

C-14-0367
RECEIVED

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

JUL 17 2014

LANCASTER COUNTY
CLERK

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 Lancaster County (hereinafter "Owners"), for the purpose of renewing the Contract C-13-0548, dated November 5, 2013, (the "Contract"), for The Annual Supply of Liquid Asphalt PG 64-22 Crack Filler, Bid No. 13-213, which is made a part hereof by this reference.

WHEREAS, the original term of the Agreement is November 5, 2013 through Novmeber 4, 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 November 5, 2014 through Novmeber 4, 2015; and

Whereas, the estimated expenditures for Lancaster County Departments for the term of this renewal shall not exceed \$4,500.00 per year without approval by the Lancaster County Board.

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

- 1) The term of the Agreement shall be from November 5, 2014 through Novmeber 4, 2015.
- 2) The estimated expenditures for Lancaster County Departments for the term of this renewal shall not exceed \$4,500.00 per year without approval by the Lancaster County Board.
- 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.

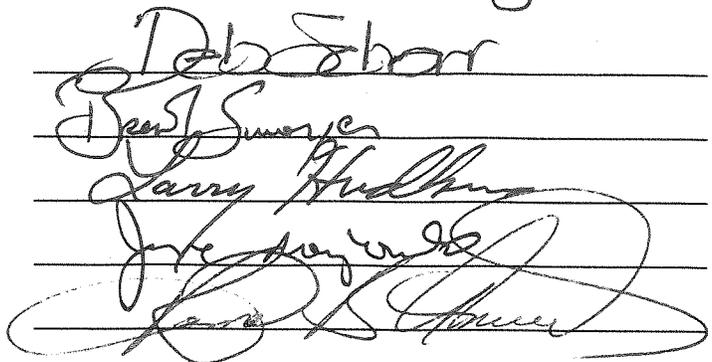
Approved as to form

this 22 day of July, 2014

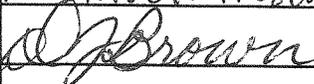

Deputy County Attorney
for Lancaster County Attorney

Lancaster County Board of Commissioners Signatures

Executed this 22 day of July, 2014



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)	
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

C-13-6548

CONTRACT DOCUMENTS

LANCASTER COUNTY

**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**

**LANCASTER COUNTY, NEBRASKA,
CONTRACT AGREEMENT**

THIS CONTRACT, made and entered into by and between **Maxwell Products, Inc., 650 S. Delong Street, Salt Lake City, UT 84104** hereinafter called Contractor, and the County of Lancaster, Nebraska, a political subdivision, hereinafter called the Owner.

WHEREAS, Neb. Rev. Stat. § 23-3109(1)(d)(iii) allows for waiver of bidding requirements when the price has been established by a cooperative purchasing agreement by which supplies, equipment, or services are procured in accordance with a contract established by another governmental entity or group of governmental entities if the contract was established in accordance with the laws and regulations applicable to the establishing governmental entity or, if a group, the lead governmental entity; and

WHEREAS, the Owner through local inter-governmental cooperative purchasing have chosen to participate in the contract between the City of Lincoln (City) and Maxwell Products, Inc., Bid No. 13-212 dated August 16, 2013, which was prepared in accordance with the City's usual and customary laws, procedures and policies, and has approved and adopted said documents connected with said, Work, to-wit:

for all materials and equipment necessary to provide the Annual Supply of Liquid Asphalt PG 64-22 Crack Filler, Bid No. 13-212, for Lancaster County and the Owner's various agencies and divisions as the Owners may determine in compliance with the prices as established via the City of Lincoln, Bid No. 13-212, dated August 16, 2013; and

WHEREAS, the Contractor, in response to the Owner's request to participate in said agreement, has submitted to the Owner, an offer approving Owners participation under the same pricing structure, terms and conditions as the City of Lincoln, Bid No. 13-212 dated August 16, 2013 for the Annual Supply of Liquid Asphalt PG 64-22 Crack Filler, with only those exceptions stated herein; and

WHEREAS, the City of Lincoln, in the manner usual and customary to their laws, policies and procedures has opened, read, examined, and canvassed the Proposals submitted in response to the proposal request, 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 City of Lincoln, Bid No. 13-212; dated August 16, 2013, 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 Owner hereby agree as follows:

1. The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other accessories, services, and facilities necessary to provide Liquid Asphalt PG 64-22 Crack Filler for the Owner's various agencies and divisions as the Owners may determine.
2. Term of the Contract. The term of this contract is for a period beginning upon execution of this contract through August 16, 2014.
 - 2.1 Upon conclusion of the initial term, the contract may be renewed on a yearly basis with mutual written agreement by both parties for three (3) additional one (1) year terms not to exceed the term of the current City of Lincoln contract.
 - 2.2 Any renewal of the contract will be under the same terms and conditions as the original agreement.
3. Pricing. Pricing of items will be pursuant to City of Lincoln, Bid No. 13-212, dated August 16, 2013.

The County 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 County shall order on an as-needed basis for the duration of the contract. The total cost of products or services for County agencies shall not exceed \$2,000.00 during the contract term without approval by the Board of Commissioners.

- 3.1 Terms of payment shall be *net* thirty (30) days for all services meeting Owner's Specifications and approval. Each location will have a separate account number and billing address. The Owner may choose to pay the vendor using an Electronic Funds Transfer. If this option is used, any discounts available to the City of Lincoln shall be made available to the Owner.
4. 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 Owner and employees of the Owner shall not be deemed to be employees of the Contractor. The Contractor and the Owner shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the Owner'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.
5. Indemnification. The Contractor shall indemnify and hold harmless the Owner (Lancaster County), their agents, principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of the Contractor, its principals, officers, agents, or employees in the performance of this contract. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this contract that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, Contractor shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this contract shall require either party to indemnify or hold harmless the other party from liability for the negligent or wrongful acts or omissions of said other party or its principals, officers, or employees.
6. 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.
7. Owner Inclusion. It is understood and agreed by all parties that "Owner/s" shall include Lancaster County, Nebraska. Whenever in the Contract documents, including the instructions to bidders, specifications, insurance requirements, bonds, and terms and conditions of any other documents which are a part of the Contract, a singular entity is referenced (i.e., "the County") it shall mean the "Owner" encompassing the County of Lancaster, Nebraska.
8. Termination. This Contract may be terminated by the following:
 - 8.1 Termination for Convenience. Either party may terminate this Contract upon fourteen (14) days written notice to the other party for any reason without penalty.
 - 8.2 Termination for Cause. The Owner may terminate the Contract for cause if the Contractor:
 - 8.2.1 Refuses or fails to supply the proper labor, materials and equipment necessary to provide and deliver Liquid Asphalt PG 64-22 Crack Filler.

- 8.2.2 Disregards Federal, State or local laws, ordinances, regulations, resolutions or orders.
- 8.2.3 Otherwise commits a substantial breach or default of any provision of the Contract Document. In the event of a substantial breach or default the Owner 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.

9. The parties agree that the terms and conditions of this Contract shall prevail and govern in the case of any such inconsistent or additional terms in the Agreement between the City of Lincoln and Maxwell Products, Inc., Bid No. 13-212, dated August 16, 2013.

The Contract Documents comprise the Contract, and consist of the following:

- 1. Contract Agreement
- 2. City of Lincoln, Bid No. 13-212, dated August 16, 2013.
- 3. Form 13 -Nebraska Resale or Exempt Sale Certificate

This Contract Agreement, together with the other Contract Documents herein above mentioned, form this Contract, and are a part of the Contract as if hereto attached.

The Contractor and the Owner 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.

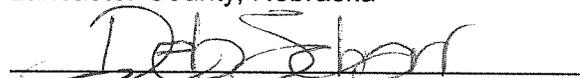
IN WITNESS WHEREOF, the Contractor and the Owner do hereby execute this contract.

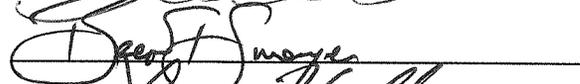
EXECUTION BY LANCASTER COUNTY

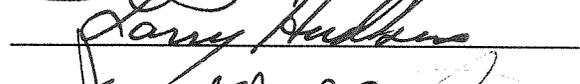
Contract Approved as to Form:


 for _____
 Lancaster County Attorney

The Board of County Commissioners of
 Lancaster County, Nebraska









Dated: 11/5/13

EXECUTION BY CONTRACTOR

IF A CORPORATION:

ATTEST:

Walter B... (SEAL)
Secretary



IF OTHER TYPE OF ORGANIZATION:

Maxwell Products, Inc.
Name of Corporation

650 Delong Street, Salt Lake, UT
(Address)

By: *Ken Maxwell*
Duly Authorized Official

President
Legal Title of Official

Name of Organization

Type of Organization

(Address)

By: _____
Member

By: _____
Member

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

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

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

Bid Messages

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. (b) Bid prices subject to escalation/de-escalation (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 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/cm²) 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