

GOLDEN BEACH, FLORIDA

RESOLUTION NO. 1717.05

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, APPROVING THE CONTRACT FOR CONSTRUCTION BETWEEN THE TOWN AND WEEKLEY ASPHALT PAVING, INC., FOR PAVEMENT OVERLAY AND RELATED WORK FOR NORTH ISLAND DRIVE AND NAVONA AVENUE; PROVIDING FOR IMPLEMENTATION OF AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council has previously authorized the procurement of construction services for the pavement overlay work described herein to be accomplished pursuant to public bids awarded by other governmental entities, in order to expedite the accomplishment of the Project; and

WHEREAS, the Town Council finds that the proposal of Weekley Asphalt Paving, Inc., for completion of the Project is in the best interest of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the above-stated recitals is hereby adopted and confirmed.

Section 2. Project Awarded. That the Project, as described in the attached Contract for Construction (the "Agreement"), is hereby awarded to Weekley Asphalt Paving, Inc. (the "Contractor"), for a contract price which shall not exceed \$22,613.75.

Section 3. Agreement Approved. That the Agreement, in substantially the form attached hereto, between the Town and the Contractor is hereby approved, and the Mayor is hereby authorized to execute the Agreement, on behalf of the Town, once approved as to form and legal sufficiency by the Town Attorney

Section 4. Implementation. That the Mayor and Town Manager are authorized to take any and all action which is necessary to implement this Resolution and the Agreement.

Section 5. Effective Date. That this Resolution shall be effective immediately upon adoption.

The Motion to adopt the foregoing Resolution was offered by Councilmember Iglesias, seconded by Vice Mayor Lusskin and on roll call the following vote ensued:

Mayor Singer	<u>Aye</u>
Vice Mayor Lusskin	<u>Aye</u>
Councilmember Einstein	<u>Aye</u>
Councilmember Iglesias	<u>Aye</u>
Councilmember Paruas	<u>Aye</u>

PASSED AND ADOPTED by the Town Council of the Town of Golden Beach, Florida, this 21st day of June, 2005.

ATTEST:



MAYOR GLENN SINGER



CATHY STABO
TOWN CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



TOWN ATTORNEY

F:/192.001/Resolution/Approving Contract for Construction Between Town and Weekley

CONTRACT FOR CONSTRUCTION

THIS IS A CONTRACT, by and between Town of Golden Beach, Florida, a municipal corporation of the State of Florida, hereinafter referred to as Town, and Weekley Asphalt Paving, Inc., a Florida corporation, hereinafter referred to as Contractor.

W I T N E S S E T H, that Contractor and Town, for the considerations hereinafter named, agree as follows:

ARTICLE 1

SCOPE OF WORK

- 1.1 Contractor hereby agrees to furnish all of the labor, materials, equipment, services and incidentals necessary to perform all of the Work described in the Proposal including any applicable drawings of the Town Engineer for the following Project:

Pavement Overlay for North Island Drive, Navona Avenue,
Including adjustment of manholes, application of tack coat, leveling course,
in Golden Beach, Florida

ARTICLE 2

CONTRACT TIME

- 2.1 Contractor shall be instructed to commence the Work by written instructions in the form of a Notice to Proceed issued by the Town Manager. The Notice to Proceed will not be issued until Contractor's submission to the Town of all required documents and after execution of this Contract.
- 2.2 Time is of the essence throughout this Contract. The Work shall be substantially completed within sixty (60) calendar days from the date specified in the Notice to Proceed, and completed and ready for final payment in accordance with Article 3 within ten (10) calendar days from the date certified by the Town Engineer as the date of Substantial Completion.
- 2.3 Upon failure of Contractor to substantially complete the Contract within the specified period of time, Contractor shall pay to Town the sum of Two Hundred Dollars (\$200.00) for each calendar day after the time specified in Section 2.2 above for Substantial Completion. After Substantial Completion, should Contractor fail to complete the remaining Work within the time specified in

Section 2.2 for completion and readiness for final payment. These amounts are not penalties but are liquidated damages to Town for its inability to obtain full beneficial occupancy and use of the Project. Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by Town as a consequence of such delay, and both parties desiring to obviate any question or dispute concerning the amount of said damages and the cost and effect of the failure of Contractor to complete the Contract on time. The above-stated liquidated damages shall apply separately to each phase of the Project for which a time for completion is given.

- 2.4 Town is authorized to deduct the liquidated damages from monies due to Contractor for the Work under this Contract.

ARTICLE 3

CONTRACT PRICE

- 3.1 Town shall pay to Contractor for the performance of the Contract, the total lump sum of Twenty Two Thousand Six Hundred Thirteen and Seventy Five Cents (\$22,613.75). This price shall be full compensation for all costs, including overhead and profit, associated with completion of all the Work in full conformity with the requirements as stated or shown, or both, in the Proposal and in any applicable drawings of the Town Engineer.
- 3.2 The sum set forth in Paragraph 3.1 shall constitute the Contract Price which shall not be modified except by any Change Order issued by Town.
- 3.3 The Contract Price may be adjusted by Town for any additional work which is expressly authorized by the Town Manager.

ARTICLE 4

CONTRACT DOCUMENTS

- 4.1 The Contract Documents which comprise the entire agreement between the Town and the Contractor concerning the Work consist of this Contract for Construction, the Town Engineer's Plans, if any such Plans are attached, Insurance Certificates, the Notice of Award, the Notice to Proceed, any Change Orders and any other Contract Documents, not specifically listed herein which shall be considered incorporated into and made a part of this Contract by this reference and shall govern this Project.
- 4.2 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of these Contract Documents that are

not contained herein. Accordingly it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

ARTICLE 5

WAIVER OF JURY TRIAL

Town and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract for Construction, arising out of, under, or in connection with the Construction of the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.

ARTICLE 6

ASSIGNMENT

Neither party shall assign the Contract or any sub-contract in whole or in part without the written consent of the other, nor shall Contractor assign any monies due or to become due to it hereunder, without the previous written consent of the Town Manager.

ARTICLE 7

MISCELLANEOUS

7. Insurance Requirements:

- 7.1 Contractor shall provide and maintain in force until all the Work to be performed under this Contract has been completed and accepted by Town (or for such duration as is otherwise specified hereinafter), the insurance coverages set forth as follows:

Contractor's Liability Insurance:

1. Contractor shall provide and maintain in force until all the Work to be performed under this Contract has been completed and accepted by Town (or for such duration as is otherwise specified hereinafter), the insurance coverage set forth:

1.1 Worker's Compensation insurance at the statutory amount to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include: Employers' Liability at the statutory coverage amount. The Contractor shall further insure that all of its Subcontractors maintain appropriate levels of worker's compensation insurance.

1.2 Comprehensive General Liability with minimum limits of One Million Dollars (1,000,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Premises and/or Operations.

- 1.2.1 Premises and Operation
- 1.2.2 Independent Contractors
- 1.2.3 Broad Form Property Damaged.
- 1.2.4 Broad Form Contractual Coverage applicable to this specific Contract, including any hold harmless and/or indemnification agreement.
- 1.2.5 Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

1.3 Business Automobile Liability with minimum limits of One Million Dollars (1,000,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- 1.3.1 Owned Vehicles.
- 1.3.2 Hired and Non-Owned Vehicles.
- 1.3.3 Employers' Non-Ownership.

2. Before starting the Work, the Contractor will file with the Town certificates of such insurance, acceptable to the Town; these certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to the Town by certified mail. The Town shall be named as an additional insured on the above-referenced policies to the fullest extent permitted by law.

3. The Contractor agrees that if any part of the Work under the Contract is sublet, they will require the Subcontractor(s) to carry insurance as required, and that they will require the Subcontractor(s) to furnish to them insurance certificates similar to those required by the Town above.

Cancellation and Re-Insurance:

- 4 If any insurance should be canceled or changed by the insurance company or should any insurance expire during the period of this contract, the Contractor shall be responsible for securing other acceptable insurance to provide the coverage specified in this section to maintain coverage during the life of this Contract.
- 5 All deductibles must be declared by the Contractor and must be approved by the Town Manager. At the option of the Town, either the Contractor shall eliminate or reduce such deductible or the Contractor shall procure a Bond, in a form satisfactory to the Town, covering the same.

7.2 Town's Right To Terminate Contract

- 7.2.1 If Contractor fails to timely begin the Work, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule or if the Contractor shall fail to perform any material term set forth in the Contract Documents or if Contractor shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, Town may, upon seven (7) days written Notice of Termination, terminate the services of Contractor, exclude Contractor from the Project site and take the prosecution of the Work out of the hands of Contractor, and appropriate or use any or all materials and equipment on the Project site as may be suitable and acceptable and may finish the Work by whatever methods it may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Project is completed. All damages, costs and charges incurred by Town, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to Contractor. In case the damages and expenses so incurred by Town shall exceed the unpaid balance, then Contractor shall be liable and shall pay to Town the amount of said excess.

7.3 Contractor to Check Plans, Specifications and Data:

Contractor shall verify all dimensions, quantities and details shown on the plans, specifications or other data received from Town, and shall notify Town Manager in writing of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery and Town Manager will promptly review the same. Any Work done after such discovery, but prior to written authorization of the Town Manager, will be done at the Contractor's sole risk.

7.4 Contractor's Responsibility for Damages and Accidents:

7.4.1 Contractor shall accept full responsibility for the Work against all loss or damage of any nature sustained until final acceptance by Town, and shall promptly repair any damage done from any cause.

7.4.2 Contractor shall be responsible for all materials, equipment and supplies pertaining to the Project. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by Town, Contractor shall replace same without cost to Town.

7.5 Defective Work/Guarantee:

7.5.1 Town shall have the authority to reject or disapprove Work which the Town finds to be defective. If required by the Town, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with nondefective Work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

7.5.2 Should Contractor fail or refuse to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by the Town Manager, Town shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary at Contractor's expense. Any expense incurred by Town in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor. In the event of failure of Contractor to make all necessary repairs promptly and fully, Town may declare Contractor in default.

7.5.3 The Contractor shall unconditionally guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date of substantial completion. If, within one (1) year after the date of substantial completion, any of the Work is found to be defective or not in accordance

with the Contract Documents, Contractor, after receipt of written notice from Town, shall promptly correct such defective or nonconforming Work within the time specified by Town without cost to Town. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents including but not limited to any claim regarding latent defects.

7.5.4 Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered.

7.6 Legal Restrictions and Traffic Provisions:

Contractor shall conform to and obey all applicable laws, regulations, or ordinances with regard to labor employed, hours of Work and Contractor's general operations. Contractor shall conduct its operations so as not to interfere with or close any thoroughfare, without the written consent of the proper authorities.

7.7 No Damages for Delay:

No claim for damages or any claim, other than for an extension of time shall be made or asserted against Town by reason of any delays. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Town for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay. Notwithstanding the above, the Contractor shall be granted an extension of time and suspension of liquidated damages for any delay beyond the control of the Contractor. Should any delay, disruption, interference or hindrance be caused by the Town, for a continuous period or cumulative period of ten (10) days, the Contractor may terminate the Contract upon seven days written notice to the Town and shall be paid for all Work which is satisfactorily completed.

7.8 Public Entity Crimes Affidavit

7.8.1 Contractor shall comply with Section 287.133, Florida Statutes, (Public Entity Crimes Statute) notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

7.9 **Capitalized Terms**

7.9.1 Capitalized terms shall have their plain meaning as indicated herein.

7.10 **Independent Contractor:**

The Contractor is an independent Contractor under the Contract. Services provided by the Contractor shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the Town. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures, applicable to services rendered under the Contract shall be those of the Contractor.

7.11 **Indemnification:**

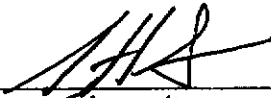
Contractor shall indemnify and hold harmless the Town, its officers and employees and any consulting engineer of the Town participating in this Project from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor and any persons employed or utilized by the Contractor in the performance of the Contract.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: TOWN OF GOLDEN BEACH, FLORIDA, signing by and through its duly authorized officer authorized to execute same by Council action on the 21 day of June 2005, and WEEKLEY ASPHALT PAVING, INC., signing by and through _____, duly authorized to execute same.

ATTEST:

TOWN OF GOLDEN BEACH, FLORIDA


Town Clerk

By: 
Name: Glen Sigon
Title: Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN ONLY:

By: 
TOWN ATTORNEY

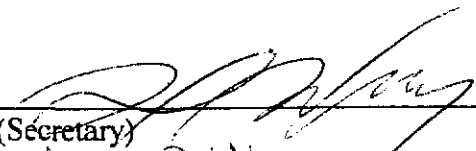
This ____ day of _____, 2005.

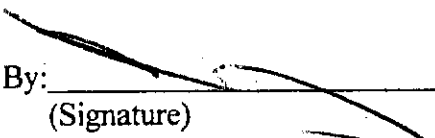
CONTRACTOR MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE CORPORATION FORMAT, AS APPLICABLE.

CONTRACTOR

ATTEST:

WEEKLEY ASPHALT PAVING, INC.


(Secretary)
Wayne D. Weekley
(Corporate Seal)

By: 
(Signature)
DANIEL D. WEEKLEY, PRESIDENT
(Type Name/Title signed above)

This ____ day of _____, 2005