

CONSTRUCTION CONTRACT

THIS AGREEMENT is made this 30th day of September, 20 19, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, acting through its Department of Property & Procurement, on behalf of the Department of Public Works (hereinafter referred to as "Government") and Virgin Islands Asphalt Products 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 **Melvin Evans Highway Pavement Rehabilitation and Safety Improvements Segment 3, (from West Airport Intersection to Williams Delight Intersection) Project No. VI-0066 (014), St. Croix, Virgin Islands** 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 attached hereto; and

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 (Scope of Work) incorporated herein by reference and made a part of this construction contract.

2. **TERM**

This Contract shall commence upon execution by the Governor, and shall terminate **Ninety (90)** calendar days after the issuance of the formal Notice to Proceed, or in accordance with an agreed upon extension pursuant to the General Provisions.

3. **COMPENSATION**

The Government, in consideration of satisfactory performance of the services described in Section I, agrees to pay the Contractor the sum of **Two Million Three Hundred Ninety-Three Thousand, Five Hundred Seventeen Dollars and Zero Cents (\$2,393,517.00)** in accordance with the provisions set forth in Section II (Schedule of Amounts, Periodical Pay Estimate, and Change Order), attached hereto is hereby incorporated by reference and made a part of this contract.

4. **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, **Two Thousand Two Hundred Dollars (\$2,200.00) 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.

5. **RECORDS**

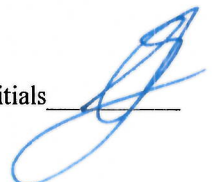
The Contractor will present documented, precise records of time and/or money expended under this Contract.

6. **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.

7. **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.

8. 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 of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

9. ASSIGNMENT

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

10. INDEMNIFICATION

Contractor agrees to indemnify, 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.

11. 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.

12. 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.

13. 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.



14. ENTIRE AGREEMENT

This agreement constitutes the entire agreement of the parties relating to the subject matter addressed in this agreement. This agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether written or oral.

15. RIGHT TO WITHHOLD

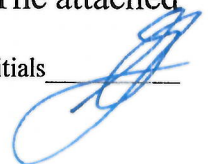
If work under this Contract is not performed in accordance with the terms, hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as the Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, 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.

16. CONDITION PRECEDENT

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

17. 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. The attached



“Contract Book Section II, Paragraph 51 and 52 of the General Provisions” is hereby fully incorporated herein by reference and is made a part of this agreement.

18. 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.

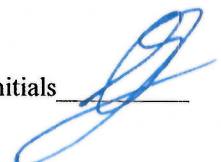
19. CONFLICT OF INTEREST

(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 provisions 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.

20. EFFECTIVE DATE

The effective date of this Contract shall be the day of execution of the Contract by the Governor.



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

Anthony D. Thomas
Commissioner
Department of Property and Procurement
8201 Sub Base, Suite 4
St. Thomas, VI 00802

Nelson M. Petty, Jr., P.E.
Commissioner
Department of Public Works
No. 8 Sub Base
St. Thomas, VI 00802

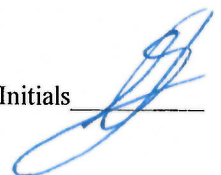
CONTRACTOR

Gustav James
General Manager
Virgin Islands Asphalt Products Corporation
P.O. Box 1549
Kingshill, VI 00841

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 it 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 it has been engaged in and now does such work and represents that it 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 notice to proceed 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 it nor its officers, agents or employees has employed no person to solicit or obtain this contract on its 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 it 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 it hereunder; and that it nor its officers, agents or employees has not, in estimating the contract price demanded by it included any sum by reason of such brokerage, commission or percentage; and that all monies payable to it 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 Contractor shall include this provision in each of its subcontracts 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

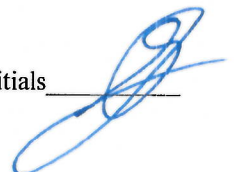
Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges 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. DAVIS BACON ACT

Contractor hereby agrees that it shall comply with all rulings and interpretations of the Davis-Bacon Act (40 USC 276a-5) and that the contractor and subcontractor agrees that all employees shall be paid the local prevailing wages as established by Virgin Islands statutes and laws.



29. **CERTIFICATION OF EMPLOYMENT**

Contractor hereby agrees that pursuant to 31 V.I.C 236(h) it will hire at least two individuals from the Welfare to Work program administered by the Labor and Human Services Departments.

30. **OTHER SPECIFICATIONS AND PROVISIONS**

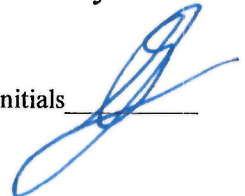
Section I through Section III of the Contract Book attached hereto, documentation included in the **Invitation Bid Package**, and **Plans/Specifications** are hereby incorporated by reference and made a part of this Contract.

The valid Specifications for this contract is the Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects (FP-14) including errata and amendments, with the exception of Part 100 and any reference to Federal Acquisition Regulation Contract clause contained in FP-14 is also modified by any pertinent supplemental specifications as included in Section III.

31. **INSURANCE**

Contractor shall maintain the following insurance coverages during the term of this Contract.

(a.) **COMMERCIAL GENERAL LIABILITY:** Commercial general liability insurance, in a form acceptable to the Government, on a “per occurrence” basis with a minimum limit of at least two million three hundred ninety-three



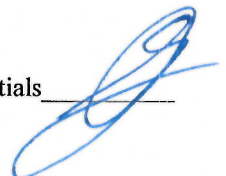
thousand, five hundred seventeen dollars (\$2,393,517.00) for any one person per occurrence for death or personal injury and two million three hundred ninety-three thousand, five hundred seventeen dollars (\$2,393,517.00) for any one occurrence for property damage. Insurance policy(ies) shall name the Government of the Virgin Islands as the certificate holder and additional insured via an endorsement.

(b.) **WORKERS' COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.

32. **PAYMENT AND PERFORMANCE BONDS**

The Contractor shall comply with the following minimum bonding requirements:

- (a.) A performance bond to secure Contractor's obligations and performance under the Contract for 100% of the Contract price;
and
- (b.) A payment bond to assure payment to all persons supplying labor and material in the execution of the work provided for in the Contract for 100% of the Contract price.



IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES: GOVERNMENT OF THE VIRGIN ISLANDS

Margalene A. Thomas Anthony D. Thomas Date: 9/13/19
Commissioner
Department of Property and Procurement

Kiriel Nelson M. Petty, Jr., P.E. Date: 9/13/19
Commissioner
Department of Public Works

CONTRACTOR

Gustav James Gustav James Date: 8/7/2019
General Manager
Virgin Islands Asphalt Products Corporation
(Corporate seal, if Contractor is a corporation)

APPROVED:

Honorable Albert Bryan Jr. Date: 9/30/19
GOVERNOR OF THE VIRGIN ISLANDS

APPROVED AS TO LEGAL SUFFICIENCY
AT THE DEPARTMENT OF JUSTICE BY: Carol McDonald Esq.

Date: 9/26/19

Contractor's Initials [Signature]

CERTIFICATE OF APPROVAL

I hereby certify that this is a true and exact copy of Contract No. **C008DPWC19(VIAPCO)** entered into between the **Department of Property and Procurement**, on behalf of the **Department of Public Works and Virgin Islands Asphalt Products Corporation**.

Anthony D. Thomas, Commissioner
Department of Property and Procurement

A handwritten signature in blue ink, consisting of stylized initials, is written over a horizontal line.

Section I

Scope of Work

Melvin Evans Highway Pavement Rehabilitation and Safety Improvements Segment 3, Route No. 66 (from West Airport Intersection to Williams Delight Intersection), Project No. VI-0066(014), St. Croix, Virgin Islands.

Total Contractual Agreement Amount - **\$2,393,517.00**

SCOPE OF WORK

IFB NO. 0110PW519 PROJECT NO. # VI-0066(014)

CONTRACTOR'S NAME: VIAPCO

CITY: ST. CROIX STATE: VT ZIP CODE: 00850

The undersigned Contractor proposed to furnish all labor, tools, equipment, machinery, and supplies for the Melvin H. Evans Highway Pavement Rehabilitation to USVI Highway 66 subject to all conditions and requirements of the Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-14 as revised and amended and the Contract Documents.

ITEM NUMBER	APPROX QTY	UNITS	ITEM / TASK DESCRIPTION	UNIT PRICE DOLLARS/CENTS	AMOUNT DOLLARS/CENTS
15101-0000	1	LPSM	Mobilization <u>ONE THOUSAND THOUSAND DOLLARS</u>	<u>100,000.00</u>	<u>100,000.00</u>
15201-0000	1	LPSM	Construction Survey and Staking <u>TEN THOUSAND DOLLARS</u>	<u>10,000.00</u>	<u>10,000.00</u>
15401-0000	1	LPSM	Contractor Testing <u>TEN THOUSAND DOLLARS</u>	<u>10,000.00</u>	<u>10,000.00</u>
15701-0000	1	LPSM	Soil Erosion Control <u>FIVE THOUSAND DOLLARS</u>	<u>5,000.00</u>	<u>5,000.00</u>

15901	1	LPSM	On the Job Training <i>SEVEN THOUSAND FIVE HUNDRED DOLLARS</i>	7,500.00	7,500.00
20102-0000	75	SQYD	Selective Clearing at washout <i>FOURTY FIVE DOLLARS</i>	45.00	3,375.00
20103-0000	7,698	LNFT	Clearing and Grubbing of Shoulders and Median Curb. <i>ONE DOLLAR</i>	1.00	7,698.00
20301-3100	2	EACH	Removal of Signal & Obstructions <i>TEN THOUSAND DOLLARS</i>	10,000.00	20,000.00
20302-0300	100	LNFT	Removal of structures & Obstructions- Median Curb <i>FIFTEEN DOLLARS</i>	15.00	1,500.00
20302 -1200	1,812	LNFT	Removal of Structures and Obstructions-Guardrail. <i>FIVE DOLLARS</i>	5.00	9,060.00
20420-0000	1	SQYD	Repair Washout Area <i>TWENTY FIVE HUNDRED DOLLARS</i>	2,500.00	2,500.00
40201-0200	5,300	TON	Warm Mix Asphalt concrete pavement, Class B, 3" <i>TWO HUNDRED TWENTY DOLLARS</i>	220.00	1,166,000.00
41201	4000	GALS	Tack Coat Grade RS-1 <i>EIGHT DOLLARS</i>	8.00	32,000.00

41301-0800	31,402	SQYD	Asphalt Pavement Milling, 3" depth <i>EIGHT DOLLARS</i>	8.00	251,216.00
60101-0000	114	LNFT	Minor Concrete Structures-CURB. <i>EIGHTY DOLLARS</i>	80.00	9,120.00
60101-0000	4,115	LNFT	Waterway- 4' concrete, 4' depth <i>EIGHTY DOLLARS</i>	80.00	329,200.00
60103-0000	1	EACH	Minor Concrete Structures- Energy Dissipater <i>NINE THOUSAND DOLLARS</i>	9,000.00	9,000.00
60201-0600	107	LNFT	Culvert & Drainage-Install 18 inch HDPE DRAIN PIPES <i>TWO HUNDRED FIFTY TWO DOLLARS</i>	252.00	26,964.00
60202-0200	35	LNFT	Culvert & Drainage-Install 18 inch CONCRETE ELLIPTICAL PIPES <i>TWO HUNDRED FIFTY TWO DOLLARS</i>	252.00	8,820.00
60404-3000	3	EACH	Mainhole Inlet & Catch basin, Type D <i>NINE THOUSAND EIGHT HUNDRED DOLLARS</i>	9,800.00	29,400.00
60706-0000	3	EACH	Repair Curb Inlets in Median <i>THREE THOUSAND THREE HUNDRED SIXTY DOLLARS</i>	3,360.00	10,080.00
61701-1350	1,812	LNFT	Guardrail system G4, type II, class B, Steel posts with button reflectors <i>EIGHTY DOLLARS</i>	80.00	144,960.00

61703-2000	9	EACH	Guardrail-Terminal end, type Round <i>THIRTY SEVEN HUNDRED TEN DOLLARS</i>	3,710.00	33,390.00
61703-1000	3	EACH	Guardrail-Terminal end, type F.E.A.T. <i>THIRTY SEVEN HUNDRED TEN DOLLARS</i>	3,710.00	11,130.00
61711-0000	1	EACH	Guardrail Terminal Section Median Impact Attenuator- REACT 350 <i>SEVEN THOUSAND SIX HUNDRED DOLLARS</i>	7,600.00	7,600.00
63401-1500	9,462	LNFT	Pavement markings, type H 4" Solid White <i>THREE DOLLARS 50/100</i>	3.50	33,117.00
63401-1500	8,100	LNFT	Pavement markings, type H 4" Solid Yellow <i>THREE DOLLARS 50/100</i>	3.50	28,350.00
63401-1600	7,422	LNFT	Pavement markings, type H 4" Broken White <i>THREE DOLLARS 50/100</i>	3.50	25,977.00
63405-2900	10	EACH	Pavement markings, type H Turn Arrow <i>TWO HUNDRED SEVENTY DOLLARS</i>	270.00	2,700.00
63405-1950	22	EACH	Pavement markings, type H Straight Arrow <i>TWO HUNDRED SEVENTY DOLLARS</i>	270.00	5,940.00
63405-3000	2	EACH	Pavement markings, type H, Straight/Turn Arrow <i>FIVE HUNDRED DOLLARS</i>	500.00	1,000.00

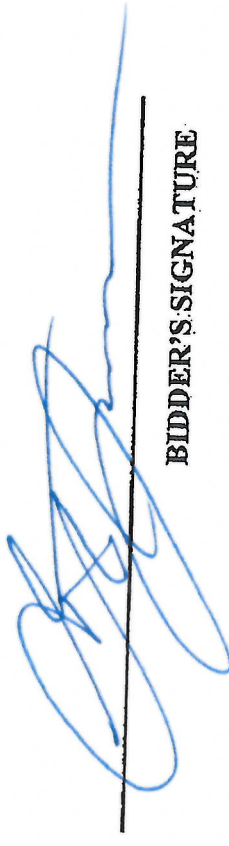
63405-1500	270	LNFT	Pavement markings, type H, 24" Solid White <i>TWENTY ONE DOLLARS</i>	21.00	5,670.00
63406-0200	750	EACH	Permanent Pavement Markings-Raised Pavement Markers <i>TWENTY SEVEN DOLLARS</i>	27.00	20,250.00
63501-0000	1	LPSM	Temporary traffic control <i>TWENTY FIVE THOUSAND DOLLARS</i>	25,000.00	25,000.00

IFB NO. 0110PW/C19 PROJECT NO. # VI-0066(014) TOTAL 2,393,517.00

ATTENTION: See notes at the beginning of this unit price schedule.

TOTAL AMOUNT OF THIS PROPOSAL, BASED ON ENGINEER'S ESTIMATE OF QUANTITIES IS AS FOLLOWS:

Two million Three Hundred Ninety Three Thousand Five
HUNDRED SEVENTY THREE DOLLARS AND 0 CENTS
\$ 2,393,517.00



BIDDER'S SIGNATURE

