

**COUNTY OF PRINCE WILLIAM**

1 County Complex Court, (MC 460) Prince William, Virginia 22192-9201  
(703) 792-6770 Metro 631-1703, Ext. 6770 Fax: (703) 792-4611

FINANCE DEPARTMENT  
Purchasing



CONTRACT: 9066BA4

SUBJECT: Asphalt

Between:

Prince William County Government  
1 County Complex Court (MC460)  
Prince William, Virginia 22192-9201  
703-792-6770 metro 631-1703 ext 6770

and the "Secondary" Contractor:

Finley Asphalt and Sealing, Inc.  
9105 Industry Drive  
Manassas park, Virginia 20111  
703-368-2289

This Contract is entered into this 1st day of January 2009, by and between the Board of County Supervisors of Prince William County, Virginia, or its authorized agents, and the Contractor identified above for supplies and/or services identified herein, on the following terms and conditions. This Contract is prepared in accordance with the Purchasing Regulations of Prince William County, which are incorporated herein by reference.

TABLE OF CONTENTS

SECTION I  
SPECIAL PROVISIONS

I.1 Definitions	03
I.2 Incorporation of Documents	03
I.3 Contract Period	03
I.4 Provisions of Supplies and/or Services	04
I.5 Contract Amount	04
I.6 Permits and Licenses	04
I.7 Insurance	04
I.8 Bonds	04
I.9 Emergency Procurements	04
I.10 Placement of Orders	05
I.11 Task Orders	05
I.12 Time of the Essence and Completion	05
I.13 Delivery	05
I.14 Response/Completion Time	05
I.15 Inspection and Acceptance	05
I.16 Invoicing and Payments	06
I.17 Warranties	06
I.18 Subcontractors	07
I.19 Hazardous Products	07
I.20 Law Compliance	07
I.21 Tax Exemption	07
I.22 Rider Clause	07

SECTION II  
GENERAL PROVISIONS

II.1 Assignability of Contract	08
II.2 Modifications or Changes to the Contract	08
II.3 Employment Discrimination for Contracts over \$10,000	08
II.4 Drug-free Workplace to be maintained by Contractor for Contracts over \$10,000	09
II.5 Claims/Disputes	09
II.6 Termination for Convenience of the County	10
II.7 Termination for Default	11
II.8 Termination for Non-Appropriation of Funds	11
II.9 Payments to Subcontractors	12
II.10 Examination of Records	12
II.11 Ethics in Public Contracting	13
II.12 Governing Law and Choice of Forum	13
II.13 Immigration Reform and Control Act of 1986	13
II.14 Integration	13
II.15 Hold Harmless	13
II.16 Specifications/Pricing Schedule	14
Contract Signature Page	23

**SECTION I**

**SPECIAL PROVISIONS**

**I.1 Definitions**

"County" shall mean the Board of County Supervisors of Prince William County, Virginia, or the requesting agency identified below and authorized by the Purchasing Regulations or other law to enter into Contracts.

"Requesting Agency" for the purpose of this Contract shall mean Public Works, Environmental Services. Other Prince William County agencies may utilize the Contract.

"Contract Administrator" assigned to administer this Contract for the County is Mr. Al Roltsch, Branch Chief.

"Secondary Contractor" shall mean:

Finley Asphalt and Sealing, Inc.  
9105 Industry Drive  
Manassas park, Virginia 20111

whose authorized representative is Mr. Eric Finley, President, who is responsible for the performance obligation of the Contractor under this Contract.

**I.2 Incorporation of Documents**

The following documents are hereby incorporated by reference into this Contract:

1. Contractor's Bid Response dated November 25, 2008
2. County's Solicitation Number IFB090026 entitled Asphalt and dated November 10, 2008.

In the event of an inconsistency between the above referenced documents the inconsistency shall be resolved by giving precedence to the following: Solicitation No. IFB090026. This Contract shall take precedence over all the documents referenced above.

**I.3 Contract Period**

The Contract Period shall be for one (1) year effective January 01, 2009. The County shall have the option to renew the Contract for four (4) additional one (1) year periods, contingent upon availability of funds for the purpose and the needs of the County.

**I.4 Provision of Supplies and/or Services**

The Secondary Contractor “Finley Asphalt and Sealing, Inc.” hereby agrees to provide Asphalt to the County on an as needed basis. Services shall be provided in accordance with the Specifications and Pricing Schedule.

“Finley Asphalt and Sealing, Inc.” understands and agrees that there is a primary Contractor for asphalt.

“Finley Asphalt and Sealing, Inc.” understands and agrees that the Secondary Contractor will be used in the event the primary contractor cannot perform its Contractual obligations.

**I.5 Contract Amount**

In return for the goods identified herein, and subject to the "Termination for Non-Appropriation of Funds" clause, the County shall compensate the Contractor in accordance with the Contract Pricing Schedule.

**I.6 Permits and Licenses**

The Contractor shall be solely responsible for complying with any Federal, Virginia, Department of Transportation, and Municipal Laws, Codes and Regulations that may be applicable under this solicitation. The Contractor shall obtain at his own cost any permits or licenses as are necessary to comply with any applicable Laws, Codes or Regulations.

**I.7 Insurance**

The Contractor shall provide insurance in accordance with the Solicitation Insurance Checklist.

An Insurance Certificate must be submitted to the County for review and acceptance before any services are provided by the Contractor. The Insurance requirements apply to the Contractor’s carriers, any sub-contractors, common and contracted carriers, performing for the Contractor under the awarded Contract.

**I.8 Bonds**

When individual task orders exceed \$100,000.00 the Contractor is required to furnish performance and payment bonds equal to one-hundred percent (100%) of the task order. Bonds shall be properly issued and executed by a Surety licensed in the State of Virginia and acceptable to the County. Cost of the bonds shall be included as a cost reimbursable. Bonds shall remain in effect for one (1) year after final acceptance of the completed task order.

The Contractor shall require the Attorney-in-Fact who executes the bonds on behalf of the Surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power. Prince William County Bond Forms will be furnished to the Contractor. These bond forms shall be used by the Surety to execute any bonds which may be required under task orders issued against the contract.

**I.9 Emergency Procurements**

In the event of a County emergency the County reserves the right to procure the contracted goods and/or services from other sources that can provide the goods and/or services sooner than the Contractor in order

to meet the County's emergency needs. Emergency procurements are as defined in the County Purchasing Regulations.

**I.10 Placement of Orders**

A County Purchase Order & Task Order shall be issued to the Contractor to provide the goods and/or services identified in the Contract. The Purchase Order indicates sufficient funds are budgeted and appropriated.

**I.11 Task Orders**

Task Orders shall be issued to the Contractor on an as needed basis. The Contractor shall acknowledge the receipt of each task order by returning to the Contract Administrator a signed copy of the task order within seven (7) calendar days of receipt. A detailed work plan including total cost of the task order based on the Contract's unit prices shall be submitted with the task order. The work plan shall also include the start date and completion date of work described in the task order.

The Contract Administrator will issue a Notice to Proceed within seven (7) calendar days after approval of the Contractor's work plan and cost. Task Orders shall not allow for any change to the terms and conditions of the contract. Where any language in the task order may suggest a change to the terms or conditions, the Contractor shall immediately notify the County's Contract Administrator.

Both contract parties shall insure task orders are complete with the following information before signatures and approvals: description of work, estimated labor hours and description of materials and quantities required, performance period and schedule of deliverables, and the task order cost based on the contract unit prices.

**I.12 Time of the Essence and Completion**

Time shall be of the essence to this Contract, except where it is herein specifically provided to the contrary.

**I.13 Delivery**

All deliveries shall be F.O.B. Prince William County Job Sites, freight fully prepaid and allowed in Prince William County. No collect shipments will be accepted. Deliveries shall arrive between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday, or as requested by the contract administrator, provided that such day is not a legal holiday.

**I.14 Response / Completion Time**

The Contractor shall begin work within seven (7) calendar days after receipt of a Notice to Proceed issued against a task order. The County Contract Administrator may extend this response time if it is in the best interest of the County. For emergency work, the Contractor shall make every effort to begin work within twenty-four (24) hours after notification that an emergency exist.

The Contractor shall complete all work required in the task order within the time period stated in the task order.

**I.15 Inspection and Acceptance**

Goods and/or services (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, end products and work performed) shall be subject to inspection

and testing by the County, to the extent practicable at all times and places including the place of manufacture, and in any event prior to acceptance.

In case goods are defective in material or workmanship or otherwise not in conformity with the County's requirements, the County shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Goods which have been rejected or required to be corrected shall be removed or, if permitted or required by the Purchasing Manager, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails to promptly remove such goods that are required to be removed or replaced or to correct such goods, the County either 1) may by Contract or otherwise replace or correct such goods and charge to the Contractor the cost occasioned the County thereby; or 2) may terminate the Contract for default as provided by the "Termination for Default" Clause. Unless the Contractor corrects or replaces such goods within the specified delivery schedule, the Purchasing Manager may require the delivery of such goods to be provided at a reduction in price that is equitable under the circumstances.

Any and all services provided shall be conducted and completed in accordance with recognized and customarily accepted industry practices, unless otherwise specified by the County, and shall be considered complete when the services are approved as acceptable by the County's Contract Administrator or its designee. In the event of rejection of any services provided, the Contractor shall be notified and shall have three (3) calendar days from date of the deficiency notice to correct the deficiencies and resubmit for inspection.

**I.16 Invoicing and Payments**

Contractor's invoices shall be submitted monthly to the "Invoice To" address as reflected on the County's Purchase Order. Progress payments may be authorized on individual task orders by the Contract Administrator. Task orders which allow for progress payments in installments based upon an estimated percentage of completion, the County shall pay the Contractor ninety-five percent (95%) of the earned sum when payment is due. The County may retain five percent (5%) of the earned sum to assure faithful performance of the task order by the Contractor. All amounts withheld by the County shall be included in the final payment to the Contractor.

Invoices shall be accompanied by job tickets supporting the costs and signed by the Contractor and the County's Contract Administrator or his Designee.

As a minimum, invoices shall reflect the following:

- Contractor's Name and Address
- Contract Number
- Purchase Order Number/Task Order Number
- Date Goods and/or Services were provided
- Receipts and/or Delivery Tickets, if applicable

Final payment Net 30 days shall be contingent upon written confirmation by the County's Designee to the Contract Administrator that the work has been performed in accordance with the task order and accepted by the County.

**I.17 Warranties**

The Contractor warrants that (1) goods/services provided to the County are fit and sufficient for the purpose intended; (2) goods/services are of good quality, and free from defects, whether patent or latent, in material or

workmanship, and (3) goods/services provided to the County conform to the County's specified requirements.

**I.18 Subcontractors**

Contractors desiring to utilize subcontractors on County jobs must receive prior written County approval to do so before subcontractors perform any services for the County.

**I.19 Hazardous Products**

Where applicable, the Contractor shall comply with all Virginia Occupational Safety and Health Administration Standards. Specifically, the Contractor shall ensure that all products provided to Prince William County are properly labeled and that Material Safety Data Sheets (MSDS) are provided for those products classified as "hazardous" by the Virginia Occupational Safety and Health Administration.

**I.20 Law Compliance**

The Contractor shall be solely responsible for complying with all applicable federal, state and municipal laws, codes and regulations relating to this procurement.

**I.21 Tax Exemption**

Prince William County Government is exempt from the payment of any Federal excise or Virginia sales tax. However, when under established trade practice any such tax is included in Contractor's list price, the Contractor shall show the list price and shall show separately the amount of tax as a flat sum that will not be paid by the County.

**I.22 Rider Clause**

The contract may be extended, with the authorization of the Contractor, to other public bodies, public agencies, or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms and conditions of the contract. The Contractor shall deal directly with public bodies utilizing the contract concerning issuance of purchase orders, contractual disputes, invoicing and payment. Prince William County Government acts only as the "Contracting Agent" for these public bodies.

It is the Contractor's responsibility to notify public bodies of the availability of the contract. Other public bodies desiring to use the contract shall make their own legal determination as to whether the use of the contract is consistent with their laws, regulations, and other policies. Other public bodies if mutually agreed may add terms and conditions required by their statute, ordinances, and regulations, to the extent that they do not conflict with the contract's terms and conditions.

Prince William County shall not be held liable for any costs or damages incurred by other public bodies as a result of any contract extended to other public bodies by the Contractor.

**SECTION II**

**GENERAL PROVISIONS**

**II.1 Assignability of Contract**

Neither this Contract, nor any part hereof, may be assigned by the Contractor to any other party without the express written permission of the County.

**II.2 Modifications or Changes to the Contract**

All modifications and changes to the Contract shall be in writing.

The Head of the Using Department of this Contract, with the concurrence of the Purchasing Manager (except as otherwise provided by the Purchasing Regulations), shall, without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a "Change Order." Such orders shall be limited to reasonable changes in the services to be performed or the time of performance; provided that the Contractor shall not be excused from performance under the changed Contract by failure to agree to such changes, and it is the express purpose of this provision to permit unilateral changes in the Contract subject to the conditions and limitations herein.

The Contractor need not perform any work described in any change order unless it has received a certification from the County that there are funds budgeted and appropriated sufficient to cover the cost of such changes.

The Contractor shall make a demand for payment for completed changed work within 30 days of receipt of a change order, unless such time period is extended in writing, or unless the Purchasing Manager requires submission of a cost proposal prior to the initiation of any changed work or supplies. Later notification shall not bar the honoring of such claim or demand unless the County is prejudiced by such delay.

No claim for changes ordered hereunder shall be considered if made after final payment in accordance with the Contract.

**II.3 Employment Discrimination for Contracts Over \$10,000**

1. During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

c. Notices, advertisements, and solicitations placed in accordance with Federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The Contractor will include the provisions of the foregoing paragraphs a, b, and c in every Subcontract or purchase order over \$10,000.00, so that the provisions will be binding upon each Subcontractor or Contractor.

#### **II.4 Drug-free Workplace to be Maintained by Contractor for Contracts over \$10,000.00**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every Subcontract or purchase order over \$10,000.00, so that the provisions will be binding upon each Subcontractor or Contractor.

For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of this Contract.

#### **II.5 Claims/Disputes**

In accordance with Section 2.2-4363, VA Code Ann., this provision shall be followed for consideration and handling of all claims by the Contractor under this contract. Section 2.2-4365, VA Code Ann., is not applicable to this Contract, and under no circumstances is this paragraph to be construed as an administrative appeals procedure governed by Section 2.2-4365, VA Code Ann.

Notice of the intent to submit a claim setting forth the basis for any claim shall be submitted in writing within ten (10) days after the occurrence of the event giving rise to the claim, or within ten (10) days of discovering the condition giving rise to the claim, whichever is later. In no event, shall any claim arising out of this Contract be filed after the submission of the request for Final Payment by the Contractor.

Claims by the Contractor with respect to this Contract shall be submitted in writing in the first instance for consideration by the Contract Administrator. The decision of the Contract Administrator shall be rendered in writing within forty-five (45) days from the receipt of the claim from the Contractor. If the Contractor is not satisfied with the decision or resolution of the Contract Administrator, the Contractor may file a formal dispute with regards to the claim with the Prince William County Director of Finance, which claim shall be received within thirty (30) days of the date of decision of the Contract Administrator. The Director of Finance shall reduce his or her decision to writing and shall mail or otherwise furnish a copy of this decision to the Contractor within forty-five (45) days of the receipt of the claim from the Contractor. The decision of the Director of Finance shall be final on behalf of Prince William County unless the Contractor submits the claim to the County Executive within thirty (30) days

of the Director of Finance's decision. The Contractor may submit the claim to the County Executive by mailing or otherwise furnishing the Purchasing Manager a copy of the claim and a request for the County Executive's determination.

The County Executive's decision on the claim shall be rendered in writing to the Contractor within forty-five (45) days of the Purchasing Manager's receipt of the request from the Contractor, and shall be final and binding on behalf of Prince William County, unless the Contractor submits the claim for determination by the Board of County Supervisors by mailing or otherwise furnishing the Purchasing Manager a copy of the claim, along with a request for determination by the Board within thirty (30) days of the County Executive's decision. The Board shall consider the claim and render a decision within forty-five (45) days of the date on which the Board hears the claim in open meeting. The Board's procedure in considering claims under this Contract shall be the same as that for other decisions of the Board on claims made under Section 15.2-1245 et seq., VA Code Ann. The decision of the Board shall be final.

Should any decision-maker designated under this procedure fail to make a decision within the time period specified, then the claim is deemed to have been denied by the decision-maker.

Pending a final determination of a claim, the Contractor shall proceed diligently with the performance of the Work under the Contract.

In accordance with the provisions of Section 2.2-4363, VA Code Ann., full compliance with this procedure set forth in the provision shall be a precondition to the filing of any lawsuit by the Contractor against the Board of County Supervisors of Prince William County arising out of this Contract.

## **II.6 Termination for Convenience of the County**

The parties agree that the County may terminate this Contract, or any work or delivery required hereunder, from time to time either in whole or in part, whenever the County Executive of Prince William County shall determine that such termination is in the best interests of the County.

Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the County Executive or his designee, mailed or delivered to the Contractor, and specifically setting forth the effective date of termination.

Upon receipt of such Notice, the Contractor shall:

1. Cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice;
2. Place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice;
3. Terminate all subcontracts except those made with respect to Contract performance not subject to the Notice;
4. Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Purchasing Manager of Prince William County; and
5. Use its best efforts to mitigate any damages which may be sustained by it as a consequence of termination under this clause.

After complying with the foregoing provisions, the Contractor shall submit a termination claim, in no event later than six (6) months after the effective date of its termination, unless an extension is granted by the Purchasing Manager.

The Purchasing Manager, with the approval of the County's signatory to this Contract, shall pay from the using department's budget reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or completed. In no event shall this amount be greater than the original Contract price, reduced by any payments made prior to Notice of Termination and further reduced by the price of the supplies not delivered, or the services not provided. This Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

In the event that the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this clause, the Purchasing Manager shall pay to the Contractor the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause:

1. With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:
  - a. Cost of work performed or supplies delivered;
  - b. The cost of settling and paying any reasonable claims as provided in subparagraph (4), above;
  - c. A sum as profit on (a) determined by the Purchasing Manager to be fair and reasonable.
2. The total sum to be paid under (a) above shall not exceed the Contract price, as reduced by the amount of payments otherwise made, and as further reduced by the Contract price of work or supplies not provided.

In the event that the Contractor is not satisfied with any payments which the Purchasing Manager shall determine to be due under this clause, the Contractor may appeal any claim to the Board of County Supervisors in accordance with the "Claims/Disputes" clause of this Contract.

The Contractor shall include similar provisions in any subcontract, and shall specifically include a requirement that subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the Contractor from any recovery from the County whatsoever of loss or damage sustained by a subcontractor as a consequence of termination for convenience.

**II.7 Termination for Default**

Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein.

**II.8 Termination for Non-Appropriation of Funds**

If funds are not appropriated for any succeeding fiscal year subsequent to the one in which this Contract is entered into, for the purposes of this Contract, then the County may terminate this Contract upon thirty (30) days prior written notice to the Contractor. Should termination be accomplished in accordance with this Section, the County shall be liable only for payments due through the date of termination.

## **II.9 Payments to Subcontractors**

In the event that the Contractor utilizes a subcontractor for any portion of the work under this Contract, the Contractor hereby agrees to:

1. The Contractor shall take one (1) of the two (2) following actions within seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by a subcontractor under the Contract.
  - a. Pay a subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by that subcontractor under the Contract; or
  - b. Notify the agency and any subcontractors, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
2. The Contractor shall be obligated to pay interest to a subcontractor on all monies owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the County for work performed by a subcontractor under the Contract, except for amounts withheld under Subsection 1 b. of this section. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the provisions of this section may not be construed to be an obligation by the County. A contract modification may not be made for the purpose of providing reimbursement for any such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.
3. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.
4. The Contractor is hereby required to include in each of its subcontracts a provision requiring each subcontractor to otherwise be subject to the same payment and interest requirements set forth in subsection 2. and 3. of this section with respect to each lower-tier subcontractor.

## **II.10 Examination of Records**

The Contractor agrees that the County, or any duly authorized representative, shall, until the expiration of three (3) years after final payment hereunder, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this Contract.

The Contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the County or any duly authorized representative shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of such Contractor involved in transactions related to such subcontract, or this Contract. The term "subcontract" as used herein shall exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. The period of access provided herein for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this Contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

**II.11 Ethics in Public Contracting**

The Contractor hereby certifies that it has familiarized itself with Article 6 of Title 2.2 of the Virginia Public Procurement Act, Sections 2.2-4367 through 2.2-4377, VA Code Ann., and that all amounts received by it, pursuant to this Procurement, are proper and in accordance therewith.

**II.12 Governing Law and Choice of Forum**

This Contract and any disputes hereunder shall be governed by the laws of the Commonwealth of Virginia. It is further agreed that all disputes and matters whatsoever arising under, in connection with or incident to this Contract, shall be litigated, if at all, in and before a state Court located in the County of Prince William in the Commonwealth of Virginia or a federal Court located in the Eastern District of Virginia, and any appropriate appellate Court thereof, to the exclusion of the courts of any other state, territory, country or other jurisdiction.

**II.13 Immigration Reform and Control Act of 1986**

By signing this contract, vendor certifies that it does not and will not during the performance of this contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

**II.14 Integration**

This Contract shall constitute the whole agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Contract shall supersede all previous communications, representations, or agreements, written or verbal, between the parties hereto.

**II.15 Hold Harmless**

The Contractor hereby agrees to indemnify and hold harmless Prince William County, Virginia, its officers, agents and all employees and volunteers, from any and all claims for property damage, bodily injuries and personal injuries to the public, including cost of investigation, all reasonable attorneys fees, and the cost of appeals arising out of any such claims or suits, because of any and all negligent acts of omission or willful misconduct of the Contractor, including its agents, Subcontractors, employees and volunteers, in connection with Work under this Contract.

It is understood and agreed that the Contractor is at all times herein acting as an independent Contractor.

## II.16

### Specifications/Pricing Schedule

#### Specifications

##### A. General

All the materials furnished and manner of construction and/or performance under the Contract shall be in accordance with and governed by the Virginia Department of Transportation Road and Bridge Standards, current edition, the Virginia Erosion and Sediment Control Handbook, current edition, the Prince William County Design and Construction Standards Manual and VDOT special provision 211 and 315 (superpave) 10/6/97 and special provision for stone matrix (SMA) 10/6/97. Where two or more of these referenced specification standards are in conflict, the standard which, in the sole opinion of the Contract Administrator is more stringent shall apply.

##### B. Materials

###### 1. Base Course Aggregate, 21-A, Supply and Place

The base course (the layer immediately on top of the subgrade) shall conform to Section 208 of the Virginia Department of Transportation Road and Bridge Specifications, as amended.

###### 2. Base course Aggregate, 21-B, Supply and Place

The base course (The layer immediately on top of the subgrade) shall conform to Section 208 of the Virginia Department of Transportation Road and Bridge Specifications, as amended.

###### 3. Cement Treated Aggregate, Supply and Place

Cement treated aggregate shall conform to Section 307 of the Virginia Department of Transportation Road and Bridge Specifications, as amended.

###### 4. Asphalt Concrete Type BM-25.0 and BM-37.5, Supply and Place

Base type asphalt concretes shall conform to Section 211 of the Virginia Department of Transportation Road and Bridge Specifications, as amended.

###### 5. Asphalt Concrete Type SM-9.5A, SM-9.5D, SM-12.5A and SM-12.5D, Supply and Place

Surface type asphalt concretes shall conform to Section 211 of the Virginia Department of Transportation Road and Bridge Specifications, as amended.

6. Asphalt Concrete Type IM-19.0A and IM-19.0D, Supply and Place

Intermediate type asphalt concretes shall conform to Section 211 of the Virginia Department of Transportation Road and Bridge Specifications, as amended.

**C. Execution and Testing**

1. Grade Preparation,

Where required, the Contractor shall prepare the subgrade to final grades before placing base course aggregate, 21-A/21-B. The existing grade provided to the Contractor shall be 3-inches average high or low. This item will also apply to fine grading 21-a and/or 21-b placed by others.

2. Excavation (Undercut)

Where required, the Contractor shall excavate these areas during the subgrade preparation. The surplus material shall be stock-piled by the Contractor on-site in an area designated by the owner.

3. Base Course Preparation, Supply and Place

Where required, base course (21-A/21-B), as shown on the plans issued with the task order or as marked in the field by the County, shall be placed by the Contractor.

The Contractor shall prepare the base course in accordance with Section 308/309 of VDOT Road and Bridge Specifications (1997) to the final grade and compact to 95% of the maximum standard proctor density at optimum moisture, within plus or minus 20% of optimum.

4. Asphalt concrete Type BM-25.0 and BM-37.5, Supply and Place

Unless otherwise specified on the project drawings, issued with the task order, a compacted 3 inch layer of Asphalt Concrete Base course, shall be supplied and placed by the contractor on the pavement areas delineated on the drawings supplied with each task order and described therein. The Work shall be in accordance with Section 315 of the VDOT Road and Bridge Specifications, as amended.

One test consisting of the average of two compaction tests per layer shall be taken for density. One sample per 500 tons shall be taken for gradation, and asphalt content. The minimum laydown temperature of the asphalt concrete shall be in accordance with Section 315.04 of the VDOT Road & Bridge Specifications. Compaction tests shall be taken by the Contractor at Contractor's expense.

5. Asphalt Concrete, Type IM-19.0A and IM-19.0D, Supply and Place

Unless otherwise specified on the project drawings, issued with

the task order, a compacted 2 inch layer of Asphalt Concrete intermediate course, shall be supplied and placed by the Contractor on the pavement areas delineated on the drawings supplied with each task order and described therein. The work shall be in accordance with Section 315 of the VDOT Road and Bridge Specifications.

One test consisting of the average of one compaction test per 25,000 sq. ft. per layer shall be taken for density and depth tests. One sample per 500 tons shall be taken for gradation and asphalt content. The minimum laydown temperature of the asphalt concrete shall be in accordance with Section 315.04 of the VDOT Road & Bridge Specifications (1997). Compaction tests shall be taken by the Contractor at Contractor's expense.

6. Asphalt Concrete, Type SM-9.5A & D; SM-12.5A & D; Supply and Place

Unless otherwise specified on the project drawings, issued with the task order, a compacted 1.5 inch layer of Asphalt Concrete surface course asphalt shall be supplied and placed by the contractor on the pavement areas delineated on the drawings supplied with each task order and described therein. The Work shall be in accordance with Section 315 of the VDOT Road and Bridge Specifications.

One test consisting of the average of two compaction tests per sq. ft. per layer shall be taken for density and depth tests. One sample per 500 tons shall be taken for gradation and asphalt content. The minimum laydown temperature of the asphalt concrete shall be in accordance with Section 315.04 of the VDOT Road & Bridge Specifications. Compaction tests shall be taken by the Contractor at Contractor's expense.

7. Milling and Cold Planing

This Work shall consist of milling flexible pavements to the designated depth in preparation for pavement repair or pavement overlay. Milling and cold planing shall conform to Section 515.02(b) of the VDOT Road and Bridge Specification (1997). Disposal of milled material is the contractor's responsibility and is to be included in the square yard price provided.

8. Hauling and Disposing

The Work shall consist of supplying rental tri-axle dump trucks for hauling material from the borrow excavation to the site or disposing of excess/unsuitable material to a designated area. Trucks will be loaded by others. Unless otherwise specified by the Contract Administrator, the Contractor shall dispose of material at the Prince William County Landfill.

9. Stabilized Open Graded Base Mix, Supply and Place

Open graded base mix shall conform to Virginia Department of Transportation Road and Bridge specifications (1997).

10. Trails-Surface mix asphalt 2" depth, Supply and Place

Provide a per ton price for surface mix asphalt SM-9.5A when used to pave 4 foot, 6 foot and 8 foot wide trails. Include priming stone for 8 foot wide trails.

11. Trails - Subgrade Preparation

Provide a per square yard price for subgrade preparation when the work is being performed on a 4 foot, 6 foot or 8 foot wide trail.

12. Trails - Base Course Aggregate 21-A or 21-B, Supply and Place

Provide a per ton price for Base course Aggregate 21-A or 21-B when placed as a base for 4 foot, 6 foot or 8 foot wide trails.

13. Petrotack 1 foot wide

Supply and place.

14. Petrotrack 3 Foot Wide

Supply and place.

**D. Mobilization**

Mobilization-It is understood by the contractor that tasks under the contract can vary from large quantities to small quantities of work. There is no minimum of work required to be assigned to the contractor under this contract. The contractor may charge a mobilization fee for tasks less than \$5,000.00 which includes any demobilization costs. This fee will be paid only one time per task. The mobilization fee shall not increase the total work order amount greater than \$5,000.00 EXAMPLE: If the mobilization fee submitted is \$500.00 and the task amount is \$4,800.00 then the mobilization fee will be \$200.00 for this task. If the task amount is \$3,000.00 then the full \$500.00 mobilization fee would apply.

**E. Traffic Control**

Maintenance of traffic during construction period shall conform to Section 512 of the Virginia Department of Transportation Road and Bridge Specifications. Signs, crash barriers, VDOT certified flaggers, arrow boards, cones/barriers and other materials needed will be provided by the Contractor. Traffic control costs are included in the unit contract prices for all contract items and shall not be an additional cost to the County.

**F. Price Adjustment**

Due to the fluctuations in liquid asphalt prices, adjustments (Increases and Decreases) for asphalt cement products provided under the contract will be allowed. Current VDOT cost per ton for

liquid asphalt PG-2264 is \$604.09/Short Ton recorded November 03, 2008. This cost will become the base index for determining any future price adjustments. (PER CD-91-3) for liquid asphalt PG-2264 is posted on the VDOT website ([www.virginiadot.org/business/const/indices-asphalt.asp](http://www.virginiadot.org/business/const/indices-asphalt.asp)) under Price and Fuel Adjustment indexes. For products using liquid asphalt type PG-7022, the index price will be \$15.00 above the Contractor's bid price for PG-2264, as determined fair and reasonable by VDOT.

The difference between this index of (\$604.09) and the current index (current being the index published by VDOT at the time material is provided to the County) will determine the amount of the adjustment (increase/decrease). However, price adjustments will not be made for any item in which the difference between the base and current indexes is less than five percent (5%). The quantity of asphalt cement in the performance grade mix to which the adjustment will be applied will be the quantity utilized in the price adjustment items based on the percent of asphalt in the performance grade mix shown on the appropriate approved job mix formula. The determination as to the amount of any cost adjustment shall be made by the County's Contract Administrator. Disputes shall be resolved by the County's Purchasing Manager.

*{Contract Renewal Option Years Price Increases do not apply to Pricing Schedule Items 12 thru 21.}*

**G. Job Mix Formula, Supply and Place**

The job mix formula shall be in accordance with the current VDOT Road and Bridge Specifications 2002-Table II-14. When unsatisfactory results or other conditions make it necessary the Contractor shall prepare and submit a new job mix formula for approval.

**H. Prime/Tack**

Prime and Tack shall be included in the unit price for all items when it is required by the VDOT Road and Bridge specifications or the Prince William County Design and Construction Manual.

**I. SPECIAL PROVISION FOR SURFACE PREPARATION AND RESTORATION**

(Prior to Plant Mix Overlay)

1. Description

This work shall consist of removing deteriorated pavement, clearing the area, and repairing with the appropriate asphalt mixes in areas designated by the Engineer. This work will apply only to restoration projects requiring in excess of 100 tons of asphalt to complete. A smaller contractor will be used for projects less than 100 tons.

After the preparation, the Contractor will be responsible for maintaining the prepared surface until the overlay has been completed.

Definitions: For the purpose of the Specifications surface preparation is defined as the following:

Type I - A localized disintegration of pavement, including distorted areas, no more than 5 inches in depth and requiring 100 tons or more asphalt to complete.

Type II - A localized disintegration more than 5 inches in depth requiring 100 tons or more asphalt to complete.

## 2. Materials

Surface preparation and restoration material shall be as follows:

For 0-2 inch - use surface mix

For 2-5 inch - use intermediate mix

For greater than 5 inches - use base mix or intermediate mix

Tack coat shall conform to the requirements of Section 210 of the Specifications.

## 3. Procedures

The Engineer will designate the surface area for preparation and restoration to be achieved prior to beginning work.

Areas designated for surface preparation and restoration shall be thoroughly cleaned, unsuitable material removed and edges shaped

to vertical sides prior to applying tack coat.

A tack coat shall be applied to all exposed surfaces of the area which will receive asphalt material.

Asphalt material shall be placed in lifts of no more than 3 inches in depth. After leveling each lift, it shall be compacted with an approved mechanical tamper or other approved method. Care shall be taken to ensure the surface of the repaired area conforms to the grade of the surrounding pavement.

## 4. Measurement and Payment

Measurement and payment will be made in tons for the type designated. This price shall include removing and disposing of unsuitable material, preparing the area, furnishing and applying asphalt material, compaction and all cost for maintenance of traffic items, with the exception of pilot vehicles.

**Pricing Schedule - Base Year**

**Base Year**

Unit prices include all cost related to the supply, delivery, and placement of materials. Delivery may be requested anywhere within Prince William County.

- (FFP) = Firm Fixed Price
- (BASE) = Price Adjustments Allowed
- (TON) = Short Ton

**Part A1 - Firm Fixed Price (FFP) Items 1-11**

**New Preparation & Paving**

Item/Description	Unit Price (FFP)
1. Grade Preparation (Less Trails) Fine Grade, Subgrade, and/or stone	\$ .50 /sy
2. Excavation	\$10.00 /cy
3. Base Course Prep.21a (Less Trails)	\$20.00 /tn
4. Base Course Prep.21b (Less Trails)	\$20.00 /tn
5. Cement Treated Aggregate	\$25.00 /tn
6. Milling (sq. yds inches)	\$ 3.00 /syi
7. Hauling (dump truck, rental min. tri-axle)	\$45.00 /hrs
8. Petrotack 1' wide	\$ 1.00 /sy
9. Petrotack 3' wide	\$ 1.00 /sy
10. For subgrade preparation of trails	\$ .10 /sy
11. Supply and place stone 21-a/21-b for trails	\$10.00 /tn

**Part A2 - VDOT Price Adjustments Allowed (BASE) Items 12-21 as follows:**

Price adjustments for the base contract period and any contract renewals will only be based on VDOT "Price Adjustment Indices for Asphalt (liquid)" for November 03, 2008 Current Index (\$604.09/Short Ton) will be used as the "base" for this Solicitation and the awarded Contract. VDOT Mix Design Criteria VTM (%) shall be used to calculate asphalt percentages in the mix. See Specifications "Price Adjustments" for additional details

{Contract Renewal Option Years Price Increases do not apply to Items 12 thru 21.}

Item/Description	Unit Price (BASE)
12. Supply and place asphalt concrete SM-9.5A, 2" depth on trails	\$75.00 /tn
13. Stabilized Open Graded Base Mix	\$45.00 /tn
14. Super Pave SM-9.5A (Less Trails)	\$80.00 /tn
15. Super Pave SM-9.5D	\$80.00 /tn
16. Super Pave SM-12.5A	\$75.00 /tn
17. Super Pave SM-12.5D	\$75.00 /tn
18. Super Pave IM-19.0A	\$80.00 /tn
19. Super Pave IM-19.0D	\$65.00 /tn
20. Super Pave BM-25.0	\$80.00 /tn
21. Super Pave BM-37.5	\$45.00 /tn

**Part B - Existing Surface Removal and Restoration**

**Price Adjustments Allowed (BASE) Items 1 & 2**

Item/Description	Unit Price (BASE)
1. Surface Removal & Restoration Type I	\$80.00 /tn

- 2. Surface Removal & Restoration Type II \$55.00 /tn

**Part C - Mobilization Fee**

**Firm Fixed Price (FFP) Items 1 & 2**

The contractor may charge a mobilization fee for tasks valued less than \$5,000.00. Mobilization fee includes any demobilization cost.

- |  | Unit<br>Price<br>(FFP) |
|--|------------------------|
| 1. Paving Mobilization Fee Per Task = \$ 1.00  |                        |
| 2. Milling Mobilization Fee Per Task = \$ 1.00 |                        |

**Part D- Liquid Asphalt**

- 1. Delivered Base Price for Liquid Asphalt PG6422 = \$604.09 Per Short Ton (VDOT Recorded November 03, 2008)
- 2. Products Containing Liquid Asphalt PG7022

Delivered Base Price for Liquid Asphalt PG7022 in products shall be \$15.00 Per Short Ton "HIGHER" then the delivered adjusted cost of Liquid Asphalt PG6422, unless otherwise specified in Contractor's Bid Submittal. This higher amount has been determined by VDOT to be fair and reasonable and shall remain \$15.00 higher then the adjusted cost of Liquid Asphalt PG6422 throughout the contract period including the option years.

**Part F - Pricing Schedule- Contract Renewal Option Years**  
**{Contract Renewal Option Years Price Increases do not apply to Items 12 thru 21.}**

- 1. **Option Year I** - There is a 10% increase from the base contract period on all firm fixed price items.
- 2. **Option Year II** - There is a 5% increase from option year I on all firm fixed price items.
- 3. **Option Year III** - There is a 5% increase from option year II on all firm fixed price items.
- 4. **Option Year IV** - There is a 5% increase from option year III on all firm fixed price items.

\*\*\*\*\*

BOARD OF COUNTY SUPERVISORS OF  
PRINCE WILLIAM COUNTY, VIRGINIA

Finley Asphalt and Sealing, Inc.

\_\_\_\_\_  
County Representative Signature

Thomas Bruun  
Director of Public Works

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_  
Carol L. Scarton  
Purchasing Manager

APPROVED AS TO FORM COUNTY ATTORNEY'S OFFICE

\_\_\_\_\_ Date: \_\_\_\_\_