

**AGREEMENT F2014111/SVC-ASPHREJ/1415
BETWEEN CITY AND CONTRACTOR**

THIS AGREEMENT is dated as of the 19th day of May in the year 2015 by and between:

The City of Punta Gorda
326 West Marion Avenue
Punta Gorda, FL 33950
(941) 575-3302

(Hereinafter "**CITY**") and

Pavement Technology, Inc
24144 Detroit Road
Westlake, Ohio 44145
(440) 892-1895

(Hereinafter "**CONTRACTOR**")

The Agreement Documents consist of this executed Agreement, the complete Solicitation Package, and CONTRACTOR'S Submittal Package, and all documents that may be executed as a result of this executed agreement. City and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

CONDITIONS OF WORK/PURCHASE: All work performed or purchases made shall be in accordance with the terms and conditions of this Agreement and any attachments hereto. No other conditions or modifications of these terms and conditions will be effective unless specifically agreed to in writing by the CITY's appropriate level of authority. Failure of CITY to object to provisions contained in any acknowledgment, document or other communications from CONTRACTOR shall not be construed as a waiver of the Agreement's terms and conditions or an acceptance of any such provision.

This Agreement and any attachments hereto, constitute the complete and exclusive statement of the parties which supersedes all previous agreements, written or oral, and all communications between the parties relating to the subject matter hereof. This Agreement shall not be modified, supplemented, qualified or interpreted by any prior course of dealing between the parties or by any usage of trade. Only the CITY's appropriate Change Order Authority can make changes or modifications by issuance of an official change notice.

ARTICLE 1 - WORK

All work to be performed in accordance with the Agreement Documents, Exhibit A and shall be completed in a timely and professional manner. The Work/Commodities under the Agreement Documents may be the whole or only a part is generally described as follows:

ASPHALT REJUVENATION APPLICATION

ARTICLE 2 – CITY STAFF RESPONSIBILITIES

REPRESENTATIVE – Linda Sposito, Project Manager, Public Works, who is hereinafter referred to as REPRESENTATIVE will assume all duties and responsibilities and will have the rights and authority assigned to REPRESENTATIVE in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

CONTRACT MANAGER - The Procurement Manager or their designee, who is hereinafter referred to as CONTRACT MANAGER will assume all duties and responsibilities and will have the rights and authority assigned to ensure contract compliance and management of the Agreement.

CONTRACT ADMINISTRATOR – Senior Purchasing Agent or their designee, who is hereinafter referred to as CONTRACT ADMINISTRATOR shall receive and/or be copied on all correspondence between the CITY and CONTRACTOR for the project and is responsible for all records retention of Agreement correspondence.

ARTICLE 3 – TERM AGREEMENT

A. **AGREEMENT TERM:** This Agreement shall be for a three (3) year period, which shall commence on May 21, 2015. The CITY retains the right to renew this initial Agreement under the same terms and conditions upon mutual agreement with the Bidder. Agreement for commodities or contractual services may be renewed for a period that may not exceed 3 years, or the term of the original contract, whichever period is longer. Renewal of a contract for commodities or contractual services shall be in writing and shall be subject to the same terms and conditions set forth in the initial contract. A renewal contract may not include any compensation for costs associated with the renewal. Renewals shall be contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds.

1. The CITY reserves the right to discontinue the contract in any year of a renewal period if it is deemed to be in the best interest of the CITY.

B. **NON-EXCLUSIVE AGREEMENT:** No Guarantee is expressed or implied as to the total quantity of commodities/services to be purchased under any open-end Agreement.

C. **ORDERING:** The CITY reserves the right to purchase commodities/services specified herein through contracts established by other governmental agencies or through separate procurement actions due to unique or special needs. If an urgent delivery is required, within a shorter period than the delivery time specified in the contract and if the CONTRACTOR is unable to comply therewith, the CITY reserves the right to purchase commodities/services from another source without penalty or prejudice to the CITY.

D. **SEPARATE PURCHASE ORDER:** CONTRACTOR will receive a separate purchase order as commodities and/or services are required, at prices quoted per the Agreement.

E. **APPROPRIATION OF FUNDS:** If funds are not appropriated or otherwise made available to support continuation of this Agreement in any fiscal year, the CITY shall have the right to terminate the Agreement without any obligation or penalty.

ARTICLE 4 – RESPONSE TIME

A. All work issued under this Agreement shall be through a Statement of Work and agreed to by both parties.

B. The City shall describe the scope of services and locations and submit the request to the CONTRACTOR.

C. The CONTRACTOR shall review, indicate quantities and costs of project and advise of a start and completion date. The CONTRACTOR agrees to complete, sign and return the Statement of Work form issued by a CITY Department within three (3) business days from receipt of CITY request. REPETITIVE FAILURE TO MEET THIS REQUIREMENT MAY BE JUST CAUSE TO TERMINATE THE CONTRACT IN ITS ENTIRETY.

D. A fully executed Statement of Work shall acknowledge agreement by both parties to the location, services, project timeline and project costs.

E. **Completion of Work -** Upon completion of work and before acceptance of final payment, the CONTRACTOR shall complete Release of Liens forms in accordance with this Agreement. The CONTRACTOR is to remove all equipment and temporary structures from all right-of-ways and adjacent property. Any surplus materials or rubbish must be discarded at the CONTRACTOR's expense. Restoration of property, both public and private, roadways and waterways, which may be damaged while performing work, shall be restored to previous existing condition at the CONTRACTOR's expense.

ARTICLE 5 – CANCELLATION OF CONTRACT

A. **CANCELLATION CLAUSE:** This Agreement may be terminated by CITY or the CONTRACTOR should CONTRACTOR or CITY fail to provide in any substantial manner the services and/or commodities required under this Agreement, or otherwise fails to comply with the terms of this Agreement or the Agreement Documents, or violates any ordinance, regulation or other law which applies to its performance under this Agreement. The CITY or the CONTRACTOR may terminate this Agreement under this subparagraph by giving five (5) calendar days written notice. The CITY, at its option, may give CONTRACTOR a reasonable period of time to cure the noncompliance.

B. The CITY may terminate this Agreement for any reason and without cause by giving thirty (30) calendar days written notice to CONTRACTOR. Upon such termination, CONTRACTOR will be compensated for the value of the services performed and/or commodities delivered to the date of termination.

C. DELAYS AND EXCUSED PERFORMANCE/FORCE MAJEURE. CONTRACTOR shall not be considered in default by reason of failure, which arises out of causes reasonably beyond the CONTRACTOR's control, and without its fault or negligence. Such causes may include, however, not limited to: Acts of God, the City's omissive and commissive failures, natural or public health emergencies, labor disputes, freight embargos.

ARTICLE 6 – AGREEMENT PRICING

A. DELIVERED PRICES: Agreement prices are FREIGHT PREPAID AND ALLOWED/FOB: DESTINATION: PROJECT SITE, PUNTA GORDA, FL. Agreement prices shall be inclusive of all labor, freight, handling, delivery, surcharges, or any other incidental charges that may be required for the completion of the contract. Agreement price schedule is defined in Exhibit A.

B. FIXED PRICE TERM: CONTRACTOR agrees to supply the CITY the items and/or services listed at firm delivered prices for the first year of the initial contract.

C. PRICE ADJUSTMENTS:

1. MAXIMUM PERCENTAGE INCREASE: The CONTRACTOR and the CITY have agreed to establish a maximum percentage increase for the second and third years of the initial Agreement. The CONTRACTOR shall be responsible for providing written documentation supporting the requested increase to the CONTRACT ADMINISTRATOR in accordance with the Price Adjustment terms stated in this Article.

a. Second year of the initial Agreement's maximum percentage increase is defined as 5%.

b. Third year of the initial Agreement's maximum percentage increase is defined as 5%.

2. The CITY will allow one (1) price adjustment in the second year of the initial Agreement and one (1) price adjustment in the third year of the initial Agreement. It will be at the CITY's discretion to continue the second and/or the third year of the initial contract. However, additional consideration by the CITY may be given for extreme and unforeseen volatility in the marketplace as specified in section relating to "Equitable Adjustments".

3. Price adjustments during the second and third year of the initial Agreement will be allowed, but shall not exceed the maximum percentage increase proposed for that period. The requested adjustment must be submitted to the CONTRACT ADMINISTRATOR accompanied by substantiating proof of necessary increase (i.e. inflationary surge in fuel, wages, insurance or an unexpected cost increase from a supplying aggregate mine). In this event, written justification itemizing the adjustments and stating the percentage of increase must be forwarded to CONTRACT ADMINISTRATOR. CONTRACT ADMINISTRATOR will compare the requested price increase with the CPI index (Urban Consumers) South Region percent of change for the past twelve (12) months immediately preceding the date of written request. If justified and approved, this request will become effective thirty (30) days from the date the notice was received by CONTRACT ADMINISTRATOR from the CONTRACTOR for all purchases and services ordered after the effective date (thirty (30) days from City receipt of request). If the CONTRACTOR fails to justify the requested increase, CITY reserves the right to reject the price increase and cancel the balance of the contract.

4. Equitable Adjustments: The CITY may, in its sole discretion, make an equitable adjustment in the Agreement terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the CONTRACTOR'S control; (2) the volatility affects the marketplace or industry, not just the particular Agreement source of supply; (3) the effect on pricing or availability of supply is substantial; and (4) the volatility so affects the CONTRACTOR that continued performance of the Agreement would result in a substantial loss. Any and all equitable adjustments may be considered temporary due to the reason for adjustment. All equitable adjustments will be evaluated by the CONTRACT ADMINISTRATOR to determine if the reason for adjustment is still valid. If the reason for the adjustment is no longer valid, the CITY will terminate the adjustment and notify the CONTRACTOR.

5. The CITY reserves the right to negotiate the contract if the prices exceed the current marketplace.

6. CONTRACT RENEWAL

a. Price adjustment, during the optional renewal period, will be allowed. However, the CITY will allow only one (1) adjustment for each year of the renewal period. Requirements for requesting a

price adjustment shall be in accordance with the Price Adjustments section above and subject to CITY approval.

- b. The CITY reserves the right to negotiate the contract if the prices exceed the current marketplace.

ARTICLE 7 – PAYMENT TERMS

- A. The payment terms agreed upon by the CITY and CONTRACTOR are Net 30. The method of payment is by check.
- B. The City shall make payment on all invoices in accordance with the Florida Prompt Payment Act, sections 218.70 through 218.79, Florida Statutes.
- C. Payments will be made for work performed in accordance with the Agreement and authorized change orders, which are documented on an Application for Payment and validated by the CITY REPRESENTATIVE for payment within six (6) months after completion of contract. Any untimely submission of invoices beyond the specified deadline period is subject to non-payment under the legal doctrine of "laches" as unreasonable delay in pursuing a claim. Time shall be deemed of the essence with respect to the timely submission of Application for Payment under this agreement.

ARTICLE 8 – WARRANTY/GUARANTEES

A. COVENANT AGAINST GRATUITIES: CONTRACTOR warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by CONTRACTOR, or any agent or representative of CONTRACTOR, to any officer or employee of CITY with a view toward securing this Agreement or favorable treatment with respect to any determination concerning the performance of this Agreement. In the event of breach of this warranty, CITY shall be entitled to pursue the same remedies including, but not limited to, termination, against CONTRACTOR as it could pursue in the event of CONTRACTOR's default.

B. SPECIFICATION WARRANTY. The awarded CONTRACTOR warrants that all services will be in full accordance with the specifications and requirements of this solicitation document and this Agreement.

C. GUARANTEE. The CONTRACTOR shall guarantee all work for a period of one (1) year from the date of final acceptance by the CITY.

1. CHANGES REQUIRED IN CONNECTION WITH GUARANTEED WORK. If, within the guaranteed period, restoration, repairs or changes are required in connection with guaranteed work, which, in the opinion of the CITY, is rendered necessary as the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the contract, the CONTRACTOR shall promptly upon receipt of notice from the CITY and without expense to the CITY, do the following:

- a. Place in satisfactory condition, in every particular incident, all of such guaranteed work and correct all defects therein.
- b. Make good all damage to a structure, building or site, or equipment or piping or contents thereof, which, in the opinion of the CITY, is the result of the use of materials, equipment or workmanship, which are inferior, defective, or not in accordance with the terms of the Agreement.
- c. Make good any work or material, or the equipment and contents of building, structure or site disturbed in fulfilling any such guarantee.
- d. Restart the guarantee period on all corrected work performed.

2. CONTRACTOR'S FAILURE TO COMPLY WITH TERMS OF GUARANTEE. If the CONTRACTOR, after notice, fails within ten (10) business days to comply with the terms of this guarantee, the CITY may have the defects corrected, and the CONTRACTOR and his surety shall be liable for all expenses incurred; provided, however that in case of emergency where, in the opinion of the CITY, delay would cause loss or damage, repairs may be started without notice being given to the CONTRACTOR and the CONTRACTOR shall pay the cost thereof.

ARTICLE 9 - CHANGE ORDER TO CONTRACT

A. All requests for changes to the resulting Agreement shall be made in writing and is subject to written acceptance by the appropriate level of City authority.

B. The following the Change Order Authority Levels for the CITY.

1. Procurement Manager - the Procurement Manager may approve change orders in a singularly or cumulatively amount that does not exceed 25% of the total contract price with a maximum cap of fifty thousand dollars (\$50,000.00) with the exception of contracts requiring City Council's approval for an award. The Procurement Manager may authorize contract time extension in excess of five (5) days and non-monetary changes, which are not considered minor, which do not result in a change in the contract amount.

2. City Manager - the City Manager may approve all change orders with the exception of contracts that require the City Council's approval.

3. City Council - the City Council shall approve change orders for exemption contract that are reserved for City Council approval (i.e. Franchises, inter-local agreements, land, legal, auditing, actuarial services and medical director).

C. The CONTRACTOR fully understands the CITY's Change Order Policy. In the event the CONTRACTOR begins work on unauthorized changes to scope prior to receiving a signed Change Order by the CITY's appropriate level of authority, they do so at their own expense and risk not being compensated by the CITY for performing unauthorized work.

ARTICLE 10 - INSURANCE REQUIREMENTS

The CONTRACTOR, before commencing any work, shall provide insurance and furnish the City with a Certificate of Insurance for **themselves and all subcontractors** as follows:

- THE CITY IS TO BE SPECIFICALLY INCLUDED AS AN ADDITIONAL INSURED (WITH REGARDS TO GENERAL LIABILITY). ENDORSEMENT DOCUMENTATION SHALL BE PROVIDED.
- THE AGREEMENT NUMBER "F2014111/SVC-ASPHREJ/1415" SHALL BE REFERENCED IN THE DESCRIPTION/COMMENT SECTION OF THE CERTIFICATE OF INSURANCE.
- THE CITY SHALL BE NAMED AS CERTIFICATE HOLDER. **PLEASE NOTE THAT THE CERTIFICATE HOLDER SHOULD READ AS FOLLOWS:**

City of Punta Gorda
326 W. Marion Avenue
Punta Gorda, Florida 33950

No CITY Division, Department, Project name or individual name should appear on the Certificate. **NO OTHER FORMAT WILL BE ACCEPTABLE.**

- GENERALLY REQUIRED COVERAGE INCLUDES:
 - COMMERCIAL GENERAL LIABILITY - Not less than \$500,000 per occurrence; combined single limit for bodily injury liability and property damage liability. This shall include the following endorsements: premises and/or operations, independent contractors and products and/or completed operations, broad form property damage.
 - Business Auto Policy - Not less than \$500,000 Per Occurrence; Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Owned Vehicles, Hired and Non-Owned Vehicles, and Employees Non-Ownership.
 - Workers Compensation – Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws. The coverage must include Employers' Liability with a minimum of \$100,000.00 for each accident.

Should any of the policies be cancelled before the expiration thereof, notice will be delivered in accordance with the policy provisions. CONTRACTOR shall provide notice to CITY at any time CONTRACTOR becomes aware of any cancellation or material change in the above insurance policies.

ARTICLE 11 - CONTRACTOR'S REPRESENTATIONS

A. In order to induce City to enter into this Agreement, CONTRACTOR makes the following representations and assurances:

1. CONTRACTOR shall be a current Licensed Specialty Paving/Asphalt Contractor, and shall maintain current licensure as stated through the term of the Agreement.
2. CONTRACTOR shall maintain a current City of Punta Gorda Certificate of Competency through the term of the Agreement.
3. CONTRACTOR shall be legal to perform business within the state of Florida. If CONTRACTOR is outside of the state of Florida they hold a current Certificate of Authority issued through the Department of State and in accordance with Florida Statute 607.1501.
4. CONTRACTOR shall hold and maintain current Business Tax Receipt for CONTRACTOR's locality for the term of this Agreement. CONTRACTOR shall hold and maintain current City of Punta Gorda Business Tax Receipt for the term of this contract IF their business is physically located within the city limits.
5. The Contractor shall furnish each of the subcontractors, manufacturers, and suppliers such copies of the contract documents (i.e. plans, drawings, specifications, etc.) as may be required for their work. Additional copies of the contract documents, when requested, may be furnished to the Contractor at cost of reproduction.
6. CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, Locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
7. CONTRACTOR shall comply with all Federal, State and Local rules, policies and ordinance in the performance of their work and document management.
8. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress, or performance of the Work which were relied upon by REPRESENTATIVE in the preparation of the Attachments and Specifications and which have been identified in the Supplementary Conditions.
9. CONTRACTOR has made or caused to be made investigations, tests, examinations and studies of such reports and related data as he/she deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Agreement Documents; and additional examinations, investigations, tests, reports or similar data are or will not be required by CONTRACTOR for such purposes.
10. CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents.
11. CONTRACTOR has given CONTRACT ADMINISTRATOR written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by CONTRACT ADMINISTRATOR is acceptable to CONTRACTOR.
12. SUBCONTRACTORS:
 - a. CONTRACTOR shall be fully responsible for the actions of their Subcontractors. Therefore, should a Subcontractor perform work outside of the awarded scope of work they do so at the CONTRACTOR's expense and risk not being compensated by the City for performing unauthorized work.
 - b. The CITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor in addition to checking of prior performance of like or similar work as delineated in part or whole as pertinent to this contract.
 - c. CONTRACTOR shall be required to notify the CONTRACT MANAGER of all intended changes to the subcontractor list (Exhibit C). CONTRACT MANAGER shall issue written notice to the CONTRACTOR indicating the acceptance or rejection of the intended subcontractor change.
13. Equal Employment Opportunity Clause. CONTRACTOR shall be in compliance with Executive Order 11426 Equal Opportunity as amended by Executive Order 11375, and as supplemented by the Department of Labor Regulations as applicable.

14. Contract Work Hours/Safety Standards Act. CONTRACTOR shall be in compliance with provisions of Section 103 and Section 107 of Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) and as supplemented by the Department of Labor Regulations (Part V, 28CFR).

15. SAFETY COMPLIANCE. It shall be the CONTRACTOR'S sole responsibility to comply with all Local, State and Federal rules and regulations while performing work for the City. These regulations include, but are not limited to: Confined Space, Lock-out/Tag-out, Hazard Communications, Personal Protective Equipment, Excavation Safety, Respiratory Protection, and Hot Work Permits.

16. Competent Personnel. CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in this scope of work.

ARTICLE 12 – INDEMNIFICATION / LIMITS OF LIABILITY

A. **INDEMNIFICATION** The CONTRACTOR shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the CITY and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by CONTRACTOR, its agents, employees, partners, or subcontractors, provided, however, that the CONTRACTOR shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the CITY or a Customer.

Further, the CONTRACTOR shall fully indemnify, defend, and hold harmless the CITY and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification or CONTRACTOR's products or a Customer's operation or use of CONTRACTOR's products in a manner not contemplated by the Agreement or the purchase order. If any product is the subject of an infringement suit or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the CONTRACTOR is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the CONTRACTOR shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.

The CONTRACTOR's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the CITY or Customer giving the CONTRACTOR (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at CONTRACTOR's sole expense. The CONTRACTOR shall not be liable for any cost, expense, or compromise incurred or made by the City or Customer in any legal action without the CONTRACTOR's prior written consent, which shall not be unreasonably withheld.

ARTICLE 13 - MISCELLANEOUS

A. PUBLIC RECORDS COMPLIANCE

1. CONTRACTOR'S RESPONSIBILITY FOR COMPLIANCE WITH FLORIDA STATUTE 119 AND 119.0701

- a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- b. Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in chapter 119.07 or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- d. Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the Contractor upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.
- e. Failure of the Contractor to comply with these requirements shall be a material breach of this Agreement.

B. CITY'S RIGHT TO AUDIT. The CITY reserves the right to audit the CONTRACTOR's records throughout the term of the Agreement and in accordance with Public Records requirement established for the retention period.

C. AUDIT DISALLOWANCES. If at any time the CITY determines that a cost for which payment has been made is a disallowed cost, such as overpayment, CITY shall notify the CONTRACTOR in writing of the disallowance. CITY shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the CONTRACTOR by the amount of the disallowance, or to require repayment of the disallowed amount by the CONTRACTOR.

D. SETTLEMENT OF DISPUTES

2. Any dispute concerning a question of fact arising under this Agreement that is not resolved by the Agreement shall be decided by the CONTRACT MANAGER, who may consider any written or verbal evidence submitted by the CONTRACTOR. The decision of the CONTRACT MANAGER, issued in writing, shall be the final decision of the CITY.

3. Neither the pendency of a dispute nor its consideration by the CONTRACT MANAGER will excuse the CONTRACTOR from full and timely performance in accordance with the terms of this Agreement.

E. SUBSTITUTIONS. In the event the CONTRACTOR, due to manufacturer or supplier discontinuing specified parts, is unable to secure sufficient supplies to fulfill all orders, the CONTRACTOR will be allowed to substitute an item of equal or better quality provided:

1. The product is sold at the contract price;
2. The CITY is contacted in writing in advance of the substitution;
3. The City retains the right to determine "equal or better quality"; and
4. The CITY gives written approval of substitution.

If the Bidder is unable to fulfill all obligations in accordance with these terms and conditions, the City may acquire the product in the open marketplace with any cost increase being the responsibility of the Bidder.

F. Material Safety Data Sheet, MSDS. In compliance with Chapter 442, Florida State Statutes, manufacturers and distributors shall supply the City with a MATERIAL SAFETY DATA SHEET (MSDS), for any and all commodities contained in this solicitation that include a toxic substance as listed on the Florida Substance List. Bidder shall include MSDS's with shipments.

G. No assignment by a party hereto of any rights under or interests in the Agreement Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitations, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Agreement Documents.

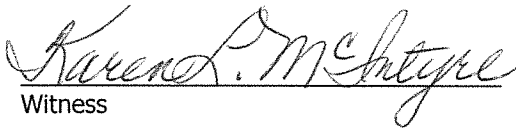
H. JURISDICTION AND VENUE. This Agreement shall be construed in accordance with the laws of the State of Florida, and the parties hereto agree that venue shall be in Charlotte County, Florida.

I. ATTORNEY'S FEES. In the event of any dispute arising under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and expenses.

J. CITY and CONTRACTOR each binds himself/herself, his/her partners, successors, assigns and legal representatives to the other party hereto, his/her partners successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Agreement Documents. No assignment by a party hereto of any rights under or interests in the Agreement Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitations, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Agreement Documents.

K. The CITY and the CONTRACTOR agree that this Agreement sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the previous terms and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed in full concurrence by the parties thereto.

IN WITNESS WHEREOF, the undersigned signatories declare they are authorized to enter into this Agreement and sign on behalf of their respective party. All portions of the Agreement Documents have been acknowledged by CONTRACTOR and CITY. The parties hereto have signed this Agreement in duplicate. One counterpart each has been delivered to CITY and CONTRACTOR.


Witness

Address for giving Notices:

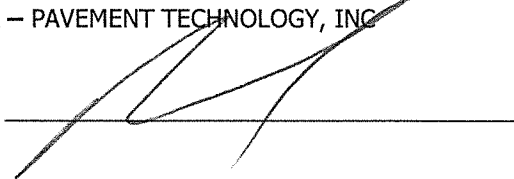
24144 Detroit Road
Westlake, Ohio 44145

CONTRACTOR – PAVEMENT TECHNOLOGY, INC

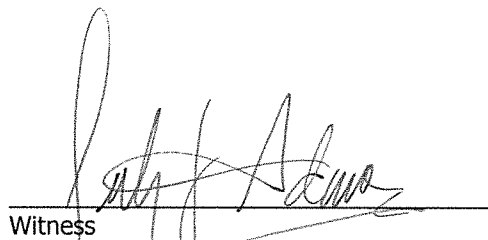
By:

Print Name:

Date:


John J. Schlegel

5/13/2015


Witness

Address for giving Notices:
Procurement Office
326 W. Marion Avenue
Punta Gorda, FL 33950

CITY OF PUNTA GORDA

By:

Print Name:

Date:



Howard Kunk, City Manager
May 19, 2015

EXHIBIT B: RELEASE AND AFFIDAVIT TO OWNER

PROJECT NO: _____ PROJECT TITLE: _____

COUNTY OF: _____, STATE OF FLORIDA

*The term, "lienor" as used in this affidavit means any person having a lien or a prospective lien, under the Mechanics Lien of Florida on the land and property of the **OWNER** described in the Contract Document.*

Before me, the undersigned authority, personally appeared _____
_____ who after being duly sworn, deposes and says:

(1) In accordance with the Contract Documents and in consideration of \$ _____ paid, _____ ("Contractor") releases and waives for itself and its subcontractors, material-men, successors and assigns, all claims demands, damages, costs and expenses, whether in contract or in tort, against the City of Punta Gorda, Florida, relating in any way to the performance of the Agreement between Contractor and Owner dated _____, 20____ for the period from _____ to _____, excluding all retainage withheld and any pending claims or _____ disputes _____ as _____ expressly _____ specified _____ as _____ follows: _____.

(2) Contractor certifies for itself and its subcontractors, material-men, successors and assigns, that all charges for labor, materials, supplies, lands, licenses and other expenses for which Owner might be sued or for which a lien or a demand against any payment bond might be filed, have been fully satisfied and paid.

(3) To the maximum extent permitted by law, Contractor agrees to indemnify, defend and save harmless Owner from all demands or suits, actions, claims of liens or other charges filed or asserted against the Owner arising out of the performance by Contractor of the Work covered by this Release and Affidavit.

(4) This Release and Affidavit is given in connection with Contractor's [monthly/final] Application for Payment No. _____.

CONTRACTOR

BY: _____

ITS: _____ President

DATE: _____

Witnesses

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ as identification and did (did not) take an oath.

My Commission Expires: _____

(Signature of Notary)

NAME: _____
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of _____
Commissioner No.: _____

EXHIBIT C: SUBCONTRACTOR LIST

Agreement # _____

Contractor: _____

[illegible]

EXHIBIT A

**CONTRACT – Rejuvenation of Asphaltic Concrete Surface Course Roadways
AGREEMENT #F2014111/SVC-ASPHREJ/1415**

INITIAL PERIOD ☒ RENEWAL PERIOD ☐ EXTENSION ☐

CONTRACT PERIOD: May 21, 2015 THRU May 20, 2018

PRICES EFFECTIVE THROUGH: May 20, 2016

NOTE: Prices may remain fixed for an extended period if price adjustment not requested by Vendor

Deb Adams, CONTRACT ADMINISTRATOR – dadams@pgorda.us, fax 941-575-3340, or 326 W. Marion Avenue, Punta Gorda, FL 33950 SHALL be copied on all correspondence relating to this contract.

AWARDED VENDOR: Pavement Technology, Inc

PRIMARY ORDERING CONTACT INFORMATION: John J Schlegel

EMAIL: jschlegel@pavetechinc.com

TELEPHONE: 440/892-1895 FAX: 440/892-0953 CELL: 216/780-4316

MAILING ADDRESS: 24144 Detroit Rd, Westlake, OH 44145

ALTERNATE ORDERING CONTACT INFORMATION: Ken Carpenter

EMAIL: kcarpenter@pavetechinc.com

TELEPHONE: 440/892-1895 FAX: 440/892-0953 CELL: 727/641-0913

PRIMARY CONTRACT CONTACT INFORMATION: Karen McIntyre

EMAIL: kmcintyre@pavetechinc.com

TELEPHONE: same FAX: same CELL: N/A

MAILING ADDRESS: same

ALTERNATE CONTRACT CONTACT INFORMATION: Maria Steward

EMAIL: mstewart@pavetechinc.com

TELEPHONE: same FAX: same CELL: n/a

PAYMENT TERMS: Net 30

ACCEPT CREDIT CARDS: ☐ Yes ☒ No

MAXIMUM PERCENTAGE INCREASE: 2ND & 3RD YEARS – 5%

RESPONSE TIME:

Normal – Within 2 days of City's acceptance of the SOW (Statement of Work)

PURCHASING REQUIREMENTS

- 1) Departments shall enter a requisition with estimated dollars for issuance of a Blanket PO. CIP requisitions will need a separate Blanket PO.
- 2) Supervisors shall verify contract rates on all invoices prior to authorizing payment of invoices.

Item	Description	UOM	Unit Price
1	Sealing w/Asphaltic Rejuvenation Agent, furnished and installed per Specifications	Square Yard	\$0.81
2	Minimum Square Yards of Asphaltic Rejuvenation Agent Required to Mobilize	Square Yard	25,000