

**FIXED UNIT PRICE AGREEMENT
FOR CONTRACTOR SERVICES**

THIS AGREEMENT is made as of the 8th day of July in the year 2013, between The City of Leesburg, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the "CITY"), and **C.W. ROBERTS CONTRACTING, INC.** whose address is 3372 Capital Circle NE, Tallahassee, FL 32308 (hereinafter referred to as the "CONTRACTOR").

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the parties agree as follows:

1. **Services.** The CONTRACTOR shall furnish Street Re-Surfacing Services to the CITY as listed in Invitation to Bid 130201 and as described in **EXHIBIT "A"**. The unit costs of the services shall not exceed those stated in **EXHIBIT "B"** except where the cost adjustment clause has been exercised following the Firm Fixed Price Period. Nothing herein shall limit the CITY'S right to obtain proposals or services from other contractors for same or similar work.

2. **Labor and Materials.** The CONTRACTOR shall furnish all labor, material and equipment necessary for satisfactory contract performance. When not specifically identified in the technical specifications, such materials and equipment shall be of a suitable type and grade for the purpose. All material, workmanship, and equipment shall be subject to the inspection and approval of the CITY's Electric Department.

3. **Payment.** All invoices shall contain the purchase order number, date and location of services provided quantity of services, CITY pay item number, item description and confirmation of acceptance of the services by the appropriate City representative. Failure to submit invoices in the prescribed manner will delay payment. Payments shall be tendered in accordance with the Florida Prompt Payment Act, Part VII, Chapter 218, Florida Statutes.

a. **Method of Payment** – The method of payment under this Agreement is by credit card through the City's e-payable program. The CONTRACTOR shall be required to enroll in the e-payable program and accept payment by virtual credit card. The CITY currently uses the Visa platform for credit card payments.

4. **Term of Agreement.** The initial term of the Agreement will be through September 30, 2015.

b. **Option to Renew.** The CITY may renew the Agreement for an additional term or terms not to exceed a total of three (3) additional years, if mutually agreed upon by the CONTRACTOR and the CITY.

5. **Termination.** Notwithstanding any other provision of this Agreement, CITY may, upon fifteen (15) days written notice to CONTRACTOR, terminate this Agreement with or without cause. In the event of such termination, CITY shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this Agreement, for work, properly performed prior to the effective date of termination.

6. **Firm Fixed Price Period** – All Pricing will be firm and fixed through September 30, 2014. Following the firm fixed price period the CONTRACTOR may request a price adjustment as provided for in the Cost Adjustments section.

- a. **Price Adjustments** – Any price adjustment(s) shall be made by a written amendment to this Agreement. Approval will be made by the Leesburg City Commission as the approving body of this original Agreement.

7. **Cost Adjustment** – Pricing adjustments following the firm fixed price period must be requested in writing by the Contractor. Any price adjustments will be firm fixed through the following September 30th.

Unit price adjustments may be requested by the City or Contractor following the initial and subsequent firm fixed price periods. Any unit price adjustments, increase or decrease, must be justified using the State of Florida Department of Transportation Fuel & Bituminous Price Index as published by the State Construction Office as the basis for the request. Use of any other commodity indexes for price adjustments shall not be permitted.

Only those bid items affected by 'commodity' pricing will be considered for an increase. All requests for price adjustments by the Contractor must be submitted in writing to the City of Leesburg Purchasing Manager. The vendor will be notified in writing if he price increase has been approved. No billings may reflect a requested price increase unless the requested increase was approved. Any price adjustments requested by the City shall be submitted to the contact person stated in the Agreement. Contractor shall respond with 7 business days.

The CONTRACTOR is responsible for submitting any request for price increase. Any requested cost increase shall be fully documented and submitted to the CITY at least sixty (60) days prior to the end of any fiscal year, currently September 30th of each year. Should the CONTRACTOR not request a price increase prior to the sixty (60) day period the prices in effect at that time will remain in effect for the next twelve (12) month period of the Agreement. Any approved cost adjustment shall become effective October 1st. In the event the CPI or industry costs decline, the CITY shall have the right to receive, from the CONTRACTOR, a reasonable reduction in costs that reflect such cost changes in the industry. The CITY may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the CITY does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the CITY, the Agreement can be cancelled by the CITY upon giving thirty (30) days written notice to the CONTRACTOR.

8. **Insurance.** The CONTRACTOR will maintain throughout this Agreement the following insurance: SEE EXHIBIT "A".

- a. The original of each such policy of insurance, or a complete duplicate, shall be delivered to the CITY by CONTRACTOR prior to starting work, together with evidence that the premiums have been paid.
- b. All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least "A."

- c. The CONTRACTOR shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.
- d. The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.
- e. The required insurance shall not limit the liability of the CONTRACTOR. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the CONTRACTOR'S interests or liabilities, but are merely required minimums.
- f. All liability insurance, except professional liability, shall be written on an occurrence basis.
- g. The CONTRACTOR waives its right of recovery against the CITY to the extent permitted by its insurance policies.
- h. Insurance required of the CONTRACTOR, or any other insurance of the CONTRACTOR shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims, which arise out of the agreement, contract or lease.
- i. Except for works' compensation and professional liability, the CONTRACTOR'S insurance policies shall be endorsed to name the CITY OF LEESBURG as additional insured to the extent of the agreement, contract or lease.
- j. The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows:
City of Leesburg
Attention: Mike Thornton, Purchasing Manager
P.O. Box 490630
Leesburg, Florida 34749-0630
- k. The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.
- l. The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.
- m. The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.
- n. The CONTRACTOR, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the CONTRACTOR'S liability coverage(s).

9. **Indemnification.** The CONTRACTOR agrees to make payment of all proper charges for labor required in the aforementioned work and CONTRACTOR shall indemnify CITY and hold it harmless from and against any loss or damage, claim or cause of action, and any attorneys' fees and court costs, arising out of: any unpaid bills for labor, services or materials furnished to this project; any failure of performance of CONTRACTOR under this Agreement; or the negligence of the CONTRACTOR in the performance of its duties under this Agreement, or any act or omission on the part of the CONTRACTOR, his agents, employees, or servants.

CONTRACTOR shall defend, indemnify, and save harmless the CITY or any of their officers, agents, or servants and each and every one of them against and from all claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY or any of their officers, agents, or servants may be put by reason of injury to the persons or property of others resulting from the performance of CONTRACTOR'S duties under this Agreement, or through the negligence of the CONTRACTOR in the performance of its duties under this Agreement, or through any act or omission on the part of the CONTRACTOR, his agents, employees, or servants.

If however, this Agreement is a "construction contract" as defined in and encompassed by the provision of Florida Statutes § 725.06, then the following shall apply in place of the aforementioned indemnification provision:

The CONTRACTOR shall indemnify the CITY and hold it, its officers, and its employees harmless from liabilities, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Agreement. The liability of the CONTRACTOR shall, however, be limited to one million and 00/100 dollars (\$1,000,000.00) per occurrence, and the obligation of the CONTRACTOR to indemnify the CITY shall be limited to acts, omissions, or defaults of the CONTRACTOR; any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services or materials in connection with the project; and the CITY, its officers, agents and employees, provided however that the CONTRACTOR shall not be obligated to indemnify the CITY against losses arising from the gross negligence, or willful, wanton, or intentional misconduct of the CITY, its officers, agents and employees, or against statutory violations or punitive damages except to the extent caused by or resulting from the acts or omissions of the CONTRACTOR, or any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services, or materials in connection with this Agreement.

10. **Codes, Laws, and Regulations.** CONTRACTOR will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

11. **Permits, Licenses, and Fees.** CONTRACTOR will obtain and pay for all permits and licenses required by law that are associated with the CONTRACTOR'S performance of the Scope of Services. All permits and licenses required by law or requirements of the Invitation to Bid will remain in force for the full duration of this Agreement and any extensions.

12. **Nonappropriation.** The CONTRACTOR understands and agrees that this Agreement is subject to the availability of funds to the CITY to purchase the specified products/services. As used herein, a "nonappropriation" shall be defined as an occurrence wherein the CITY, in any fiscal period, does not allocate funds in its budget for the purchase of the specified products/services or other amounts owed pursuant to this Agreement, from the source of funding which the CITY anticipates using to pay its obligations hereunder, and the CITY has no other funds, from sources other than ad valorem taxes, which it deems to be available to pay its obligations under this Agreement. The CITY may terminate this Agreement,

with no further liability to the CONTRACTOR, effective the first day of a fiscal period provided that (a) a nonappropriation has occurred, and (b) the CITY has provided the CONTRACTOR with written notice of termination due to nonappropriation of funds.

Upon the occurrence of such nonappropriation the CITY shall not be obligated for payment for any fiscal period for which funds have not been appropriated.

13. **Access to Records.** The services provided under this Agreement may be funded in part by a grant from a government agency other than the CITY. As a requirement of grant funding CONTRACTOR shall make records related to this project available for examination to any local, state or federal government agency, or department, during CONTRACTOR'S normal business hours. Said records will be maintained for a period of five (5) years after the date of the invoice.

14. **Contingent Fees Prohibited.** The CONTRACTOR warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

15. **Acceptance of Goods or Services.** The goods delivered as a result of an award from this solicitation shall remain the property of the CONTRACTOR, and services rendered under the Agreement will not be deemed complete, until a physical inspection and actual usage of the product(s) and/or service(s) is (are) accepted by the CITY and shall be in compliance with the terms herein, fully in accord with the specifications and of the highest quality.

Any goods and/or services purchased as a result of this solicitation and/or Agreement may be tested and/or inspected for compliance with specifications. In the event that any aspect of the goods or services provided is found to be defective or does not conform to the specifications, the CITY reserves the right to terminate the solicitation or initiate corrective action on the part of the CONTRACTOR, to include return of any non-compliant goods to the CONTRACTOR at the CONTRACTOR's expense, requiring the CONTRACTOR to either provide a direct replacement for the item, or a full credit for the returned item. The CONTRACTOR shall not assess any additional charge(s) for any conforming action taken by the CITY under this clause. The CITY will not be responsible to pay for any product or service that does not conform to the contract specifications.

In addition, any defective product or service or any product or service not delivered or performed by the date specified in the purchase order or contract, may be procured by the CITY on the open market, and any increase in cost may be charged against the awarded contractor. Any cost incurred by the CITY in any re-procurement plus any increased product or service cost shall be

withheld from any monies owed to the CONTRACTOR by the CITY for any contract or financial obligation.

This project will be inspected by an authorized representative of the CITY. This inspection shall be performed to determine acceptance of work, appropriate invoicing, and warranty conditions.

16. **Ownership of Documents.** All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the CONTRACTOR (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the CONTRACTOR shall in no way be liable or legally responsible to anyone for the CITY'S use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the CONTRACTOR.

17. **Independent Contractor.** The CONTRACTOR agrees that he or she is an independent contractor and not an agent, joint venture, or employee of the CITY, and nothing in this Agreement shall be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the CONTRACTOR. CONTRACTOR will be responsible for paying his own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Agreement. The CONTRACTOR shall be solely and primarily responsible for his and her acts during the performance of this Agreement.

18. **Assignment.** Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

19. **No Third Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than the CONTRACTOR and the CITY.

20. **Jurisdiction.** The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

21. **Contact Person.** The primary contact person under this Agreement for the CONTRACTOR shall be CHARLIE TAYLOR. The primary contact person under this Agreement for the CITY shall be JIMMY FEAGLE.

22. **Approval of Personnel.** The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of CONTRACTOR pursuant to this

Agreement, CITY may require CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the CONTRACTOR services hereunder.

23. **Disclosure of Conflict.** The CONTRACTOR has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the CONTRACTOR and his duties under this Agreement.

24. **Warranty.** The CONTRACTOR agrees that, unless expressly stated otherwise in the bid or proposal, the product and/or service furnished as a result of an award from this solicitation shall be covered by the most favorable commercial warranty the CONTRACTOR gives to any customer for comparable quantities of products and/or services and the rights and remedies provided herein are in addition to said warranty and do not limit any right afforded to the CITY by any other provision of this solicitation.

The CONTRACTOR hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the CONTRACTOR in conjunction with this Agreement shall be new, warranted for their merchantability, and fit for a particular purpose.

25. **Risk of Loss.** The CONTRACTOR assumes the risk of loss of damage to the CITY's property during possession of such property by the CONTRACTOR, and until delivery to, and acceptance of, that property to the CITY. The CONTRACTOR shall immediately repair, replace or make good on the loss or damage without cost to the CITY, whether the loss or damage results from acts or omissions (negligent or not) of the CONTRACTOR or a third party.

The CONTRACTOR shall indemnify and hold the CITY harmless from any and all claims, liability, losses and causes of action which may arise out of the fulfillment of this Agreement. The CONTRACTOR shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of the CITY when applicable, and shall pay all costs and judgments which may issue thereon.

26. **Guaranty of Faithful Performance and Payment -** Performance and Payment Bonds, written by a Surety firm satisfactory to the City of Leesburg on forms acceptable to the CITY which comply with Section 255.05(1), Florida Statutes, will be required of the successful Bidder to guarantee that he will deliver a complete project under task orders issued under this Agreement in strict accordance with the Agreement Documents and that he will pay promptly all persons supplying him with labor or materials for the work.

The Performance and Payment Bonds will be equal to 100% of the City purchase order issued ordering work under this agreement. The cost of the bonds shall be borne by the CONTRACTOR.

The bonds shall be written by a qualified Surety firm and through a reputable and responsible surety bond agency licensed to do business in the State of Florida and Lake County and meet the following requirements:

The Surety must be rated as "A" or better as to strength by Best's Insurance Guide, published by Alfred M. Best Company, Inc., 75 Fulton Street, New York, New York.

Bonding Limit - Any One Risk: The Bonding Limit of the Surety shall not exceed ten (10) percent of the policy-holders surplus (capital and surplus) as listed by the aforementioned Best's Insurance Guide. The completed Bonds shall be executed in four (4) counterparts and delivered to the City of Leesburg with the required Power-of-Authority and executed Agreement.

27. **Illegal Alien Labor** - CONTRACTOR shall comply with all provisions of the Federal Immigration and Control Act of 1986 (8 U.S. Code § 1324 a) and any successor federal laws, as well as all provisions of Section 448.09, Florida Statutes, prohibiting the hiring and continued employment of aliens not authorized to work in the United States. CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into an Agreement with a subcontractor that fails to certify to the CONTRACTOR that the subcontractor is in compliance with the terms stated within. The CONTRACTOR nor any subcontractor employed by him shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. CONTRACTOR agrees that it shall confirm the employment eligibility of all employees through participation in E-Verify or an employment eligibility program approved by the Social Security Administration and will require same requirement to confirm employment eligibility of all subcontractors.

All cost incurred to initiate and sustain the aforementioned programs shall be the responsibility of the CONTRACTOR. Failure to meet this requirement may result in termination of the Agreement by the CITY.

28. **Counterparts.** Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall bind the parties to the same extent as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the parties and conclusive proof of such agreement. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. The CITY shall determine legibility and acceptability for public record purposes. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

29. **Authority to Obligate.** Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated in the preamble to the Agreement.

THE CITY OF LEESBURG, FLORIDA

By: _____
David Knowles, Mayor

ATTEST:

City Clerk

Approved as to form:

City Attorney

C.W. ROBERTS CONTRACTING, INC.

By: Charles W. Roberts III

Printed: Charles W. Roberts III

Its: President
(Title)

EXHIBIT "A"

SCOPE OF SERVICES

- I. **Scope of Services.** The CONTRACTOR shall provide all labor, materials, supervision and equipment necessary for street resurfacing.
- II. **Technical Specifications.** Technical specifications for this project are comprised of the section titled 'Technical Specifications' contained in the Invitation to Bid 130201.
- III. **General Conditions.** The General Terms and Conditions from Invitation to Bid 130201 are incorporated by reference and made a part hereof.
- IV. **Special Conditions.** The Special Conditions from Invitation to Bid 130201 are incorporated by reference and made a part hereof.
- V. **Insurance and Indemnity Requirements.** The Insurance and Indemnity Requirements from Invitation to Bid 130201 are incorporated by reference and made a part hereof.
- VI. **Addenda.** Addenda 1 of Invitation to Bid 130201 is incorporated by reference and made a part hereof.
- VII. **Bid Submittal.** The original May 30, 2013 bid submittal from the vendor is incorporated by reference and made a part hereof.
 - A. Unit prices submitted by the vendor are attached as **EXHIBIT "B"** and are incorporated by reference and made a part hereof.

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EXHIBIT "B"**UNIT PRICING**

BASE BID ITEMS				
Item No.	Description	FDOT Pay Item	Unit	Unit Price
1	Asphaltic Concrete Type S-3 including Tack Coat, for single mobilization less than 50 tons	331	TN	\$93.50
2	Asphaltic Concrete Type S-3 including Tack Coat, for single mobilization between 50 – 100 tons	327	SY	\$ 2.65
ADDITIONAL CONTRACT ITEMS - AS NEEDED				
3	Asphaltic Concrete Type S-3 including Tack Coat, for single mobilization less than 50 tons	331	TN	\$135.00
4	Asphaltic Concrete Type S-3 including Tack Coat, for single mobilization between 50 – 100 tons	331	TN	\$125.00
5	Asphaltic Concrete Type S-3 including Tack Coat, for single mobilization between 100 - 300 tons	331	TN	\$97.00
6	Remove existing Asphalt (milling) including around manhole 1-1/4" to 3-1/2"	327	SY	\$20.00
7	Adjust manhole using Riser Ring	425	EA	\$300.00
8	Adjust water, gas and sewer valves	---	EA	\$300.00
9	Remove & replace 6"x16" concrete curb	110 520-2	LF	\$25.00
10	Remove & replace 2'-0" standard curb and gutter	110 520-2	LF	\$25.00
11	Remove & replace existing valley gutters	---	LF	\$35.00
12	Reflective Pavement Markers (RPM), yellow, blue or white	706	EA	\$5.50
13	"Stamark" tape – double yellow line	---	EA	\$4.00
14	Quadrapole Loops	711	EA	\$5,000.00
15	Windows for Quadrapole Loops	711	EA	\$5,000.00
16	1 Home Run with 2 beldens	711	LF	\$3,500.00
17	18-inch Gore Area	N/A	N/A	N/A
18	City Police Officers time to manage traffic at signalized intersections.	---	Hours	\$50.00