



PAVEMENT RESTORATION, Inc

Contract No. BUR2022, *Asphalt Rejuvenation Program*

AGREEMENT FOR REJUVENATION SERVICES CONTRACT NO. BUR2022

STATE OF TEXAS

COUNTY OF JOHNSON

This agreement is made and entered into this day by and between the City of Burleson Texas, hereinafter referred to as the "City" and **Pavement Restoration, Inc.** here in after referred to as the "Contractor" or "Vendor" and shall be binding upon their respective executors, administrators, heirs successors or assigns;

WHEREAS, the City desires to enter into a contract for the service of **Asphalt Rejuvenation** in the City of Burleson Texas, in accordance with the provisions of the state statutes and conforming to the contractor's standard specifications, all of which are incorporated herein or attached;

WHEREAS, the Contractor has been engaged in and now does comparable work and represents that he/she is fully equipped, competent and capable of performing the above desired and outlined work, and is ready and willing to perform such work in accordance with all provisions of the above mentioned and standard specifications and marked **Asphalt Surface Maintenance with Maltene Rejuvenator.**

NOW THEREFORE, in consideration, the City, promises to pay the amount below as totaled in the contract and hereto attached and made part of this contract. The Contractor agrees to do at his own proper cost and expense all the work necessary for the production of **Asphalt Rejuvenation** in the City of Burleson, Texas in accordance with the provisions of the aforementioned standard specifications to the satisfaction of the City.

This contract document, the standard specifications, attached hereto and incorporated herein by reference for all purposes, represent the entire and integrated contract between the city and the Contractor and supersedes all prior negotiations, representations, or agreements, either oral or written. This Contract may be amended only by written instrument signed by both the City and the Contractor.

The term of the contract shall be for six months from the date of contract execution, subject to City Council approval.

For and in consideration of the Contractor's performance of the Work, Agency shall pay the Contractor in the manner provided for in the Standard Specifications, on Final Invoice based on the following Unit Price: (i) \$1.25 per Square Yard. **Total Cost of this Agreement shall not to exceed \$300,000. The City reserves the right to decrease the total yardage based on field conditions and budgetary considerations.**

Unit Prices shall remain firm for the period of the contract and shall not include Federal or State of Texas sales, excise and use taxes.

The Contractor shall also furnish to the City a certificate of insurance naming the Owner as an additional insured and showing coverage in accordance with City Insurance requirements, which is detailed below in the Additional Terms article of this Agreement.

The Contractor warrants that the completed project shall be in compliance of the Reclamite Specification and Scope of Work for the purposes intended.

Additional Terms:

1. **Payment Terms.** Payment will be made upon submittal and approval of a valid invoice. City shall make payment in accordance with Chapter 2251 of the Texas Government Code. It is the policy of the State of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice. Vendor agrees that, to the extent Vendor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Vendor is otherwise owed under this Contract shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full. Vendor agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.
2. **Applicable Law; Venue.** This Agreement is subject to and governed by the laws of the State of Texas. Any disputes arising from or relating to this Agreement shall be resolved in a court of competent jurisdiction located in Johnson County, Texas, or the federal courts for the United States for the Northern District of Texas. The parties hereto irrevocably waive any right to object to the jurisdiction of such courts in any dispute arising from or relating to this Agreement.
3. **Tax Exempt Status.** As a political subdivision of the State of Texas, City is tax exempt in the State of Texas. Tax exemption certification will be furnished upon request.
4. **Termination Due to Lack of Appropriations.** If City should not appropriate or otherwise receive funds sufficient to purchase, lease, operate, or maintain the equipment or services set forth in this Agreement, City may unilaterally terminate this Agreement effective on the final day of the fiscal year through which City has funding. City will make every effort to give Vendor at least thirty (30) days written notice prior to a termination for lack of appropriations. In the event of termination due to a lack of appropriations, City will pay Vendor for all undisputed fees and expenses related to the equipment and/or services City has received, or Vendor has incurred or delivered, prior to the effective date of termination.
5. **No Waiver of Governmental Immunity.** The Vendor expressly acknowledges City is a political subdivision of the State of Texas and nothing in the Agreement will be construed as a waiver or relinquishment by City of its right to claim such exemptions, privileges, and immunities as may be provided by law. Neither the execution of the Agreement by City nor any other conduct, action, or inaction of any representative of City relating to the Agreement constitutes or is intended to constitute a waiver of City's sovereign immunity to suit.
6. **Public Information.** Vendor acknowledges that City is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. The City's compliance with the Texas Public Information Act shall not violate the Agreement. Upon City's written request, Vendor will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of City. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Vendor agrees that the Agreement can be terminated if the Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.
7. **Force Majeure.** Neither party is required to perform any term, condition, or covenant of the Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.
8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and may not be waived or modified except by a written agreement signed by the parties.
9. **Savings Clause.** If a court of competent jurisdiction finds any provision of this Agreement illegal, ineffective or beyond contractual authority of either party, then the offending provision will be stricken and the remainder of the agreement between the parties will remain in effect.
10. **Conflicts Of Interest.** By executing this Agreement, Contractor and each person signing on behalf of Contractor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of City Council, city manager, deputy city manager, city secretary, department heads, or deputy department heads of the City has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof, in violation of Section 132 of the Home Rule Charter of the City.

11. Anti-Boycotting Provisions. Vendor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
 - i. Pursuant to Section 2271.002 of the Texas Government Code, Vendor certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Vendor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
 - ii. Pursuant to SB 13, 87th Texas Legislature, Vendor certifies that either (i) it meets an exemption criterion under SB 13, 87th Texas Legislature; or (ii) it does not boycott energy companies, as defined in Section 1 of SB 13, 87th Texas Legislature, and will not boycott energy companies during the term of the Agreement. Vendor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
 - iii. Pursuant to SB 19, 87th Texas Legislature, Vendor certifies that either (i) it meets an exemption criterion under SB 19, 87th Texas Legislature; or (ii) it does not discriminate against a firearm entity or firearm trade association, as defined in Section 1 of SB 19, 87th Texas Legislature, and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. Vendor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
12. Contractor Certification Regarding Business With Certain Countries And Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Vendor certifies Vendor (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Vendor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
13. Relationship of the Parties. The parties agree that in performing their responsibilities under this Agreement, they are in the position of independent contractors. This Agreement is not intended to create, does not create, and shall not be construed to create a relationship of employer-employee. Vendor, Vendor's employees, and anyone else working at Vendor's direction is an independent contractor and not an employee or servant of the City. Nothing in this Agreement is intended to or shall be construed in any manner as creating or establishing the relationship of employer-employee between Vendor, Vendor's employees, and anyone else working at Vendor's direction. Vendor, Vendor's employees, and anyone else working at Vendor's direction shall at all times remain an independent contractor with respect to the service to be performed under this Agreement.
14. Survival. The terms of this Additional Terms section or article shall survive any closing or termination of the Agreement.
15. Insurance Requirements. Contractor shall submit evidence of required insurance on an original ACORD certificate not later than fifteen (15) working days after signing this Agreement. However, an insurance certificate is required to be on file prior to the start of any work. Contractor shall be insured as required below:
 1. **Commercial General Liability:** \$500,000.00 per occurrence, \$500,000.00 products/completed operations and \$1,000,000.00 general aggregate for bodily injury, personal injury and property damage. This policy shall have no coverage's removed by exclusions.
 2. **Automobile Liability:** \$500,000.00 combined single limit per accident for bodily injury and property damage. Coverage should be provided as a "Code 1," any auto.
 3. **Workers' Compensation and Employers' Liability:** Statutory. Employers Liability policy limits of \$100,000.00 for each accident, \$500,000.00 policy limit - Disease.
16. Other Insurance Provisions. Contractor shall be insured as required below:
 1. The City, its officials, employees and volunteers shall be named as an additional insured on the Commercial General Liability and Automobile Liability Insurance policies. These insurance policies shall contain the appropriate additional insured endorsement signed by a person authorized by that insurer to bind coverage on its behalf.

- 2. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been provided to the City. If the policy is cancelled for non-payment of premium, only ten (10) days' notice is required.
- 3. Insurance is to be placed with insurers with a Best rating of no less than A:VII. The company must also be duly authorized to transact business in the State of Texas.
- 4. Workers' Compensation and Employers' Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from the activities under this contract.
- 5. Certificates of Insurance and Endorsements effecting coverage required by this clause shall be forwarded to:

City of Burleson
Justin Scharnhorst, Purchasing Manager
jscharnhorst@burlesontx.com
141 W. Renfro
Burleson, Texas 76028

- 6. Workers' Compensation Insurance Coverage:
 - a. **Certificate of coverage** ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83 or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
 - b. **Duration of the project** - Includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

EXECUTED THIS 6th DAY OF September, 2022.

PAVEMENT RESTORATION, INC.
CONTRACTOR/VENDOR

By: 
ROBERT HIGGINS

DATE: August 31, 2022

CITY OF BURLESON
CITY

By: _____
CITY MANAGER

DATE: _____

ATTEST:
By: _____

CITY SECRETARY
CITY OF BURLESON