

**RESOLUTION NO. 2012-87**

**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO AN EXISTING AGREEMENT WITH H&J ASPHALT, INC., FOR ROADWAY RESURFACING AND STRIPING OF PUBLIC ROADWAYS WITHIN THE VILLAGE OF PALMETTO BAY; FURTHER AUTHORIZING THE VILLAGE MANAGER TO ISSUE A PURCHASE ORDER IN AN AMOUNT NOT TO EXCEED \$287,650.00 TO CONTINUE RESURFACING AND STRIPING VILLAGE ROADWAYS IN FY 2012-13; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Department of Public Works is responsible for the inventory, inspection and resurfacing of Village roadways; and

**WHEREAS**, funding is budgeted on an annual basis for the Department of Public Works to continue to improve roadways conditions through ongoing resurfacing projects; and

**WHEREAS**, resident input and visual inspections by Public Works staff are also identified and prioritized for resurfacing and/or pavement markings; and

**WHEREAS**, the approved contractor is responsible for resurfacing, striping placement and deletion of old pavement markings; and

**WHEREAS**, a competitive bid process was followed for construction services for street resurfacing with the issuance of Invitation to Bid No. 2011-PW-103; and

**WHEREAS**, as per Resolution No. 2011-23, adopted April 4<sup>th</sup>, 2011, the Village of Palmetto Bay Council approved the selection of H&J Asphalt, Inc. to provide street resurfacing construction services for a period of three (3) years with the option the renew one (1) additional twelve (12) month period; and

**WHEREAS**, the Village expended \$206,692.65 to resurface 12,000 linear feet of roadway in FY2010-2011 and \$240,176.02 to resurface 16,030 linear feet of roadway in FY2011-2012 including lifting numerous manholes, striping, and the installation of reflective pavement markings; and

**WHEREAS**, the Department of Public Works recommends that it is in the best interest of the Village to continue the contract with H&J Asphalt, Inc., which submitted the lowest, most inclusive and responsive bid to provide the requested street resurfacing in accordance with Invitation to Bid No. 2011-PW-103; and

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**

**Section 1.** The Village Manager is authorized to continue the agreement with H&J Asphalt, Inc. for Street Resurfacing in the Village of Palmetto Bay in an amount not to exceed \$287,650.

**Section 2.** This Resolution shall become effective immediately.

PASSED AND ADOPTED this 5<sup>th</sup> day of November, 2012.

Attest:   
Meighan J. Alexander  
Village Clerk

  
Shelley Stanczyk  
Mayor

APPROVED AS TO FORM:

  
Eve A. Boutsis,  
FIGUEREDO & BOUTSIS, P.A., as Office  
of the Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore	<u>YES</u>
Council Member Howard Tendrich	<u>YES</u>
Council Member Joan Lindsay	<u>YES</u>
Vice-Mayor Brian W. Pariser	<u>YES</u>
Mayor Shelley Stanczyk	<u>YES</u>



September 28, 2012

Jorge Lorenzo  
H&J Asphalt, Inc.  
4310 NW 35 Avenue  
Miami, FL 33142

Re: Contract with H&J Asphalt, Inc. for Villagewide Street Resurfacing

Dear Mr. Lorenzo,

On April 4<sup>th</sup>, 2011, Village of Palmetto Bay Council approved Resolution No. 2011-23, relating to Villagewide Street Resurfacing for the Village of Palmetto Bay.

Pursuant to Section 2.2. Term of Contract, the term of the agreement shall be for (3) years, with an option to allow for the Village, at its sole discretion, to extend this agreement for an additional one year (12 months). At this time, the Village is notifying H & J Asphalt, Inc. of its obligation to provide services in accordance with the terms and conditions detailed in Contract No. 2011-PW-103 throughout the third year of the attached three year contract. If accepted by both parties, the continuance term of this subject contract is for Fiscal Year beginning October 1, 2012 through September 30, 2013.

Please indicate your company's concurrence of this contract continuance option below and return to our office in the enclosed self-addressed envelope. Should you need further information, please feel free to contact 305-969-5011.

H&J Asphalt, Inc.

\_\_\_\_\_  
Approved  
Jorge Lorenzo  
President

\_\_\_\_\_  
Disapproved  
Jorge Lorenzo  
President

Village of Palmetto Bay

\_\_\_\_\_  
Approved  
Ron E. Williams  
Village of Palmetto Bay Manager

\_\_\_\_\_  
Disapproved  
Ron E. Williams  
Village of Palmetto Bay Manager

Approved by Legal Sufficiency \_\_\_\_\_  
Eve Boutsis, Village of Palmetto Bay Attorney

9705 East Hibiscus Street, Palmetto Bay, Florida 33157  
Tel: 305.259.1234 • Fax: 305.259.1290

NOTICE TO PROCEED

TO: H & J Asphalt, Inc.

Contractor

4310 Northwest 35 Avenue

Street Address

Miami, FL 33142

ATTN: Jorge Lorenzo, President

Name and Title

PROJECT: Villagewide Street Resurfacing

Gentlemen:

One executed copy of your Contract for the above Project has been forwarded to you through the Engineer. The Commencement date is July 12, 2011. Completion date shall be October 10, 2011.

Your attention is invited to the provision whereby you shall start to perform your obligations under the Contract Documents on the Commencement date. Said date shall begin the Contract Time.

The Village of Palmetto Bay Public Works Director and/or his/her designee will be responsible for this project.

Sincerely yours,



Corrice E. Patterson, Public Works Director

**AGREEMENT ("CONTRACT")**

**BETWEEN OWNER AND CONTRACTOR**

THIS CONTRACTOR is dated as of the 22 day of June, in the year 20 11, (which shall be the Effective Date of the Contract) by and between the Village of Palmetto Bay, (hereinafter sometimes called the "OWNER" or VILLAGE"), and H&J Asphalt Inc. (hereinafter sometimes called the "CONTRACTOR").

**Article 1. WORK.** CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Street Resurfacing for the Village (Contract No.2011-PW-103) includes, but may not be limited to, the furnishing of all labor, materials, tools, equipment, machinery and incidentals required to provide street resurfacing in the Village of Palmetto Bay.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**VILLAGEWIDE STREET RESURFACING**

**Article 2. CONTRACT TIME.**

- 2.1 The Work will be completed within 90 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.21 of the General Conditions. Substantial completion within 60 calendar days and Final completion within 90 calendar days from notice to proceed.
- 2.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Contract and that OWNER will suffer financial loss and other damages if the Work is not substantially or finally complete within the time specified in paragraph 3.1 above. They also recognize the expense and difficulties involved in proving in a legal or arbitration preceding the actual loss suffered by OWNER if the Work is not substantially or finally complete on time. CONTRACTOR acknowledges and agrees that the actual delay damages which OWNER will suffer in the event of delay in achieving Substantial Completion or Final Completion of the Work are difficult, if not impossible, to determine and that the liquidated damages described herein are a fair and reasonable estimate of the delay damages which the OWNER is expected to suffer in the event of such delay. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree, that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER One Thousand Two Hundred and 00/100 dollars (\$1,200.00) for each day that expires after the time specified in Paragraph 3.1 for Final Completion. Liquidated damages shall be deducted from the CONTRACTOR's Final Application for Payment. However, if at the time of the CONTRACTOR's Final Application for Payment, CONTRACTOR is owed insufficient amounts to fully cover the deduction for liquidated damages, then CONTRACTOR shall pay any amount due within 10 days of written demand by OWNER.

**Article 3. CONTRACT PRICE.**

- 3.1 The contractor warrants by virtue of bidding that prices quoted shall remain fixed and firm during the term of this contract.
- 3.2 The estimated expenditures for this contract are two hundred and fifty thousand dollars (\$250,000). This is an estimated amount; however, the Village may increase or reduce the amount of this contract based on availability of budgeted funds. The total estimated expenditures include the budget for the Public Works Department road paving and repair.

Contract Price: \$250,000.00

Contract Price (in words):  
Two Hundred and Fifty Thousand

---

**Article 4. PAYMENT PROCEDURES.**

CONTRACTOR shall submit Applications for Payment in accordance with Section 2.8 of the Special Conditions. Applications for Payment will be processed by Village of Palmetto Bay as provided in the Special Conditions.

4.1. Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by Village of Palmetto Bay, on or before the 28th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values provided in paragraph 2.8 of the Special Conditions and the requirements of the Contract Documents.

4.1.1 Prior to Substantial Completion, progress payments will be in an amount equal to: 90% of the Work completed and 90% of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

4.2. Final Payment. Upon Final Completion and acceptance of the Work, OWNER shall pay the remainder of the Contract Price as following written final acceptance of work as provided in said paragraph 2.8 of the Special Conditions.

**Article 5. INTEREST. Not Applicable**

**Article 6. CONTRACTOR'S REPRESENTATIONS.**

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

- 6.1. CONTRACTOR has thoroughly and to its full satisfaction familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work. CONTRACTOR has: (a) examined the Contract Documents, Project Specifications and Drawings thoroughly to its full satisfaction and has undertaken the responsibility to determine, within the scope of CONTRACTOR's competence as a licensed General Contractor, that the Project Specifications and Drawings are fit and proper for the performance of the Work and to the best of CONTRACTOR's knowledge are: (i) free from material errors, omissions, and/or inconsistencies; and (ii) are in compliance with applicable laws, statutes, building codes, ordinances, rules and regulations, recognizing however, that CONTRACTOR is not responsible for the design of the Project; (b) visited the site to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work; (c) examined the Project Site to its full satisfaction, including any existing work or improvements in place, and has determined that the same are fit and proper to receive the Work in their present condition and CONTRACTOR waives all claims that same are not in accordance with all data and information with respect to the Project as specified in the Drawings and Project Specifications and/or as provided by OWNER and Engineer; (d) familiarized himself with federal, state and local laws, ordinances, rules, policies, and regulations that may in any manner affect cost, progress or performance of the Work; (e) studied and carefully correlated CONTRACTOR's observations with the Contract Documents; and (f) at CONTRACTOR's own expense, made or obtained any additional examinations, investigations, explorations, tests and studies, and obtained any additional information and data which pertain to the physical conditions (surface, sub-surface and underground facilities) at or contiguous to the Project or otherwise which may affect cost, progress, performance or furnishing of the Work and which CONTRACTOR deems necessary to determine its Contract Price for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.
- 6.2 The Contractor acknowledges that he has investigated prior to bidding and satisfied himself as to the conditions affecting the work, including but not limited to those bearing upon transportation, disposal, handling and storage of material, availability of labor, water, electric, power, roads and uncertainties of weather, river stages, tides, water tables or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Village on the site or any contiguous site, as well as from information presented by Drawings and Specifications made part of this Contract, or any other information made available to them prior to receipt of bids. Any failure by the Contractor to acquaint themselves with the available information will not relieve them from responsibility for estimating properly the difficulty or cost of successfully performing work. The Village assumes no responsibility for any conclusions or interpretations made by the Contractor

on the basis of the information made available by the Village.

#### Article 7. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire Contract between OWNER and CONTRACTOR are attached to this Contract, made a part hereof and consist of the following:

- 7.1. This Contract
- 7.2. Exhibits to this Contract
- 7.3. Bid Forms and Bid Bonds (Performance and Payment)
- 7.4. Notice of Intent to Award
- 7.5. Notice to Proceed
- 7.6. General Conditions
- 7.7. Special Conditions
- 7.8. Scope of Work
- 7.9. Specifications and Special Provisions
- 7.10. Addenda (s)
- 7.11. CONTRACTOR'S BID
- 7.12. Documentation submitted by CONTRACTOR prior to Notice of Intent to Award
- 7.13. Any Modifications, including Change Orders, duly delivered after execution

of the Contract.

- 7.14. Advertisement for Bid.

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

#### Article 8. MISCELLANEOUS

- 8.1. Terms used in this Contract which are defined in Article 1 shall have the meanings indicated in the General Conditions.
- 8.2. No assignment by a party hereto of any rights under or interests 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. OWNER and 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. This Contract may be executed in counterparts.
- 8.5. Should there be any action brought to enforce the terms of this Contract, the prevailing party shall be entitled to recovery of attorney's fees (including paralegal fees) incurred through mediation, arbitration, or the appellate processes.
- 8.6. The OWNER shall retain the ownership of all shop drawings and design drawings

once payment therefore is made.

8.7 OWNER and CONTRACTOR hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action or proceeding based upon the Contract Documents or arising out of, under, or in connection with the Work or the Project.

IN WITNESS WHEREOF, the parties hereto have signed 3 copies of this Contract. At least one counterpart each has been delivered to OWNER, CONTRACTOR, and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on OWNER'S behalf.

OWNER

CONTRACTOR

Village of Palmetto Bay

H&J Asphalt, Inc.

ADDRESS

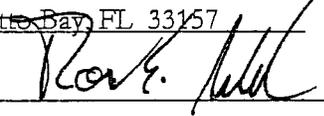
ADDRESS

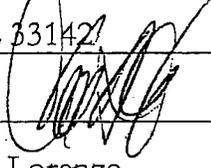
9705 E. Hibiscus Street

4310 NW 35 Avenue

Palmetto Bay, FL 33157

Miami, FL 33142

BY 

BY 

Ron E. Williams

Jorge Lorenzo

Print Name

Print Name

Village Manager

Vice President

Title

Title

WITNESS 

WITNESS 

Corvace E. Patterson

Karen Vasquez

Print Name

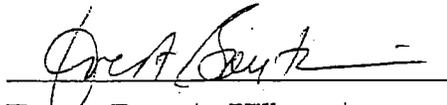
Print Name

(CORPORATE SEAL)

(CORPORATE SEAL)

END OF SECTION

  
Meighan J. Alexander, Village Clerk

  
Eve A. Boutsis, Village Attorney

END OF SECTION