

CONTRACT

THIS AGREEMENT, made and entered into this 9th day of June, 2011, by and between ASPHALT PAVING & SUPPLY, INC., hereinafter designated the CONTRACTOR, and the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona hereinafter designated the OWNER.

WITNESSETH: That the said Contractor, for and in consideration of the sum to be paid him by the said Owner, in the manner and at the time hereinafter provided, and of the other covenants and agreements herein contained, and under the penalties expressed in the bonds provided, hereby agrees, for himself, his heirs, executors, administrators, successors, and assigned as follows:

ARTICLE I – SCOPE OF WORK: The Contractor shall furnish any and all labor, materials (other than those listed as supplied by the Owner), equipment, transportation, utilities, services and facilities required to perform all work for the construction related to the **ANNUAL STREET AND PARK CONCRETE CONTRACT**, to completely and totally construct the same and install the material therein for the Owner, in a good and workmanlike and substantial manner and to the satisfaction of the Owner through its Engineers and under the direction and supervision of the Engineer, or his properly authorized agents, and strictly pursuant to and in conformity with the Plans and Specifications prepared by the Engineers for the Owner, and with such modifications of the same and other documents that may be made by the Owner through the Engineer or his properly authorized agents, as provided herein.

ARTICLE II – CONTRACT DOCUMENTS: The Call for Bids, Plans, Specifications, Special Provisions, Addenda (if any), Bid Proposal and Schedule (as accepted by the Owner), this Contract, and any Performance Bonds, Payment Bonds, Certificates of Insurance, and Change Orders are by this reference the Contract Documents and are made a part of the Contract to the same extent as if set forth herein in full.

ARTICLE III – TIME OF COMPLETION: The Contractor covenants and agrees at her/his/its own proper cost and expense, to do all work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by the Contracts, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the Bid Proposal.

ARTICLE IV – PAYMENTS TO CONTRACTOR: For and in consideration of the faithful performance of the work herein embraced as set forth in the Contract Documents, and in accordance with the directions of the Owner, through its Engineer and to its satisfaction, the Owner agrees to pay the Contractor the amount earned, computed from actual quantities of work performed and accepted or materials furnished at the unit bid price in the Bid Proposal and to make such payment in accordance with applicable Arizona Revised Statutes, after final inspection and acceptance of the work.

The Owner by mutual agreement may make progress payments on contracts of less than ninety days and shall make monthly progress payments on all other contracts as provided for in this paragraph. Payment to the Contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under such Contract may include payment for material and equipment, but to ensure the proper performance of such Contract, the Owner shall retain ten per cent (10%) of the amount of each estimate until final completion and acceptance of all material, equipment and work covered by the Contract. An estimate of the work submitted shall be deemed approved and certified for payment after seven (7) days from the date of submission unless before that time the Owner or Owner's agent prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the Contract. The Owner may withhold any amount from the progress payment sufficient to pay the expenses the Owner reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen (14) days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received by the Owner on submission to any person designated by the Owner for the submission, review or approval of the estimate of the work.

When the Contract is fifty per cent (50%) completed, one-half (1/2) of the amount retained, including any securities substituted as set forth below, shall be paid to the Contractor upon the Contractor's request, provided the Contractor is making satisfactory progress on the Contract and there is no specific cause or claim requiring a greater amount to be retained. After the Contract is fifty per cent (50%) completed, no more than five percent (5%) of the amount of any subsequent progress payments made under the Contract may be retained, providing the Contractor is making satisfactory progress on the project, except that if at any time the Owner determines satisfactory progress is not being made, ten per cent (10%) retention shall be reinstated for all progress payments made under the Contract subsequent to the determination.

Upon completion and acceptance of each separate building, public work or other division of the Contract on which the price is stated separately in the Contract, except as qualified below, payment may be made in full, including retained percentages thereon, less authorized deductions. In preparing estimates, the material and equipment delivered on the site to be incorporated in the job shall be taken into consideration in determining the estimated value by the Architect or Engineer.

Ten percent (10%) of all estimates shall be retained by the Owner as a guarantee for complete performance of the Contract, to be paid to the Contractor within sixty (60) days after completion or filing notice of completion of the Contract. Retention of payments by the Owner longer than sixty (60) days after final completion and acceptance requires a specific written finding by the Owner of the reasons justifying the delay in payment. The Owner may not retain any moneys after sixty (60) days which are in excess of the amount necessary to pay the expenses the purchasing agency reasonably expects to incur in order to pay or discharge the expenses determined by the Owner in the finding justifying the retention of moneys. In lieu of the retention provided in this section, the Owner shall, at the option of the Contractor, accept as a substitute an assignment of time certificates of deposit of banks licensed by this State, securities of or guaranteed by the United States of America, securities of this State, securities of counties, municipalities and school districts within this State, or shares of savings and loan institutions authorized to transact business in this State, in an amount equal to ten per cent (10%) of all estimates which shall be retained by the agent as a guarantee for complete performance of the Contract. In the event the Owner accepts substitute security as described in this paragraph for the ten percent (10%) retention, the Contractor shall be entitled to receive all interest or income earned by such security as it accrues and all such security in lieu of retention shall be returned to the Contractor by the Owner within sixty (60) days after final completion and acceptance of all material, equipment and work covered by the Contract if the Contractor has furnished the Owner satisfactory receipts for all labor and material billed and waivers of liens from any and all persons holding claims against the work. In no event shall the agent accept a time certificate of deposit of a bank or shares of a savings and loan institution in lieu of the retention specified unless accompanied by a signed and acknowledged waiver of the bank or savings and loan association of any right or power to set off against either the Owner or the Contractor in relationship to the certificates or shares assigned.

In any instance where the Owner has accepted substitute security as provided above, any Subcontractor undertaking to perform any part of such public work shall be entitled to provide substitute security to the Contractor upon terms and conditions similar to those described above, and such security shall be in lieu of any retention under the Subcontract.

ARTICLE V – PAYMENTS TO SUBCONTRACTORS

The Contractor shall pay to his Subcontractors or material suppliers, and each Subcontractor shall pay to his Subcontractor or material supplier, within seven (7) days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the Contractor or Subcontractor on account of the work performed by his Subcontractors, to the extent of each such Subcontractor's interest therein, except that no Contract for construction may materially alter the rights of any Contractor, Subcontractor or material supplier to receive prompt and timely payment as provided under ARS Section 34-221(E). Such payments to Subcontractors or material suppliers shall be based on payments received pursuant to that Section.

Any diversion by the Contractor or Subcontractor or payments for work performed on a Contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for disciplinary action by the Registrar of Contractors. The Subcontractor or material supplier shall notify the Registrar of Contractors and the Owner in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in that Section.

Nothing herein prevents the Contractor or Subcontractor, at the time of application and certification to the Owner or Contractor, from withholding such application and certification to the Owner or Contractor for payment to the Subcontractor or material supplier for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third-party claims filed or reasonable evidence that a claim will be filed, failure of a Subcontractor to make timely payments for labor, equipment and materials, damage to the Contractor or another Subcontractor, reasonable evidence that the Subcontract cannot be completed for the unpaid balance of the Subcontract sum, or a reasonable amount for retention that does not exceed the actual percentage retained by the Owner.

ARTICLE VI – INTEREST PAYMENTS

If any payment to the Contractor is delayed after the date due, interest shall be paid at the rate of one per cent (1%) per month or fraction of a month on such unpaid balance as may be due.

If any periodic or final payment to a Subcontractor is delayed by more than seven (7) days after receipt of the periodic or final payment by the Contractor or Subcontractor, the Contractor or Subcontractor shall pay his Subcontractor or material supplier interest, beginning on the eighth (8th) day, at the rate of one per cent (1%) per month or a fraction of a month on such unpaid balance as may be due.

ARTICLE VII – DAMAGES UPON DELAY

Negotiations between the Owner and the Contractor for the recovery of damages related to expenses incurred by the Contractor for a delay for which the Owner is responsible, which is unreasonable under the circumstances and which was not within the contemplation of the parties to the Contract, are provided under this Contract. This Article shall not be construed to void any provision in the Contract which requires notice of delays, provides for arbitration or other procedure for settlement, or provides for liquidated damages.

ARTICLE VIII - INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, its agents, officers, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its agents, employees or any tier of Contractor's subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the Owner, its agents, officers, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by Contractor's acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor, any tier of Contractor's subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

ARTICLE IX - INSURANCE REQUIREMENTS

The Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed to do business in the State of Arizona with policies and forms satisfactory to the Owner.

All requirements herein shall be maintained in full force and effect until all work required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole direction of the Owner, constitute a material breach of this Contract.

The Contractor's insurance shall be primary insurance, and any insurance or self-insurance maintained by the Owner shall not contribute to it.

Any failure to comply with the claim reporting provisions of the policies or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect the Owner.

The insurance policies, except Worker's Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the Owner, its agents, representatives, directors, officers, and employees for any claims arising out of the Contractor's work or service.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the Owner under such policies. The Contractor shall be solely responsible for deductible and/or self-insured retention and the Owner, at its option, may require the Contractor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

The Owner reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The Owner shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, the Owner's right to insist on strict fulfillment of Contractor's obligations under this Contract.

The insurance policies, except Workers' Compensation, required by this Contract shall name the Owner, its agents, officers, officials and employees as Additional Insured's.

REQUIRED COVERAGE

General Liability

Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products and Completed Operations Aggregate and \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products/completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract, which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 000211093 or any replacement thereof. The coverage shall not exclude X, C, U.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc's, Additional Insured, Form B, CG20101185, and shall include coverage for Contractor's operations and products and completed operations.

If required by this Contract, the Contractor subletting any part of the work, services or operations awarded to the Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this contract, an Owner's and Contractor's Protective Liability insurance policy for bodily and property damage, including death, which may arise in the prosecution of the Work or Contractor's operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.

Automobile Liability

Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to the Contractor's any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

Workers' Compensation

The Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work; and, Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 disease policy limit.

In case any work is subcontracted, the Contractor will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of the Contractor.

Builders' Risk (Property) Insurance

The Contractor shall purchase and maintain, on a replacement cost basis, Builders' Risk insurance in the amount of the initial Contract Amount as well as subsequent modifications thereto for the entire work at the site. Such Builders' Risk insurance shall be maintained until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, and all Subcontractors and Sub-Subcontractors in the work during the life of the Contract and course of construction, and shall continue until the work is completed and accepted by the Owner. For new construction projects, the Contractor agrees to assume full responsibility for loss or damage to the work being performed and to the buildings under construction. For renovation construction projects, the Contractor agrees to assume responsibility for loss or damage to the work being performed at least up to the full amount of the Contract Amount, unless otherwise required by the Contract Documents or amendments thereto.

Builders' Risk insurance shall be on an all-risk policy form and shall also cover false work and temporary buildings and shall insure against risk of direct physical loss or damage from external causes including debris removal, demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's service and expenses required as a result of such insured loss and other "soft costs" as required by the Contract.

Builders' Risk insurance must provide coverage from the time any covered property becomes Contractor's control and/or responsibility, and continue without interruption during construction or renovation or installation, including any time during which the covered property is being transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will provide coverage while the covered premises or any part thereof are occupied. The Builders' Risk insurance shall be primary and not contributory.

If the Contract requires testing of equipment or other similar operations, at the option of the Owner, the Contractor will be responsible for providing property insurance for these exposures under a Boiler Machinery policy.

Required coverage's may be modified by an amendment to the Contract Documents.

CERTIFICATES OF INSURANCE

Prior to commencing Services under this Contract, Contractor shall furnish the Owner with Certificates of Insurance, or formal endorsements as required by the Contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverage's, conditions and limits required by this Contract are in full force and effect.

In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the Contractor's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the contract, a renewal certificate must be sent to the Owner fifteen (15) days prior to the expiration date.

All Certificates of Insurance required by this Contract shall be identified with a bid serial number and title.

CANCELLATION AND EXPIRATION NOTICE

Insurance required herein shall not expire, be canceled, or materially changed without fifteen (15) days prior written notice to the Owner.

The Contractor hereby agrees to indemnify and save harmless the Owner and any jurisdiction or agency issuing permits for any work included in the project, their officers, employees, agents and representatives from all suits, actions, losses, damages, expenses, costs or claims of any character or any nature brought on account of any injuries or damages sustained by any person(s) or property arising out of the work done in fulfillment of the construction or the improvement under the terms of these Contract Documents, or on account of any act or omission by the Contractor or his agents, or from any claims or amounts arising or recovered under Worker's Compensation laws, or any other law, by-law, ordinance, order or decree.

The Contractor agrees that this Contract, as awarded, is for the stated work, and understands that payment for the total work will be on the basis of the indicated amount(s), as bid in the Bid Proposal.

OWNER:

Town of Prescott Valley, Arizona

Harvey C. Skoog, Mayor

CONTRACTOR:

Asphalt Paving & Supply, Inc.

Contractor Signature

BY _____
Print Name and Title

ATTEST: Town of Prescott Valley

Diane Russell, Town Clerk

TOWN CLERK
(CORPORATE SEAL)

APPROVED AS TO FORM:

Ivan Legler, Town Attorney