

CITY OF TEMECULA, DEPARTMENT OF PUBLIC WORKS

CONTRACT

for

CITYWIDE SLURRY SEAL FISCAL YEAR 2022-23

PROJECT NO. PW23-16

THIS CONTRACT, made and entered into the **10th day of October, 2023** by and between the City of Temecula, a municipal corporation, hereinafter referred to as "City", and **American Asphalt South, Inc.**, hereinafter referred to as "Contractor."

WITNESSETH:

That City and Contractor, for the consideration hereinafter named, mutually agree as follows:

1. **CONTRACT DOCUMENTS**

The complete Contract includes all of the Contract Documents, to wit: Notice Inviting Bids, Instructions to Bidders, Proposal, Performance Bond, Labor and Materials Bond, Plans and Specifications entitled **CITYWIDE SLURRY SEAL FISCAL YEAR 2022-23, PROJECT NO. PW23-16**, Insurance Forms, this Contract, and all modifications and amendments thereto, the State of California Standard Plans and Specifications, (latest edition), issued by the California Department of Transportation, where specifically referenced in the Plans, Special Provisions, and Technical Specifications, and the latest version of the Standard Specifications for Public Works Construction, including all supplements as written and promulgated by Public Works Standards, Inc. (hereinafter, "Standard Specifications") as amended by the General Specifications, Special Provisions, and Technical Specifications for **CITYWIDE SLURRY SEAL FISCAL YEAR 2022-23, PROJECT NO. PW23-16**. Copies of these Standard Specifications are available from the publisher:

BNi Building News
Division of BNi Publications, Inc.
990 Park Center Drive, Suite E
Vista, CA 92081
(760) 734-1113

The Standard Specifications will control the general provisions, construction materials, and construction methods for this Contract except as amended by the General Specifications, Special Provisions, and Technical Specifications for **CITYWIDE SLURRY SEAL FISCAL YEAR 2022-23, PROJECT NO. PW23-16**.

In case of conflict between the Standard Specifications and the other Contract Documents, the other Contract Documents shall take precedence over, and be used in lieu of, such conflicting portions.

Where the Contract Documents describe portions of the work in general terms, but not in complete detail, it is understood that the item is to be furnished and installed completed and in place and that only the best general practice is to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment, and incidentals, and do all the work involved in executing the Contract.

The Contract Documents are complementary, and what is called for by anyone shall be as binding as if called for by all. Any conflict between this Contract and any other Contract Document shall be resolved in favor of this Contract.

2. SCOPE OF WORK

Contractor shall perform everything required to be performed, shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services required for the following: **CITYWIDE SLURRY SEAL FISCAL YEAR 2022-23, PROJECT NO. PW23-16**

All of said work to be performed and materials to be furnished shall be in strict accordance with the Drawings and Specifications and the provisions of the Contract Documents hereinabove enumerated and adopted by City.

3. CITY APPROVAL

All labor, materials, tools, equipment, and services shall be furnished and work performed and completed under the direction and supervision, and subject to the approval of City or its authorized representatives.

4. CONTRACT AMOUNT AND SCHEDULE

The City agrees to pay, and Contractor agrees to accept, in full payment for, the work agreed to be done, the sum of: **TWO MILLION TWO HUNDRED AND THIRTY-SIX THOUSAND SEVEN HUNDRED FORTY-SEVEN DOLLARS AND ELEVEN CENTS (\$2,236,747.11)**, the total amount of the base bid.

Contractor agrees to complete the work in a period not to exceed **75 working days**, commencing with delivery of a Notice to Proceed by City. Construction shall not commence until bonds and insurance are approved by City.

5. CHANGE ORDERS

All change orders shall be approved by the City Council, except that the City Manager is hereby authorized by the City Council to make, by written order, changes or additions to the work in an amount not to exceed the contingency as established by the City Council.

6. PAYMENTS

a. Lump Sum Bid Schedule: Before submittal of the first payment request, the Contractor shall submit to the Director of Public Works a schedule of values allocated to the various portions of the work, prepared in such form and supported by such data to substantiate its accuracy as the Director of Public Works may require. This schedule, as approved by the Director of Public Works, shall be used as the basis for reviewing the Contractor's payment requests.

b. Unit Price Bid Schedule: Pursuant to Section 20104.50 of the Public Contract Code, within 30 days after submission of a payment request to the City, the Contractor shall be paid a sum equal to **95% of the value of the work*** completed according to the bid schedule. Payment request forms shall be submitted on or about the 30th day of each successive month as the work progresses. The final payment, if unencumbered, or any part thereof unencumbered, shall be made 60 days after acceptance of final payment and the Contractor filing a one-year

Warranty and an Affidavit of Final Release with the City on forms provided by the City.

- c. Payment for Work Performed: Payments shall be made on demands drawn in the manner required by law, accompanied by a certificate signed by the City Manager, stating that the work for which payment is demanded has been performed in accordance with the terms of the Contract, and that the amount stated in the certificate is due under the terms of the Contract. Partial payments on the Contract price shall not be considered as an acceptance of any part of the work.
- d. Payment of Interest: Interest shall be paid on all undisputed payment requests not paid within 30 days pursuant to Public Contract Code Section 20104.50. Public Contract Code Section 7107 is hereby incorporated by reference.

7. LIQUIDATED DAMAGES / EXTENSION OF TIME

- a. Liquidated Damages: In accordance with Government Code Section 53069.85, Contractor agrees to forfeit and pay to City the sum of \$1,000 per day for each calendar day completion is delayed beyond the time allowed pursuant to Paragraph 4 of this Contract. Such sum shall be deducted from any payments due to or to become due to Contractor.
- b. Extension of Time: Contractor will be granted an extension of time and will not be assessed liquidated damages for unforeseeable delays beyond the control of, and without the fault or negligence of the Contractor, including delays caused by City. Within ten calendar days of the occurrence of such delay, Contractor shall give written notice to City. Within 30 calendar days of the occurrence of the delay, Contractor shall provide written documentation sufficient to support its delay claim to City. Contractor's failure to provide such notice and documentation shall constitute Contractor's waiver, discharge, and release of such delay claims against City.

8. WAIVER OF CLAIMS

On or before making each request for payment under Paragraph 6 above, Contractor shall submit to City, in writing, all claims for compensation as to work related to the payment. Unless the Contractor has disputed the amount of the payment, the acceptance by Contractor of each payment shall constitute a release of all claims against the City related to the payment. Contractor shall be required to execute an affidavit, release, and indemnity agreement with each claim for payment.

9. PREVAILING WAGES

Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. Copies may be obtained from the California Department of Industrial Relations Internet website at <http://www.dir.ca.gov>. Contractor shall provide a copy of prevailing wage rates to any staff or subcontractor hired, and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1720, 1720.9, 1725.5, 1771.1(a), 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to the City, as a penalty, the sum of \$200.00 for each calendar day, or portion

thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Contract, by him or by any subcontractor under him, in violation of the provisions of the Contract. This project, work, or service will be subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR) pursuant to Labor Code Section 1771.4.

10. TIME OF THE ESSENCE

Time is of the essence in this contract.

11. INDEMNIFICATION

All work covered by this Contract done at the site of construction or in preparing or delivering materials to the site shall be at the risk of Contractor alone. Contractor agrees to save, indemnify, hold harmless and defend the City of Temecula, Temecula Community Services District, and/or Successor Agency to the Temecula Redevelopment Agency, its officers, employees, and agents, against any and all liability, injuries, or death of persons (Contractor's employees included), and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor, save and except claims or litigations arising through the sole active negligence or sole willful misconduct of the City.

The Contractor shall indemnify and be responsible for reimbursing the City for any and all costs incurred by the City as a result of Stop Notices filed against the project. The City shall deduct such costs from progress payments or final payments due to the Contractor.

12. GRATUITIES

Contractor warrants that neither it nor any of its employees, agents, or representatives has offered or given any gratuities or promises to City's employees, agents, or representatives with a view toward securing this Contract or securing favorable treatment with respect thereto.

13. CONFLICT OF INTEREST

Contractor warrants that none of its partners, members or shareholders are related by blood or marriage to any employee of the City who has participated in the development of the specifications or approval of this project or who will administer this project nor are they in any way financially associated with any City officer or employee, or any architect, engineer, or other preparers of the Drawings and Specifications for this project. Contractor further warrants that no person in its employ nor any person with an ownership interest in the Contractor has been employed by the City within one year of the date of the Notice Inviting Bids.

14. CONTRACTOR'S AFFIDAVIT

After the completion of the work contemplated by this Contract, Contractor shall file with the City Manager, its affidavit stating that all workmen and persons employed, all firms supplying materials, and all subcontractors upon the Project have been paid in full, and that there are no claims outstanding against the Project for either labor or materials, except certain items, if any, to be set forth in an affidavit covering disputed claims or items in connection with a Stop Notice which has been filed under the provisions of the laws of the State of California.

15. NOTICE TO CITY OF LABOR DISPUTES

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Contract, Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to City.

16. BOOKS AND RECORDS

Contractor's books, records, and plans or such part thereof as may be engaged in the performance of this Contract, shall at all reasonable times be subject to inspection and audit by any authorized representative of the City.

17. INSPECTION

The work shall be subject to inspection and testing by City and its authorized representatives during manufacture and construction and all other times and places, including without limitation, the plants of Contractor and any of its suppliers. Contractor shall provide all reasonable facilities and assistance for the safety and convenience of inspectors. All inspections and tests shall be performed in such manner as to not unduly delay the work. The work shall be subject to final inspection and acceptance notwithstanding any payments or other prior inspections. Such final inspection shall be made within a reasonable time after completion of the work.

18. DISCRIMINATION

Contractor represents that it has not, and agrees that it will not, discriminate in its employment practices on the basis of race, creed, religion, national origin, color, sex, age, or handicap.

19. GOVERNING LAW

The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Contract and also govern the interpretation of this Contract.

20. PROHIBITED INTEREST

No member, officer, or employee of the City of Temecula or of a local public body who has participated in the development of the specifications or approval of this project or will administer this project shall have any interest, direct or indirect, in the Contract or the proceeds thereof during his/her tenure or for one year thereafter.

Furthermore, the Contractor covenants and agrees to their knowledge that no board member, officer or employee of the City of Temecula has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the contracting party other than the City of Temecula, and that if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made, in writing, to the other party or parties, even if such interest would not be considered a conflict of interest under Article 4 (commencing with Section 1090) or Article 4.6 (commencing with Section 1220) of Division 4 of Title I of the Government Code of the State of California.

21. ADA REQUIREMENTS

By signing this Contract, Contractor certifies that the Contractor is in total compliance with the Americans with Disabilities Act of 1990, Public Law 101-336, as amended.

22. WRITTEN NOTICE

Any written notice required to be given in any part of the Contract Documents shall be performed by depositing the same in the U.S. Mail, postage prepaid, directed to the address of the Contractor as set forth in the Contract Documents, and to the City addressed as follows:

Mailing and Delivery Address: Patrick A. Thomas, PE
Director of Public Works / City Engineer
City of Temecula
41000 Main Street
Temecula, CA 92590

23. INSURANCE.

The Contractor shall procure and maintain, for the duration of the Contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Contractor, its agents, representatives, employees or subcontractors.

Minimum Scope of Insurance: Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability Form No. CG 00 01 11 85 or 88.
2. Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Contractor owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.
3. Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Contractor has no employees while performing under this Contract, worker's compensation insurance is not required, but Contractor shall execute a declaration that it has no employees.

Minimum Limits of Insurance: The Contractor shall maintain limits no less than:

1. General Liability: Two Million Dollars \$2,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: One Million Dollars \$1,000,000 per accident for bodily injury and property damage.
3. Worker's Compensation as required by the State of California; Employer's Liability: One Million Dollars \$1,000,000 per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions: Any deductibles or self-insurance retentions shall not exceed Twenty-Five Thousand Dollars \$25,000.

Other Insurance Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Temecula, Temecula Community Services District, Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, and volunteers are to be covered as insureds as respects to liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Temecula, Temecula Community Services District, Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, agents or volunteers.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City of Temecula, Temecula Community Services District, Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City of Temecula, Temecula Community Services District, Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Temecula, Temecula Community Services District, Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, agents and volunteers.
4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this Contract shall be endorsed to state in substantial conformance to the following: If the policy will be cancelled before the expiration date the insurer will notify in writing to the City of such cancellation not less than 30 days prior to the cancellation effective date.
6. If insurance coverage is cancelled or reduced in coverage or in limits, the Contractor shall within two business days of notice from the insurer, phone, fax, and/or notify the City via certified mail, return receipt requested of the changes to or cancellation of the policy.

Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-, VII or better, unless otherwise acceptable to the City. Self-insurance shall not be considered to comply with these insurance requirements.

Verification of Coverage: Contractor shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Contractor's

insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Subcontractors: Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

24. RECOVERED MATERIALS AND SOLID WASTE DISPOSAL ACT

Contractor agrees to comply with all requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

25. TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Contractor shall not procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities. Covered equipment also includes video surveillance and telecommunications equipment or services provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, any subsidiary or affiliate of such entities, and any entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

26. COMPLIANCE WITH LAWS

The Contractor shall comply with all applicable federal, State and local laws, ordinances, codes and regulations in force at the time the Contractor performs pursuant to the Contract Documents, and shall comply with all grant or funding terms and conditions applicable to the Contract and/or the work.

27. CLAIM DISPUTE RESOLUTION

In the event of any dispute or controversy with the City over any matter whatsoever, the Contractor shall not cause any delay or cessation in or of work, but shall proceed with the performance of the work in dispute. The Contractor shall retain any and all rights provided that pertain to the resolution of disputes and protests between the parties. The disputed work will be categorized as an "unresolved dispute" and payment, if any, shall be as later determined by mutual agreement or a court of law. The Contractor shall keep accurate, detailed records of all disputed work, claims and other disputed matters.

All claims arising out of or related to the Contract or this project, and the consideration and payment of such claims, are subject to the Government Claims Act (Government Code Section 810 et seq.) with regard to filing claims. All such claims are also subject to Public Contract Code Section 9204 and Public Contract Code Section 20104 et seq. (Article 1.5), where applicable. This Contract hereby incorporates those provisions as though fully set forth herein. Thus, the Contractor or any Subcontractor must present a claim in accordance with the Government Claims Act as a prerequisite to prosecuting any claim

against the City. The filing or prosecution of a claim in compliance with Section 9204 and/or Article 1.5 (if applicable) does not in any way obviate the need to timely present a claim under the Government Claims Act, or in any toll the expiration of any limitations period for the timely presentation of a claim under the Government Claims Act.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed on the date first above written.

DATED: 9-20-23

CONTRACTOR:
American Asphalt South, Inc.
2990 Myers Street
Riverside, CA 92503
(909)427-8276
JeffP@AmericanAsphaltSouth.com

By: 

Jeff Petty
Print or type NAME

President
Print or type TITLE*

By: 

Tim Griffin
Print or type NAME

Vice President
Print or type TITLE*

(*Signatures of two corporate officers required for Corporations)

CITY OF TEMECULA

DATED: _____

By: _____
Zak Schwank, Mayor

ATTEST:

Randi Johl, City Clerk

APPROVED AS TO FORM:

Peter M. Thorson, City Attorney