

**AMENDMENT TO AGREEMENT  
CITY OF LINCOLN  
ANNUAL SUPPLY OF LIQUID ASPHALT PG 64-22 CRACK FILLER  
BID NO: 13-212  
FIRST RENEWAL**

This Amendment is hereby entered into on this 3 day of July, 2014 by and between Maxwell Products, Inc., 650 S. Delong Street, Salt Lake City, UT 84104 (hereinafter "Contractor") and City of Lincoln (hereinafter "City"), for the purpose of amending an Agreement dated August 16, 2013, under E. O. No. 086380, (the "Agreement"), for **The Annual Supply of Liquid Asphalt PG 64-22 Crack Filler, Bid No. 13-212**, which is made a part hereof by this reference.

WHEREAS, the original term of the Agreement is August 16, 2013 through August 15, 2014, with the option to renew for three (3) additional one (1) year terms upon written mutual consent of both parties; and

WHEREAS, the parties wish to renew the agreement for an additional one (1) year term beginning August 16, 2014 through August 15, 2015; and

WHEREAS, the estimated expenditures for City Departments for the term of this renewal shall not exceed \$40,000.00 without prior approval by the City of Lincoln.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants stated herein the parties agree as follows:

- 1) The term of the Agreement shall be from August 16, 2014 through August 15, 2015.
- 2) The estimated expenditures for City Departments for the term of this renewal shall not exceed \$40,000.00 without prior approval by the City of Lincoln.
- 3) All other terms of the Agreement, not in conflict with this Amendment, shall remain in full force and effect.

The Parties do hereby agree to all the terms and conditions of this Amendment. This Amendment shall be binding upon the parties, their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Parties do hereby execute this Amendment.

**Official City Use Only**

Dated this <u>23<sup>rd</sup></u> day
of <u>July</u> 2014
 <hr style="width: 100%;"/> Chris Beutler, Mayor

Supplier, please fill in the date and following information and mail back to our office; a faxed copy is not acceptable.

Company Name: (Please Print)	Maxwell Products Inc.
By: (Please Sign)	<i>D. Brown</i>
By: (Please Print)	Dustin J Brown
Title: (Please Print)	Bid Administrator
Company Address: (Please Print)	650 S. DeLong St., SLC, UT 84104
Company Phone & Fax: (Please Print)	(801) 972-2090 F: (801) 972-5536
E-Mail Address: (Please Print)	dustin@maxwellproducts.com
Date: (Please Print)	July 3, 2014
Contact Person For: "Orders or Service" (Please Print)	Dave McIntosh
Phone Number: (Please Print)	720-323-7777

86380

**CONTRACT DOCUMENTS**

**CITY OF LINCOLN  
NEBRASKA**

**ANNUAL SUPPLY  
OF  
Liquid Asphalt PG 64-22 Crack Filler  
Bid No. 13-212**

**Maxwell Products, Inc.  
650 S. Delong Street  
Salt Lake City, UT 84104  
801-972-2090**

**CITY OF LINCOLN  
CONTRACT AGREEMENT**

THIS CONTRACT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by and between **Maxwell Products, Inc., 650 S. Delong Street, Salt Lake City, UT 84104**, hereinafter called "Contractor", and the City of Lincoln, Nebraska, a municipal corporation, hereinafter called "City".

WHEREAS, the City has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to-wit:

For providing **Annual Supply of Liquid Asphalt PG 64-22 Crack, Bid No. 13-212** and,

WHEREAS, the Contractor, in response to such advertisement, has submitted to the City, in the manner and at the time specified, a sealed Proposal/Supplier Response in accordance with the terms of said advertisement; and,

WHEREAS, the City, in the manner prescribed by law has publicly opened, read aloud, examined, and canvassed the Proposals/Supplier Responses submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the Contractor's Proposal/Supplier Responses, a copy thereof being attached to and made a part of this Contract;

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the mutual covenants herein contained, the Contractor and the City has agreed and hereby agree as follows:

1. The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute and complete all Work included in and covered by the City's award of this Contract to the Contractor, such award being based on the acceptance by the City of the Contractor's Proposal, or part thereof, as follows:

**Agreement to full proposal**

2. The City agrees to pay to the Contractor for the performance of the Work embraced in this Contract, the Contractor agrees to accept as full compensation therefore, the following sums and prices for all Work covered by and included in the Contract award and designated above, payment thereof to be made in the manner provided by the City:

**The City will pay for products/service, according to the Line Item pricing as listed in Contractors Proposal/Supplier Response, a copy thereof being attached to and made a part of this Contract. The City shall order on an as needed basis for the duration of the contract. The total cost of products or services for City departments shall not exceed \$38,400.00 during the contract term without approval.**

3. **Equal Employment Opportunity.** In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.

4. E-Verify. In accordance with Neb. Rev. Stat. 4-108 through 4-114, the contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The contractor shall require any subcontractor to comply with the provisions of this section.
5. Termination. This Contract may be terminated by the following:
  - 5.1) Termination for Convenience. Either party may terminate this Contract upon thirty (30) days written notice to the other party for any reason without penalty.
  - 5.2) Termination for Cause. The City may terminate the Contract for cause if the Contractor:
    - 5.2.1) Refuses or fails to supply the proper labor, materials and equipment necessary to provide services and/or commodities.
    - 5.2.2) Disregards Federal, State or local laws, ordinances, regulations, resolutions or orders.
    - 5.2.3) Otherwise commits a substantial breach or default of any provision of the Contract Document. In the event of a substantial breach or default the City will provide the Contractor written notice of said breach or default and allow the Contractor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the contract shall terminate.
6. Independent Contractor. It is the express intent of the parties that this contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the City and employees of the City shall not be deemed to be employees of the Contractor. The Contractor and the City shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the City's employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.
7. Contract Term. This Contract shall be effective upon execution by both parties. The term of the Contract shall be a one (1) year term, with option to renew for three (3) additional one (1) year terms.
8. The Contract Documents comprise the Contract, and consist of the following:
  1. Contract Agreement
  2. Accepted Proposal/Supplier Response
  3. Special Provisions
  4. Specifications
  5. Instructions to Bidders
  6. Sales Tax Exemption Form 13

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and they are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the City hereby agree that all the terms and conditions of this Contract shall be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the City do hereby execute this contract.

**EXECUTION BY THE CITY OF LINCOLN, NEBRASKA**

ATTEST:

*Teresa J. Meier*  
City Clerk



CITY OF LINCOLN, NEBRASKA

*Chris Beutler*  
Chris Beutler, Mayor

Approved by Executive No. 086380

dated 8-16-13

**EXECUTION BY CONTRACTOR**

IF A CORPORATION:

ATTEST:

Secretary

*Al B.*



Maxwell Products Inc.

Name of Corporation  
650 S. Dalong Street  
Salt Lake City UT 84104  
(Address)

By: *[Signature]*  
Duly Authorized Official

Sales Manager  
Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

\_\_\_\_\_  
Name of Organization

\_\_\_\_\_  
Type of Organization

\_\_\_\_\_  
(Address)

By: \_\_\_\_\_  
Member

By: \_\_\_\_\_  
Member

IF AN INDIVIDUAL:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

## City of Lincoln/Lancaster County (Lincoln Purchasing) Supplier Response

Bid Information		Contact Information		Ship to Information	
Bid Creator	Suzanne Siemer Asst. Purchasing Agent	Address	Purchasing, City & County	Address	Public Works & Utilities, Street Maintenance Division
Email	ssiemer@lincoln.ne.gov		440 S. 8th St.		3200 Baldwin Avenue
Phone	(402) 441-7414	Contact	Lincoln, NE 68508	Contact	Lincoln, NE 68508
Fax	(402) 441-6513		Suzanne Siemer, Assistant Purchasing Agent		Street Maintenance
Bid Number	13-212	Department		Department	
Title	Annual Supply of Liquid Asphalt PG 64-22 Crack Filler	Building		Building	
Bid Type	Bid	Floor/Room		Floor/Room	
Issue Date	06/19/2013	Telephone	1 (402) 441-7414	Telephone	
Close Date	7/3/2013 12:00:00 PM CT	Fax	1 (402) 441-6513	Fax	
Need by Date		Email	ssiemer@lincoln.ne.gov	Email	

### Supplier Information

**Company** Maxwell Products, Inc.  
**Address** 650 S. Delong St.  
  
 SLC, UT 84104  
**Contact** Dave McIntosh  
**Department**  
**Building**  
**Floor/Room**  
**Telephone** 1 (801) 9722090  
**Fax** 1 (801) 972-5536  
**Email** dave.m@maxwellproducts.com  
**Submitted** 6/24/2013 5:42:40 PM CT  
**Total** \$38,400.00

Signature \_\_\_\_\_

### Supplier Notes

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### Bid Notes

If you need assistance in preparing your bid, 1) Click the "Help" button in the upper right hand corner of any screen; 2) Contact our office at 402-441-7417 to set up a training session in Purchasing or assistance over the phone.

### Bid Activities

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### Bid Messages

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Please review the following and respond where necessary

#	Name	Note	Response
1	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	Yes
2	Specifications	I acknowledge reading and understanding the specifications.	Yes
3	Special Provisions	I acknowledge reading and understanding the Special Provisions.	Yes
4	Sample Contract	I acknowledge reading and understanding the sample contract.	Yes
5	Renewal is an Option	Contract Extension Renewal is an option.	Yes
6	Product	List your product name?	Nuvo pg 64-22
7	Delivery	State number of delivery days ARO. FOB to the City/County at the location specified with all transportation charges paid.	14
8	Quantities	I acknowledge that the quantities listed for each line item are an estimated yearly amount. The City does not guarantee any dollar amount or order quantities for the term of the contract.	Y
9	Term Clause with Escalation/De-escalation	I acknowledge that the term of the contract will be a one (1) year term from the date of the executed contract with the option to renew for three (3) additional one (1) year terms? (a) Bid prices firm for the first full contract period. YES or NO (b) Bid prices subject to escalation/de-escalation YES or NO (c) If (b), state period for which prices will remain firm: through _____	yes
10	Bid award	I acknowledge and understand that the City, County and/or Public Building Commission reserves the right to award bids item-by-item, with or without alternates/options, by groups, or "lump sum" such as shall best serve the requirements and interests of the City, County and/or Public Building Commission.  If your pricing is based on an all-or-nothing basis, please indicate so in the Supplier Notes section of your E-Bid response.	Yes
11	Numbers in Price Box	I acknowledge, understand and hereby verify that ONLY numbers have been typed into the Unit Price box in the Line Item section of this ebid response. I further understand that if any symbols or letters (other than a decimal point for dollars and cents) have been typed into the Unit Price box that it will result in my bid showing an amount of \$0 for respective line items.	Yes
12	Contact	Name of person submitting this bid:	Dave McIntosh
13	Electronic Signature	Please check here for your electronic signature.	Yes

Line Items

#	Qty	UOM	Description	Response
1	80,000	lbs	Liquid Asphalt PG 64-22 Crack Filler	\$0.48

Item Notes: The Asphalt binder shall conform to the requirements of AASHTO M320 for Performance Graded Asphalt Binder and shall meet or exceed the upper and lower temperature targets of PG 64-22.

Supplier Notes:

Item Attributes: Please review the following and respond where necessary

#	Name	Note	Response
1	Product Name	State the Product Name.	maxwell products Nuvo pg 64-22

Response Total: \$38,400.00

**SPECIFICATIONS  
ANNUAL SUPPLY OF  
LIQUID ASPHALT PG 64-22 CRACK FILLER  
CITY OF LINCOLN**

**1. GENERAL INFORMATION**

- 1.1 It is the intent of this specification to describe the minimum acceptable requirements for the Annual Supply of Liquid Asphalt PG 64-22 Crack Filler for the City of Lincoln, (hereinafter referred to as "City").
- 1.2 It is estimated that the City purchases approximately 80,000 pounds per year of this product.
- 1.3 Vendor shall submit bid documents and all supporting material via the e-bid system.
- 1.4 All inquiries regarding these specifications shall be directed via e-mail or faxed request to Suzanne Siemer, Assistant Purchasing Agent, [ssiemer@lincoln.ne.gov](mailto:ssiemer@lincoln.ne.gov) or Fax:(402)441-6513.
  - 1.4.1 These inquiries and/or responses shall be distributed to prospective vendors electronically as an addenda.
  - 1.4.2 The Purchasing Office shall only reply to written inquiries received within five (5) calendar days of bid opening.
  - 1.4.3 No direct contact is allowed between Vendor and other City staff besides Purchasing throughout the bid process.
    - 1.4.3.1 Failure to comply with this directive may result in Vendor bid being rejected.
- 1.5 The term of the contract shall one (1) year from date of execution by all parties with the option to renew for three (3) additional one (1) year periods
- 1.6 Pricing provided in this bid shall be firm for a period of one (1) year from the date of execution.
  - 1.6.1 Any price increases following the one year term must be submitted to the City Purchasing office within 30 days of the increase with detailed justification of the increase.
    - 1.6.1.1 Detailed information includes invoices from manufacturers showing the exact price and product being charged compared to earlier invoices for same product.

**2. PRODUCT**

- 2.1 The crack filler will consist of a single component, hot-applied asphalt composition.
- 2.2 This material can be used for filling minimal width cracks and other areas.
- 2.3 Material will be melted in a double boiler, oil-jacketed melter applicator equipped with an agitator and separate temperature thermometers for both the oil bath and melting vat.

**3. FILLER SPECIFICATION**

3.1	<u>TEST</u>	<u>SPEC Limits (AASHTO M320 Specifications)</u>
3.1.1	Flash Point, °C (T48)	230 °C min.
3.1.2	Viscosity at 135 °C, Pa.s (T316)	3.0 Pa.s max.
3.1.3	Dynamic Shear, 10 rad/sec G*/sin_at 64 °C (T315)	1.00 k Pa min
3.1.4	Rolling Thin Film Oven Residue	
	2.1.4.1 Mass Change, % (T240)	1.00 wt% max.
	2.1.4.2 Dynamic Shear, 10 rad/sec G*/sin_at 64 °C (T315)	2.20 kPa min.
3.1.5	Pressure Aging Vessel Residue at 1--°C	
	3.1.5.1 Dynamic Shear,	

- |         |                                  |              |
|---------|----------------------------------|--------------|
|         | 10 rad/sec G*/sin_at 25VC (T315) | 5000 kPa max |
| 3.1.5.2 | Creep Stiffness, 60 sec          |              |
|         | S at - 12 °C                     | 300MPa max   |
|         | M at - 12 ° C                    | 0.300 min.   |
| 3.1.6   | Recommended pour temperature     | 380 °F       |
- 3.2 Filler material shall be new, standard production material of latest design in current production.
- 3.3 Materials shall be of good commercial quality for the intended usage and shall be produced by use of current manufacturing processes.

4. **PACKAGING**

- 4.1 Packaging shall consist of individual boxes of sealant palletized into shipping units.
- 4.1.1 Boxes will contain a non-adherent film which permits easy removal of the sealant.
- 4.1.2 Weight of sealant in each box should not exceed 40 pounds. Pallets of sealant must be weighted and product will be purchased by the net weight of product.
- 4.2 Pallet weight shall not exceed 2,880 pounds.
- 4.2.1 Each pallet contains 72 boxes which are stacked in six layers of 12 boxes per layer.
- 4.2.2 Product boxes are manufactured from double wall kraft board producing a minimum bursting test certification of 350 psi (241 N/cm<sup>2</sup>) and using water resistant adhesives.
- 4.3 Boxes use tape closure and do not contain any staples.
- 4.4 Boxes must be labeled with the product name, part number, and lot number.
- 4.5 Palletized units are protected from the weather using a three mil thick plastic part number, lot number and net weight.

5. **ACCEPTANCE OF MATERIAL**

- 5.1 Orders will be placed online or via the phone by the agency requesting services.
- 5.2 All correspondence, including acknowledgment of receipt of orders, packing lists and invoices, shall carry the bid number assigned by City of Lincoln Purchasing Office.

6. **DELIVERY**

- 6.1 Unit bid prices shall include all delivery costs to the Street Maintenance Facility located at 3200 Baldwin Avenue, Lincoln NE 68508.
- 6.2 Deliveries shall be made between the hours of 8:00 a.m. and 3:00 p.m., CDT, on normal City of Lincoln - Lancaster County working days.
- 6.3 Vendor shall indicate in the attribute section of the e-bid, the number of days to deliver to the destination after receipt of an order.

7. **AWARD INFORMATION**

- 7.1 Bid will be awarded based on the following:
- 7.1.1 The bid will be awarded to the lowest responsible, responsive Bidder whose bid will be most advantageous to the City, and as the City deems will best serve the requirements and interest of the City;
- 7.1.2 Compliance with the specification requirements as outlined herein; and
- 7.1.3 Length of time to receive materials after an order has been placed.

END OF SPECIFICATIONS