

# CONSTRUCTION CONTRACT

THIS AGREEMENT is made this 22<sup>nd</sup> day of May, 2013 in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, DEPARTMENT OF PROPERTY AND PROCUREMENT, on behalf of **DEPARTMENT OF PUBLIC WORKS** (hereinafter referred to as "Government") and **BETTERROADS ASPHALT CORPORATION** (hereinafter referred to as "Contractor").

## WITNESSETH:

WHEREAS, the Government is in need of a contractor to furnish all labor, materials and equipment necessary for the **Island Wide Pavement Rehabilitation – Phase VII, St. Thomas, Virgin Islands, Project Number: VI-9999(122)**, in strict accordance with the plans and specifications (incorporated by reference and made a part of this contract), which duties and responsibilities are more particularly described in Section I, Section II, and Section III of the **Contract Book**.

WHEREAS, the Contractor represents that it is willing and capable of providing such services;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

## 1. WORK

The Contractor will provide the services described more particularly in Section I (Bid Schedule) incorporated herein by reference and made a part of this construction contract.

## 2. PROJECT TIME OF PERFORMANCE

This Contract shall commence upon execution by the Governor and the services as stated in Addendum I shall be completed **Four hundred Twenty (420)** calendar days thereafter ("Project Performance"). Project Performance must be completed within this period; failing which, the contractor shall be subject to liquidated damages as stated in **Section 5** herein.

## 3. CONTRACT TIME OF PERFORMANCE

This Contract shall commence upon execution by the Governor and the services as stated in Addendum I shall be completed **Five hundred Forty (540)** calendar days thereafter ("Contract Time of Performance"), or in accordance with an agreed extensions pursuant to the General Provisions in Addendum II. Particular reference should be made to the Notice to Proceed.

## 4. COMPENSATION

The Government, in consideration of satisfactory performance of the services described in Section I, agrees to pay the Contractor the sum of **Six million Seven hundred Sixty-Six thousand Eighteen dollars and Zero cents (\$6,766,018.00)** accordance with the provisions set forth in Section II (Schedule of Amounts, Periodical Pay Estimate, and Change Order), attached hereto.

## 5. LIQUIDATED DAMAGES

It is hereby expressly agreed by the parties hereto that in the event the Contractor has not completed the scope of work under the term set forth in Paragraph 2 hereof, liquidated damages of **\$1,200.00 for each calendar day** or portion thereof shall be due the Government. The liquidated damages shall first be deducted from any contract monies due, but not yet paid to the extent available.

## **6. RECORDS**

The Contractor will present documented, precise records of time and/or money expended under this Contract.

## **7. PROFESSIONAL STANDARDS**

The Contractor agrees to maintain the professional standards applicable to its profession and to Contractors doing business in the United States Virgin Islands.

## **8. DOCUMENTS, PRINTOUTS, ETC.**

Certified copies of all documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract, or at the Government's request, during the life of the contract. The above-described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

## **9. LIABILITY OF OTHERS**

Nothing in this Contract shall be construed to impose any liability upon Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, independent contractors, or in any other capacity whatsoever, or make the Government liable to any such persons, firms, associations or corporations for the acts, omissions, responsibilities, obligations and taxes of Contractor or whatsoever nature, including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

## **10. ASSIGNMENT**

The Contractor shall not subcontract or assign any part of the services under this contract without the prior written approval of the Government.

## **11. INDEMNIFICATION**

Contractor agrees to investigate, defend, and hold harmless the Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expenses (including attorney's fees) and causes of action of whatsoever character which the Government may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of Government.

## **12. INDEPENDENT CONTRACTOR**

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

## **13. GOVERNING LAW**

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction and venue are exclusive in the United States Virgin Islands.

## **14. WAIVERS AND AMENDMENTS**

No waiver, modification, or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification, or amendment. Any such waiver, modification, or amendment in any instances shall in no event be construed to be a general waiver, modification, or amendment of any of the terms, conditions, or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

**15. ENTIRE AGREEMENT**

This Contract constitutes the entire agreement between the parties hereto, and all prior understandings or communications, written or oral, with respect to the project, which, are the subject matter of this Contract, are merged herein.

**16. RIGHT TO WITHHOLD**

If work under this Contract is not performed in accordance with the terms, hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as the Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, the Government may apply such sums in such manner as the Government may deem proper to secure itself or to satisfy such claims. The Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

**17. CONDITION PRECEDENT**

This contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

**18. TERMINATION**

Either party will have the right to terminate this contract with cause on ten (10) days written notice to the other party specifying the date of termination.

**19. NON-DISCRIMINATION**

No person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

## 20. CONFLICT OF INTEREST

(a) Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to perform under this Contract.

(b) Contractor further covenants that it is:

(1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature or any other elected territorial official; or an officer or employee of the legislative, executive, or judicial branch of the Government or any agency, board, commission, or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or

(2) a territorial officer or employee and, as such, has:

- (i) familiarized itself with the provisions of Title 3, Chapter 37, Virgin Islands Code pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
- (ii) Not made, negotiated or influenced this contract, in its official capacity;
- (iii) No financial interest in the contract as that term is defined in section 1101(1) of said Code chapter.

## 21. NOTICE

Any notice required to be given by the terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

**GOVERNMENT**

**Lynn A. Millin Maduro**  
Commissioner  
**Department of Property and Procurement**  
Building No. 1, Third Floor, Subbase  
St. Thomas, VI 00802

**Darryl A. Smalls, P.E.**  
Commissioner  
**Department of Public Works**  
8244 Subbase  
St. Thomas, VI 00802

**CONTRACTOR**

**Mr. Antonio J. Diaz Fernandez, PE**  
Engineering & Sales Vice President  
**Betteroads Asphalt Corporation**  
P.O. Box 21420  
San Juan, PR 00928-1420

**22. LICENSURE**

The Contractor covenants that it has:

- a. obtained all of the applicable licenses or permits, temporary or otherwise, as required by Title 27 of the Virgin Islands Code; and
- b. familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

**23. CONTRACTOR'S REPRESENTATIONS**

The Contractor agrees that he is fully informed regarding all the conditions affecting the work to be done and labor and materials to be furnished for the completion of the Contract, and that he has been engaged in and now does such work and represents that he is fully equipped, competent, and capable of performing the work and is ready and willing to perform such work.

The Contractor agrees further to begin work not later than the date indicated on the formal notice to proceed and complete the work within the number of days specified in the proposal or as extended in accordance with the General Provisions of the Contract.

The Work shall be done under the direct supervision of the Government, and in accordance with the laws of the Government and its Rules and Regulations thereunder issued and any and all applicable federal rules and regulations. The parties hereto agree that this contract shall, in all instances, be governed by the Laws of the Government of the Virgin Islands.

#### **24. WARRANTY OF NON-SOLICITATION**

The Contractor expressly warrants that he has employed no person to solicit or obtain this contract on his behalf, or to cause or procure the same to be obtained upon compensation in any way, contingent, in whole or in part, upon such procurement, and that he has not paid, or promised or agreed to pay to any person, in consideration of such procurement, or in compensation for services in connection therewith, any brokerage, commission, or percentage upon the amount receivable by him hereunder; and that he has not, in estimating the contract price demanded by him included any sum by reason of such brokerage, commission or percentage; and that all monies payable to him hereunder are free from obligation to any other person for services rendered, or supposed to have been rendered, in the procurement of this contract.

Breach of the warranty shall give the Government the right to terminate this Contract, or in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fees.



## **25. DEBARMENT CERTIFICATION**

By execution of this contract, the Contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contract shall include this provision in each of its subcontractors hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT". In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

## **26. FALSE CLAIMS**

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

## **27. NOTICE OF FEDERAL FUNDING**

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offense.

## 28. OTHER SPECIFICATIONS AND PROVISIONS

**Section I** through **Section III** attached hereto, documentation included in the **Invitation Bid Package**, and **Plans/Specifications** are hereby incorporated by reference and made a part of this Contract.

The valid Specifications for this contract is the Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects (FP-03) including errata and amendments, with the exception of any reference to Federal Acquisition Regulation Contract clause contained in FP-03 is also modified by any pertinent supplemental specifications as included in Section III.

