidding Documents and any other enclosed documents.

**BASE BID**

The Work included in the Contract shall consist of improvements to approximately 3.5 miles of roadway in the City of Diamondhead, primarily in neighborhoods located north of I-10 and on the outside edges of the city. Road improvements include the following: Asphalt overlay on approximately 3.5 miles of roadway, cold plane milling on approximately 0.75 miles of roadway, and roadway base repairs. The project work shall include construction of all roads and furnishing of all equipment required to complete, test, and make ready all roadways for use by the Owner, and establishment of vegetation, as specified in the Contract Documents.

IN WITNESS WHEREOF, the OWNER and the CONTRACTOR have signed this Agreement. All portions of the Contract Documents have been signed or identified by the OWNER and the CONTRACTOR or by the ENGINEER on their behalf.

This Agreement will be effective on \_\_\_\_\_, 2021.

OWNER:

CONTRACTOR:

CITY OF DIAMONDHEAD

WARREN PAVING, INC.

By: \_\_\_\_\_  
(print name)

By: Joel Moody  
(print name)

Title: \_\_\_\_\_

Title: VP of Asphalt Operations

Signature: \_\_\_\_\_

Signature: [Handwritten Signature]

Attest: \_\_\_\_\_

Attest: [Handwritten Signature]

[SEAL]

[SEAL]



Owner Address for giving notices:

Contractor Address for giving notices:

CITY OF DIAMONDHEAD  
5000 DIAMONDEAD CIRCLE  
DIAMONDHEAD, MS 39525

PO Box 2545  
Gulfport, MS 39505

Contractor's Mississippi Certificate of Responsibility No.:

02932-SC

If the CONTRACTOR is a corporation, attach evidence of authority to sign, as required in Section 00485.

DIAMONDHEAD ROADWAY IMPROVEMENTS - PHASE 3 REBID  
 BID FORM

Bid Date: May 5, 2021

<i>Schedule of Bid Items - BASE BID</i>					
ITEM NO.	DESCRIPTION	UNIT	EST QTY	UNIT COST	TOTAL COST
1	MOBILIZATION	LS	1	\$15,000.00	\$15,000.00
2	PRE-CONSTRUCTION VIDEO	LS	1	\$500.00	\$500.00
3	CONSTRUCTION LAYOUT	LS	1	\$300.00	\$300.00
4	MAINTENANCE OF TRAFFIC	LS	1	\$15,000.00	\$15,000.00
5	CLEAN-UP, DRESSING & SODDING	LS	1	\$2,000.00	\$2,000.00
6	ASPHALTIC CONCRETE PAVEMENT, 1-1/2" OVERLAY	SY	41,062	\$8.10	\$332,602.20
7	COLD PLANING/DISPOSAL OF ASPHALTIC CONCRETE PAVEMENT	SY	8,982	\$4.50	\$40,419.00
8	FULL DEPTH PATCH	SY	215	\$85.00	\$18,275.00
9	APSHALTIC CONCRETE LEVELING COURSE, 0" - 1 1/2"	SY	677	\$12.00	\$8,124.00
10	PLASTIC PVM'T STRIPING (24" WIDTH) (THERMOPLASTIC 125 MIL)(STOP BAR)	LF	384	\$12.00	\$4,608.00
11	REMOVE UNSUITABLE MATERIAL & REPLACE WITH SELECT GRANULAR BACKFILL (FOR ROADWAY & DRAINAGE STRUCTURES) FM, AH, CONTRACTOR FURNISHED	CY	50	\$55.00	\$2,750.00
<i>TOTAL BASE BID UNIT PRICE SUM</i>				\$	<b>\$439,578.20</b>

TOTAL PROJECT BASE BID UNIT PRICE SUM (in words): \$ Four Hundred and Thirty-Nine Thousand, Five Hundred and Seventy-Eight Dollars and Twenty Cents



## LISTING OF MANUFACTURERS

The bidder intends to furnish materials listed below by the following manufacturers. Bidder shall list one manufacturer only for each item. In case of discrepancies in listing materials or manufacturers, the Owner reserves the right to obtain clarification from the bidder within forty-eight (48) hours after the Bid opening. No substitution of manufacturers will be allowed unless approved by the Owner. Award of a contract under this bid will not imply approval by the District of a manufacturer or vendor listed by the Bidder.

### ITEM OF EQUIPMENT

### MANUFACTURER/VENDOR

1. ST Hot Mix Asphalt

Warren Paving, Inc.

2. \_\_\_\_\_

\_\_\_\_\_

3. \_\_\_\_\_

\_\_\_\_\_

4. \_\_\_\_\_

\_\_\_\_\_

5. \_\_\_\_\_

\_\_\_\_\_

6. \_\_\_\_\_

\_\_\_\_\_

7. \_\_\_\_\_

\_\_\_\_\_

8. \_\_\_\_\_

\_\_\_\_\_

9. \_\_\_\_\_

\_\_\_\_\_

10. \_\_\_\_\_

\_\_\_\_\_

11. \_\_\_\_\_

\_\_\_\_\_

12. \_\_\_\_\_

\_\_\_\_\_



SECTION 00435

CERTIFICATION REGARDING DEBARMENT,
SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

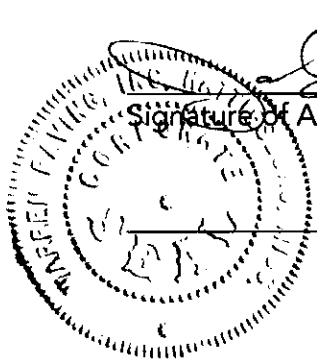
- (a) Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
(b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal or State antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property;
(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under United States Code, Title 18, Sec. 1001, a false statement shall be fined as set under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

Joel Moody VP of Asphalt Operations
Typed Name & Title of Authorized Representative

Signature of Authorized Representative

May 5, 2021
Date



[ ] I am unable to certify to the above statements. My explanation is attached.

SECTION 00450

NON-COLLUSION AFFIDAVIT

CITY OF DIAMONDHEAD

BEFORE ME, the undersigned authority, personally came and appeared,
Joel Moody who after being by me duly sworn and deposed
(Name)
said that he is the fully authorized VP of Asphalt Operations of Warren Paving, Inc.
(Title) (Name of Bidder)
(hereinafter referred to as bidder), the party who submitted a bid for the Diamondhead
Roadway Improvements – Phase 3 was received by the City of Diamondhead on
May 5, 2021 and said affiant further said:

- (1) The bidder employed no person, corporation, firm, association, or other organization,
either directly or indirectly, to secure the public contract under which he received payment,
other than persons regularly employed by the bidder whose services in connection with the
construction of the public building or project or in securing the public contract were in the
regular course of their duties for bidder, and
(2) That no part of the contract price received by bidder was paid or will be paid to any
person, corporation, firm, association, or other organization for soliciting the contract,
other than the payment of their normal compensation to persons regularly employed by
the bidder whose services in connection with the construction of the public building or
project were in the regular course of their duties for bidder.
(3) Said bid is genuine and the bidder has not colluded, conspired, or agreed, directly or
indirectly, with any other bidder to offer a sham or collusive bid.
(4) Said bidder has not in any manner, directly or indirectly, agreed with any other person to
fix the bid price of affiant or any other bidder, or to fix any overhead profit or cost element
of said bid price, or that of any other bidder, or to induce any other person to refrain from
bidding.
(5) Said bid is not intended to secure an unfair advantage of benefit from the City of
Diamondhead or in favor of any person interested in the proposed contract.
(6) All statements contained in said bid are true and correct.
(7) Neither affiant nor any member of his company has divulged information regarding said bid
or any data relative thereto any other person, firm, or corporation.

City of Diamondhead Date

[Signature] 5-5-2021
Contractor Date

Witness Date

[Signature] 5-5-2021
Witness Date

**SECTION 00485**

**AUTHORITY TO EXECUTE CONTRACT**

If the Bidder is a corporation, the Bidder shall attach to this page a copy of the corporate resolution of the Board of Directors of the corporation granting the signer the authority to commit the resources of the corporation, to submit bids and to execute the Agreement contained within this document on behalf of the corporation. The resolution of the Board of Directors shall be affixed with the corporate seal and attested by the Secretary or an Assistant Secretary.

If two or more corporations form a Joint Venture for the bid, then each corporation shall attach its resolution as stated above.

Failure to submit the required authorization will result in the bid being rejected.

These requirements are in accordance with Paragraph 11.2 of Section 00100, Instructions to Bidders.

A sample resolution is given on the next page for information purposes for the convenience of Bidders. (See sample on next page)



ASPHALT CONTRACTORS & MINING

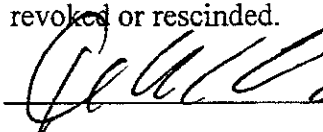
POST OFFICE BOX 572  
HATTIESBURG, MISSISSIPPI 39403  
TELEPHONE (601)544-7811 – FAX (601)544-2005

POST OFFICE BOX 2545  
GULFPORT, MISSISSIPPI 39503  
TELEPHONE (228)896-8003 – FAX (228)896-8155

Corporate Resolution 20200602-02

At the meeting of Directors of Warren Paving, Inc., duly noticed and held on June 2, 2020 at 4:30pm, quorum being there present, on motion duly made and seconded, it was resolved that Joel Moody, be and is hereby appointed, constituted and designated as agent and attorney-in-fact of the corporation with full power and authority to act on behalf of this corporation in all negotiations, bidding, concerns and transactions with the City of Diamondhead or any of its agencies, departments, employees or agents, including but not limited to, the execution of all bids, papers, documents, affidavits, bonds, sureties, contracts and acts and to receive and receipt therefor all orders and notices issued pursuant to the provisions of any such bid or contract, this corporation hereby ratifying, approving, confirming and accepting each and every such act performed by said agent and attorney-in-fact.

I hereby certify the foregoing to be a true and correct copy of an excerpt of the minutes of said corporation, and that the same has not revoked or rescinded.

  
SECRETARY

6-2-20  
DATE

[SEAL]

