

## CONSTRUCTION CONTRACT

**THIS CONSTRUCTION CONTRACT** (hereinafter the “Contract”) made this the \_\_\_\_\_ day of \_\_\_\_\_, 2022 (“Effective Date”) by and between Asphalt Inc., LLC dba Lone Star Paving (a Texas limited liability City), whose address is 11675 Jollyville Rd. Suite 119, Austin, Texas 78759 (hereinafter called the “Contractor”), and the CITY OF DRIPPING SPRINGS (hereinafter called the “City”) acting herein by its Mayor, Bill Foulds, Jr. hereunto duly authorized.

**WITNESSETH**, that the Contractor and the City for the considerations stated herein mutually agree as follows:

### **ARTICLE 1. Statement of Work.**

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services, including utility and transportation services that are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable. Furthermore, Contractor shall perform and complete all work required for the construction of the Improvements embraced in the Project; namely, **2022 Maintenance Project** and required supplemental work, all in strict accordance with the contract documents including all addenda thereto (hereinafter referred to as the “Work”). All Work shall be performed in a good and workmanlike manner according to industry standards. The parties agree that the Statement of Work and the addenda to this Contract is a description of Contractor’s obligations and responsibilities, and is deemed to include preliminary considerations and prerequisites.

### **ARTICLE 2. Contractor’s Duties.**

**2.1. Construction.** Contractor shall construct all Improvements embraced in the **2022 Road Maintenance Project** as described in the bid documents.

**2.2. Labor and Materials.** The Contractor shall furnish all labor, materials, mechanical workmanship, transportation, equipment, and services necessary for the completion of the work described in this Contract and in accordance with the plan (if any) and other contract documents to conduct the construction required under this Contract in an efficient manner.

**2.3. Completion of Work.** Work, in accordance with the Contract dated the \_\_\_\_\_, **2022 Road Maintenance Project**, shall commence after the date the Notice to Proceed is

received by the Contractor following the preconstruction meeting, and Contractor shall complete the Work within **thirty (30) consecutive calendar days** after receiving the Notice to Proceed. The City shall provide Contractor with written acceptance of the Work upon completion. Payment of monies due hereunder does not constitute acceptance of the Work.

**2.4. Invoicing.** Contractor shall prepare an invoice for work completed and submit the invoice to the City for payment. The proposal for the work is set forth in the bid documents. Incomplete or inaccurate invoices shall be returned to Contractor for correction and re-submittal.

**2.5. Insurance.** Contractor shall assume all risk and liability for accidents and damages that may occur to persons or property during the performance of the work under this Contract. Contractor shall not be covered by the City's liability carrier. Contractor shall, at its sole expense, acquire and maintain during the full term of this Contract insurance coverage with insurers licensed to do business in the State of Texas and acceptable to the City. The Contractor shall comply with all insurance requirements contained in *Article 5 of General Conditions and Division C*, including maintaining worker's compensation and liability coverage in stated amounts and providing proof of such coverage. Contractor shall give the City thirty (30) days written notice of any material change or cancellation of coverage.

**2.6. Change Orders.** Change orders from the City or requested by the Contractor shall be controlled by *Articles 10, 11 and 12 of the General Conditions*. The City shall have the continuing right to inspect and, upon reasonable cause, reject any Work provided by Contractor under this Contract. Contractor will at Contractor's cost promptly re-perform any Work to the extent necessary to correct any rejected Work, to correct any breach or to make the Work conform to the provisions of this Contract and any applicable Statement of Work (collectively, "Corrective Work"). The City's failure to inspect or to discover defective Work will not relieve Contractor from any liability or responsibility. Payment of any funds by the City to Contractor will not constitute a waiver or acceptance of any defective Work.

**2.7. Warranty and Maintenance Bond.** The Contractor agrees to remedy all defects appearing in the work or developing in the materials furnished and the workmanship performed under this Contract during the warranty period of **two (2) years** after the date

of final acceptance of the work by the City for the full amount of the work. Contractor further agrees to indemnify and hold the City harmless from any costs encountered in remedying such defects. Contractor shall agree to supply a **two (2) year** maintenance bond to the City at the time of acceptance of the work for the full amount of the work. Furthermore, Contractor shall:

(a) Timely perform the Work with due diligence, in a good, workmanlike and safe manner consistent with that high degree of skill, competence and professional care of generally accepted industry standards and in compliance with City policies and the provisions of this Contract and any applicable Statement of Work. Contractor will perform the Work within the period of time set by the City in each Statement of Work.

(b) Ensure that all employees of Contractor and Contractor Group maintain a current license while performing any Work for which a license is required under any applicable regional, state or federal law or regulatory agency.

(c) Use only materials, goods, tools, machinery and equipment of sufficient quality for their purposes, free from defect and meeting all standards and specifications customary for the Work being performed as well as standards and specifications provided by City, if any.

**2.8. Mandatory Disclosures.** Texas law requires that vendors make certain disclosures. Prior to the effective date of this Contract, the Contractor has submitted to the City a copy of the Conflict-of-Interest Questionnaire form (CIQ Form) approved by the Texas Ethics Commission (Texas Local Government Code Chapter 176) and the Affidavit regarding Prohibition on Contracts with Companies Boycotting Israel (Texas Government Code Chapter 2270). Contractor agrees by approving this Contract that it is in compliance with the Prohibition on Contracts with Companies Boycotting Israel (Texas Government Code Chapter 2270).

### **ARTICLE 3. The Contract Price.**

The City will pay the Contractor for the performance of the Contract, in current funds, subject to additions and deductions as provided in this Contract and Addenda, the sum of **\$159,636.47**. Payments will be made pursuant to this Contract and its Addenda. Contractor shall document and submit to City all time, mileage, travel, equipment, rentals, supplies, materials and other charges incurred for which City has agreed to reimburse Contractor. Contractor shall maintain correct records in connection with the Work and all transactions related to this Contract (including without

limitation, complete and accurate records of all of Contractor's charges and expenses and documentation of items that are chargeable to City under this Contract) and shall retain all records for two years following the calendar year in which the final invoice for the Work was sent to City. City shall have the right, at City's expense, upon reasonable advance notice at the offices of Contractor and during Contractor's normal business hours, to inspect, copy, and audit all records (except Contractor's trade secrets or proprietary information) of Contractor in connection with the Work performed by or on behalf of Contractor for City's account and all payments made to or by Contractor. If the audit reveals a discrepancy between the amount or value of materials or services billed to City and that which is evidenced by Contractor's books and records, City shall have the right to adjust its account with Contractor, which adjustment may necessitate a refund by Contractor of funds disbursed to Contractor.

**ARTICLE 4. The Contract.**

The executed contract documents shall consist of the following components:

- |                                       |                                 |
|---------------------------------------|---------------------------------|
| a. This Contract                      | f. Performance and Payment Bond |
| b. General Conditions                 | g. Certificate of Insurance     |
| c. Plans                              | h. Wage Rates                   |
| d. Specifications                     | i. Addenda                      |
| e. Instructions and Notice to Bidders | j. Contractor's Signed Bid Form |

This Contract, together with other documents enumerated in this ARTICLE 4, which said other documents are as fully a part of this Contract as if hereto attached or herein repeated, forms the Contract between the parties hereto. If there is any inconsistency between the terms of this Contract and other documents listed herein Article 4, the terms of this Contract shall control. The City objects to and rejects any terms contained within Contractor's statements of work, purchase orders, work orders, invoices, bids, proposals, delivery tickets, or other document issued by Contractor that modify, alter, amend, or supplement the terms of this Contract, purport to affect the risk allocation scheme in this Contract, or add additional requirements to this Contract or any Statement of Work. The Parties agree that no changes to the risk allocation scheme set forth in this Contract may be made unless an amendment to this Contract is executed by authorized representatives of both Parties that specifically identifies this Contract and the specific terms or provisions that are amended.

**ARTICLE 5. Termination and Delays**

Terminations and delays are governed by *Articles 10, 12 and 15 of General Conditions.*

**ARTICLE 6. Miscellaneous**

**6.1. Non-Assignability.** Neither the City nor the Contractor shall assign any interest in this Contract without the prior written consent of the other party outside of what is allowed in this Contract or its the bid documents described above.

**6.2. Amendment.** This Contract and the bid documents described above embody the entire Contract between the parties and may not be modified unless in writing, executed by all parties.

**6.3. Independent Contractor.** Contractor is an independent contractor under this Contract. Services provided by Contractor pursuant to this Contract shall be subject to the supervision of the Contractor. In providing such services, neither Contractor nor Contractor’s agents shall act as officers, employees, or agents of the City. No partnership, joint venture, or other join relationship is created hereby. City does not extend to Contractor or Contractor’s agents any authority of any kind to bind City in any respect whatsoever.

**6.4. Notice.** Any notice and/or statement required or permitted by this Contract, shall be deemed to be given and delivered when deposited in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate Party at the following addresses, or such other address as amended by providing notice to the other party at the addresses below:

If to the City:

Michelle Fischer, City Administrator  
City of Dripping Springs  
  
P.O. Box 384  
Dripping Springs, Texas 78620

If to the Contractor:

Alex Flores, Executive Vice President  
Asphalt Inc., L.L.C.  
dba Lone Star Paving Company  
11675 Jollyville Rd. Suite 119  
Austin, TX 78759

**6.5. Force Majeure.** No party to this Contract shall be deemed in violation if it is prevented from timely performing any of its obligations by reason of labor disputes, acts of God, acts

of the public enemy, acts of superior governmental authority, or other circumstances for which the party is not responsible, or which is not in its control.

**6.6. Law & Venue.** This Contract shall be governed by the laws of the State of Texas. The venue for any disputes arising under this Contract shall be the district court of Hays County, Texas.

**6.7. Severability.** If the final judgment of a court of competent jurisdiction invalidates any part of this Contract, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the Parties as evidenced by this Contract.

**6.8. Entire Contract.** This Contract and the bid documents described above in Article 4 herein constitutes the entire Contract of the Parties and supersedes any and all prior understandings, or oral or written Contracts, between the Parties on this subject matter.

**6.09. Termination and Delays.** Terminations and delays are governed by *Articles 10, 12 and 15 of Section D-1 of the General Conditions*.

**6.10. Indemnification.** Contractor hereby releases, and shall cause its insurers, its subcontractors, to release the City and its agents and assigns from any and all claims or causes of action which Contractor, its insurers, and/or its subcontractors might otherwise possess resulting in or from or in any way connected with any loss covered or which should have been covered by insurance maintained and/or required to be maintained by Contractor and/or its subcontractors pursuant to this contract, even if such claims of causes of action arise from or are attributed to the sole or concurrent negligence of any City agent or from strict liability.

**6.11 Liquidated Damages.** Failure on the part of the Contractor to sustain the required maintenance or perform under this Contract may result in liquidated damages. The City may assess **four hundred dollars (\$400) per day** liquidated damages as listed in Section C-7 for incomplete work until all work is completed.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be executed in four (4) original copies on the day and year first above written.

Asphalt Inc., L.L.C. \_\_\_\_\_  
dba Lone Star Paving Company \_\_\_\_\_  
*(The Contractor)*

ATTEST:

By \_\_\_\_\_  
Alex Flores

By \_\_\_\_\_

Title: Executive Vice President

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

**Corporate Certifications**

I, \_\_\_\_\_, certify that I am the Secretary/Treasurer of the corporation named as Contractor herein; that Alex Flores who signed this Contract on behalf of the Contractor, was then Executive Vice President of said corporation; that said Contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Corporate  
Seal

\_\_\_\_\_  
*(Corporate Secretary)*

**CITY OF DRIPPING SPRINGS**

ATTEST:

By \_\_\_\_\_  
Bill Foulds, Jr. - Mayor

By \_\_\_\_\_  
Andrea Cunningham - City Secretary