



City of Auburn, Maine

Public Works Department
www.auburnmaine.gov | 60 Court Street
Auburn, Maine 04210
207.333.6601

August 16, 2021

Dear Bidder:

The City of Auburn is accepting written proposals for the Auburn Public Works Department's **2022 Crack Sealing Program**. The City reserves the right to accept or reject any or all proposals in whole or in part and to waive any informality the City may determine necessary. The City also reserves to itself the exclusive right to accept any proposal when it is deemed by the City to be in its best interest. The City of Auburn is governed by Title 1 M.R.S.A. § 401-410, otherwise known as the Freedom of Information Act, which considers bid specifications as public documents. In awarding any proposal, the City may consider, but not be limited to, any of the following factors: Bidder qualifications, price, experience, financial standing with the City, warranties, references, bonding, delivery date, and service of Bidder. Vendors/Contractors shall be current on all amounts due to the City of Auburn prior to the City entering into any contract agreement. All proposals must include FOB to Auburn, Maine unless otherwise specified.

Proposals will not receive consideration unless submitted in accordance with the following instructions to bidders. Please mark sealed envelopes plainly: **"2022 Crack Sealing Program– Bid #2022-008."**

Bid packages will be available beginning on Monday, August 16, 2021. Documents can be obtained on the City Website: <http://www.auburnmaine.gov/Pages/Government/Bid-Notices>. Questions regarding this Request for Bids should be directed to Kris Bennett, P.E., Assistant City Engineer, at (207) 333-6601, ext. 1134 and submitted no later than 4:30pm Friday August 27, 2021.

Please submit your proposal to the City of Auburn by 2:00 p.m. **Thursday, September 2, 2021.** Proposals must be delivered to **Derek Boulanger, Purchasing Agent, 60 Court Street, Auburn, Maine 04210** on or before the date and time appointed. No proposals will be accepted after the time and date listed above. Proposals will be opened at 2:00 p.m. on that date at City Hall.

Sincerely,

Derek Boulanger
Purchasing Agent

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CONDITIONS AND INSTRUCTIONS TO BIDDERS

1. Bidders shall use the enclosed bid form for quotations. Whenever, in bid forms, an article is defined by using a trade name or catalog number, the term "or approved equal", if not inserted, shall be implied.
2. Submit a separate unit price for each item unless otherwise specified in the bid request. Award will be made on a basis of each item, or as a group, whichever is in the best interest of the City. Prices stated are to be "delivered to destination".
3. Bid proposals must be completed in full, in ink and must be signed by firm official. Bid proposal **must be notarized** prior to bid being sealed and will be disqualified if not notarized. Bids may be withdrawn prior to the time set for the official opening
4. Bids will be opened publicly. Bidders or representatives may be present at bid opening.
5. Awards will be made to the lowest responsible bidder, considering the quality of the materials, date of delivery, cost which meets specification and is in the best interest to the City of Auburn.
6. All transportation charges, including expense for freight, transfer express, mail, etc. shall be prepaid and be at the expense of the vendor unless otherwise specified in the bid.
7. The terms and cash discounts shall be specified. Time, in connection with discount offered, will be computed from date of delivery at destination after final inspection and acceptance or from date of correct invoice, whichever is later.
8. The City is exempt from payment of Federal Excise Taxes on the articles not for resale, Federal Transportation Tax on all shipments and Maine Sales Tax and Use Taxes. Please quote less these taxes. Upon application, exemption certificate will be furnished with the Purchase Order when required.
9. The completion date for this project is October 29th, 2021. Liquidated damages of \$500/calendar day will be assessed on uncompleted work.
10. No contract may be assigned without the written consent of the Finance Director or her designate. The contract shall not be considered valid until a purchase order has been issued to the successful bidder.
11. Please state "**2022 Crack Sealing Program– Bid # 2022-008**", on submitted, sealed envelope.

12. The City of Auburn reserves the right to waive any formality and technicality in bids whichever is deemed best for the interest of the City of Auburn.

GENERAL CONDITIONS

1. Equal Employment Opportunity

The City of Auburn is an Equal Opportunity Employer and shall not discriminate against an applicant for employment, and employee or a citizen because of race, color, sex, marital status, physical and/or mental handicap, religion, age, ancestry or natural origin, unless based upon a bona-fide occupation qualification. Vendors and contractor or their agents doing business with the City shall not violate the above clause or the Civil Rights Acts of 1964. Violations by vendors shall be reviewed on a case-by-case basis and may mean an automatic breach of contract or service to the City of Auburn.

2. Save Harmless

The Bidder agrees to protect and save harmless the owner from all costs, expenses or damages that may arise out of alleged infringement of patents of materials used.

3. Subcontracting

The Bidder shall not subcontract any part of the work or materials or assign any monies due it without first obtaining the written consent of the municipality. Neither party shall assign or transfer its interest in the contract without the written consent of the other party.

4. Warranty

The Bidder warrants that all work will be of good quality and free from faults and defects, and in conformance with the specifications. All work not so conforming to these standards may be considered defective. The Bidder agrees to be responsible for the acts and omissions of all of its employees and all subcontractors, their agents and employees, and all other persons performing any of the work under a contract with the Bidder.

5. Bonds and Payments

Payments shall be made by the City to the Contractor 30 days after receipt of the request for payment.

QUOTE PROPOSAL FORM

Crack Seal

Due by 2:00 pm, Thursday, September 2nd, 2021

To: City of Auburn
Derek Boulanger, Purchasing Agent
60 Court Street
Auburn, ME 04210

The undersigned individual/firm/business guarantees this price for Thirty days (30) from the bid due date. The undersigned submits this proposal without collusion with any other person, individual, or firm or agency. The undersigned ensures the authority to act on behalf of the corporation, partnership or individual they represent; and has read and agreed to all of the terms, requests, or conditions written herein by the City of Auburn, Maine. By signing this bid form, the firm listed below hereby affirms that its bid meets the minimum specifications and standards as listed above.

Signature _____ Name (print) _____

Title _____ Company _____

Address _____

Telephone No. _____ Fax No. _____

Email Address: _____

STATE OF MAINE
_____, SS.

Date: _____

Personally appeared and acknowledged the foregoing instrument to be his/her free act and deed in his/her capacity and the free act and deed of said company.

Notary Public _____

Print Name _____

Commission Expires _____

BID FORM

DESCRIPTION	UNIT	QNTY	UNIT COST	TOTAL COST
Polymer Modified Asphalt Sealant	Pound	15,000		

Written total amount is: _____

Company Name: _____

Signed by: _____

Title: _____

Print Name: _____

Address: _____

Tel. # _____

Date: _____

Addendum Acknowledged:

_____ Date _____

_____ Date _____

2021 Crack Seal Street Locations

Street locations are listed below. Streets may be added or removed as work progresses or to meet the available funding for this work.

STREET NAME

FROM

TO

GROUP 1

Lake St.	Park Ave.	Court St.
Old Carriage Rd.	Hotel Rd.	End
Concord Pl.	Old Carriage Rd.	End
Old Danville Rd.	Pownal Rd.	Spencer Dr.
Park Ave.	Summer St.	Lake St.
Seventh St.	South Main St.	End
Cook St.	South Main St.	South Main St.
Lake Auburn Ave.	Turner St.	Center St.
Joline Dr.	Turner St.	Center St.
Pownal Rd.	Old Danville Rd.	Jordan School Rd.

GROUP 2

Avon St.	South Main St.	Roy Ave.
Beckett St.	South Main St.	Roy Ave.
Candia St.	South Main St.	Roy Ave.
Dee St.	South Main St.	Laureat St.
Enfield St.	South Main St.	Laureat St.
Flanders St.	South Main St.	End
Gosnold St.	South Main St.	Kilsyth St.
Ipswich St.	Kilsyth St.	South Main St.
Kilsyth St.	Gosnold St.	Ipswich St.
Lafayette St.	Roy Ave.	End
Laureat St.	Dee St.	Enfield St.
Roy Ave.	Cook St.	End

GROUP 3

South Main St.	Broad St.	Witham Rd.
Townsend Brook Rd.	Route 4	Route 4
Pettengill Park Rd.	Field Ave.	Winter St.
Highland Ave.	Court St.	Western Promenade
Perkins Ridge Rd.	West Shore Rd.	Jackson Hill Rd.
South Witham Rd.	Penley Corner Rd.	Sopers Mill Rd.

GROUP 4

Trapp Rd.
East Waterman Rd.
Hickory Dr.
Broad St.

Pownal Rd.
Route 4
Beech Hill Rd.
Mill St.

Town Line
End
End
South Main St.

Special Provisions

1. Work Hours

The City's established work hours are from 7:00 a.m. to 7:00 p.m. The definition of work for this specification shall include the starting of moving of equipment, machinery or materials. Work included in this contract is intended to be completed during the designated work hours. If work is to be scheduled outside of these hours, written permission from the City Engineer must be obtained.

2. Resident Notification

Residents shall be notified sufficiently in advance of any work affecting the resident's driveway and sidewalk to allow adequate time for removal of personal vehicles so as not to impede work progress.

3. Parking Control

When directed, the contractor shall post "Emergency No Parking" signs on streets and/or parking lots to be crack sealed. Streets shall be posted no less than 12 hours before they are scheduled to be sealed.

4. Maintenance and Protection of Traffic

The Contractor shall be responsible for the maintenance and protection of all vehicular and pedestrian traffic at all times during work under this contract in accordance with the most recent edition of the **"Manual on Uniform Traffic Control Devices for Streets and Highways"**. Suitable warning signs, flashers, barriers or temporary lighting devices of sufficient size and number to afford protection to the traveling public shall be erect. The cost for Maintenance and protection of traffic shall be considered incidental to the work included in this contract.

5. Pre-construction Conference

A conference will be held at the Engineering Division of the City Building at 60 Court Street within five (5) working days after awarding of the contract. At this time the contractor will be required to submit the following:

- Estimate of working days
- Schedule of operations
- Proposed hours of work
- Schedule of streets
- Outline of traffic control

6. Traffic Officers

Traffic control shall be the responsibility of the contractor and as directed.

7. Records

The Contractor shall keep daily records including but not limited to street sealed, temperature, begin and end times, and materials used. Upon completion of the project the contractor shall deliver to the City a marked-up list of sealed streets with all changes indicated as well as the total amount of sealant utilized on each street.

8. Materials

All materials shall be delivered to Public Works prior to work and distributed from there as needed. Daily records will need to be turned in before the release of any materials for the next day.

9. Examination of Contract Documents and Site of Work

The bidder is expected to carefully examine the proposed areas of work and all available contract documents before submitting a proposal.

10. Final Clean Up

Before final acceptance of the work, all affected areas and areas occupied by the Contractor in connection with the work shall be clean and left in an acceptable condition. Final clean up costs are considered to be incidental to the work included in this contract.

SUPPLEMENTAL SPECIFICATIONS
Polymer & Crumb Rubber Modified Asphalt
Compound Fibers with Reinforcing Fibers

1. SCOPE OF WORK

The work covered by this section of the specification consists of furnishing all plant, labor, equipment and materials necessary to perform all operations in connection with the cleaning and sealing of construction and random cracks in bituminous concrete pavements, including vegetation removal and sterilization of cracks, where necessary.

2. MATERIAL

Crack sealant shall be a modified asphalt-fiber compound designed specifically for improving the strength and performance of the parent asphalt sealant.

(a) The asphalt binder shall consist of a blend of neat asphalt binder, chemically modified crumb rubber (CMCR), and a polymer package, all of which meet the following specifications:

- The binder will meet PG 64-28E requirements after modification including:
 - PG grade requirements of AASHTO M320
 - Requirements of AASHTO TP70/MP19
- Modification, at a minimum, shall consist of 7% crumb rubber, and the maximum particle size for the recycled tire rubber shall be 80 mesh (#80 sieve)
- The asphalt supplier shall provide testing for both the neat and modified asphalt binders
- See below for typical modified test results for 64-28E with crumb rubber:

DSR ORIGINAL

- kPa >1.00 @ 64° C. Fail temp = 76+° C

DSR RTFO

- kPa >2.20 @ 64° C. Fail temp = 76+° C

MSCR

- JNR (MSCR unit of measure): 3.2 E <0.5% @ 64° C
- R3200 (Average % Recovery): >70%

DSR PAV

- kPa <6000 @ 64° C

BBR

- Stiffness <300 @ -18° C. M-Value >0.300 @ -18° C

(b) Fiber reinforcing materials shall be short-length polyester fibers having the following properties:

Length*	0.25 in. ± 0.02 in.
Elongation at Break (ASTM D2256-90)	35% ± 3%
Melting Point (ASTM D3418-82)	>475 degrees F
Crimps/Inch (ASTM D3937-90)	None
Cross Section	Round
Denier (ASTM D1577-90)	4.5 Nominal dpf
Tensile Strength (ASTM D2256-90)	>70,000 psi
Diameter	0.0008 in. **
Specific Gravity (ASTM D792-91)	1.32 to 1.40

* At temperatures ranging from ambient to maximum finished product mix temperature

** Subject to Normal Variations

(c) Allowable materials shall meet at a minimum the following specifications:

- Test ASTM D-6690 (AASHTO M-324)
- Cone Penetration 90 Max
- Flow 3mm Max
- Softening Point 176° Degrees F (80° C) Min
- Resilience 60% Min
- Bond -20° F (-29° C) 50% ext. Pass 3 Cycles
- Asphalt Compatibility Compatible
- Minimum Application Temperature 380° F (193° C)
- Maximum Heating Temperature 400° F (204° C)

The modified asphalt-fiber compound shall be mixed at a rate of 8% fiber weight to weight of asphalt cement. This compound having the same chemical base provides compatibility and exhibits excellent bond strengths. The fiber functions to re-distribute high stress and strain concentrations that are imposed on the sealant by thermal sources, traffic loading, etc.

3. EQUIPMENT

Equipment used in the performance of the work required by this section of the specification shall be subject to approval by the Owner, and maintained in a satisfactory working condition at all times.

(a) Air Compressor: Air compressors shall be capable of furnishing not less than 100 cubic feet of air per minute at not less than 90 lbs. per square inch pressure at the nozzle. The compressor shall be equipped with traps that will maintain the compressed air free of oil and water.

(b) Manually operated, gas powered air-broom or self-propelled sweeper designed especially for use in cleaning highway and airfield pavements shall be used to remove debris, dirt and dust from the cracks.

(c) Melter: The unit used to melt or maintain the crack sealant compound at the recommended application temperature shall be the indirect fired type. It shall be equipped with a remote heat exchanger and hot oil circulation pump capable of maintaining a consistent temperature of the heat transfer oil. The heat transfer oil shall be circulated to all sides and the bottom of the vat containing the crack sealant compound making a continuous loop back to the heat exchanger and having a flash point of not less than 600 degrees F. The melter shall be equipped with a satisfactory means of agitating the crack sealant at all times. This may be accomplished by continuous stirring with mechanically operated paddles and/or by a circulating gear pump attached to the melter. The melter must be equipped with a thermostatic control calibrated between 200 degrees F and 550 degrees F, and must be capable of pumping an 8% fiber content blend.

4. PREPARATION OF CRACKS

(a) Debris and Vegetation Removal: **All cracks shall be blown clean and sterilized by use of a propane air torch generating 2,000 degrees F and 3,000 feet/second velocity to eliminate all vegetation, dirt, moisture and seeds.** All debris removed from the cracks shall be removed from the pavement surface immediately by means of a power sweeper, hand or air broom.

(b) General: No crack sealant material shall be applied in wet cracks or where frost, snow or ice is present, nor when the ambient temperature is below 25 degrees F.

5. PREPARATION AND PLACEMENT OF SEALANT

(a) The asphalt-fiber compound shall be thoroughly mixed for a minimum of one hour before application can begin. To ensure a uniform fiber distribution in the sealant, and also to limit fluctuations in the application temperature of the blended material, the contractor must have a full melter kettle of sealant mixed, heated to the proper application temperature, and ready for testing at the start of each work day. Once that batch of sealant is emptied from the melter kettle, crack sealing operations will cease for the remainder of the day. No new materials will be allowed to be added to the melter kettle during the work day under any circumstances. Minimum application temperature shall be 320 degrees F.

(b) Sealant shall be delivered to the pavement cracks through a high pressure hose line and applicator shoe. Diameter of the applicator shoe is not to exceed 3.5 inches. Once the pavement cracks are sealed, the width of the sealant on the pavement (overbanding) shall be no greater than 3 inches. When traffic requires immediate use of the roadway, a boiler slag aggregate shall be broadcast over the cracks to prevent the sealant from being picked up.

6. WORKMANSHIP

All workmanship shall be of the highest quality, and any excess of spilled sealant shall be removed from the pavement by approved methods and discarded. Any workmanship determined to be below the high standards of the particular craft involved will not be accepted, and will be corrected and/or replaced as required by the Owner.

7. PERFORMANCE

(a) It is the intention of the Owner not to award a contract for this work under this or any other proposal if the bidder cannot furnish satisfactory evidence that he has the ability and experience to perform this class of work, and that he has sufficient capital and equipment to enable him to prosecute the work successfully and to complete it within the time named in the contract. The Owner reserves the right to reject this or any other proposal, or to award the contract as is deemed to be in the best interest of said Owner

(b) Properly formulated and mixed asphalt fiber compound overbanding shall not be greater than three inches (3") in width. Penalties will be imposed upon the contractor for overbanding beyond three inches (3").

(c) The contractor must submit the following with his bid proposal:

- A list of six (6) jobs which he has successfully completed with the polymer and crumb rubber modified asphalt compound with reinforcing fibers specified herein, giving the name and address of these projects so they can be investigated prior to the award of the contract.
- The trade name of the crack sealant the bidder intends to use.
- The manufacturer of the crack sealant the bidder intends to use.

(d) The Owner will require the contractor to successfully perform a 200 foot test strip in the field prior to commencing work under the contract.

(e) Manufacturer's certificate of material compliance will be furnished to the Owner certifying conformance to the above material specifications, including the following:

- Performance Grade of Unmodified Asphalt: **PG 64-28S** (standard)
- AASHTO M-320, Table 1
- 7% chemically-modified crumb rubber (CMCR)
 - Composed of 100% 80-mesh recycled tire rubber
- 3-4% specially formulated polymer package
- Performance Grade of Modified Asphalt: **PG 64-28E** (able to withstand "extremely heavy" traffic loads)
- AASHTO M-320, Table 1

- "E" Jnr 3.2 kPa @ 64⁰C: <**0.5%**
 - R3200 (Average % Recovery) @ 3.200 kPa: >**70%**
- 8% polyester reinforcing fibers

8. MEASUREMENT AND PAYMENT

(a) The unit of measure for the work is the following:

- Pound

The unit of measure will be determined by the awarding authority and set forth in the bid documents. Payment shall be at the unit price bid in the proposal and shall be full compensation for furnishing, preparing, placing the material specified and furnishing of all labor, equipment and incidentals for the satisfactory completion of this item.

9. BASIS OF PAYMENT:

The accepted quantity of Asphalt Sealer will be paid for at the contract unit price per Pound complete in place, which price shall be full compensation for furnishing and placing crack sealer, including cleaning cracks, furnishing and applying a de-tackerfier and all other associated work.

SAMPLE CONTRACT AGREEMENT

THIS AGREEMENT is made this ### day of ###, 2021, by and between the CITY OF AUBURN, a municipal corporation existing under the laws of the State of Maine and located in the County of Androscoggin, State of Maine (hereinafter "CITY"), Contractor., Address, EIN, (hereinafter "CONTRACTOR"),

WITNESSETH:

In consideration of the mutual covenants and conditions contained herein, the CITY and the CONTRACTOR agree as follows:

SPECIFICATIONS:

1. The CONTRACTOR shall furnish all of the material and perform all of the work shown on the drawings and described in the specifications entitled: Bid # 2022-008 2021 Crack Sealing Program which are attached hereto and made a part hereof, and the CONTRACTOR covenants that it shall do everything required by this Agreement, the Special Provisions of the Agreement, the Invitation to Bid and the Specifications in return for payment as provided herein.

COMPLETION DATE:

2. The work to be performed under this Agreement shall be fully completed on or before October 29, 2021.

CONTRACT PRICE:

3. The CITY shall pay the CONTRACTOR for the performance of the Agreement the sum of \$ Dollar amount

PERFORMANCE BOND:

4. If required by the City, the CONTRACTOR shall furnish to the CITY at the time of the execution of this Agreement a performance bond and a labor and material payment bond each in the amount of \$ Dollar amount or N/A (whichever applies) executed by a surety company satisfactory to the CITY, guaranteeing the performance and payment by the CONTRACTOR. Yes, Required (Initials: __) No, Waived (Initials __)

GUARANTEE:

5. The CONTRACTOR shall guarantee his work against any defects in workmanship and materials for a period of one year from the date of the CITY's written acceptance of the project.

PERMITS AND LICENSES:

6. Permits and licenses necessary for the prosecution of the work shall be secured and paid by the CONTRACTOR.

CITY'S RIGHT TO TERMINATE CONTRACT:

7. If the CONTRACTOR should be adjudged a bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of its insolvency, or if it should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if it should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, and ordinances, or otherwise be guilty of a substantial violation of any provision of the Agreement, then the CITY when sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the CONTRACTOR, and his surety, seven (7) days written notice, terminate the employment of the CONTRACTOR and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method it may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Agreement price shall exceed the expense of the finishing the work, including compensation for additional architectural, managerial and administrative services, such excess shall be paid to the CONTRACTOR. If such expense shall exceed such unpaid balance, the CONTRACTOR shall pay the difference to the CITY.

CONTRACTOR'S LIABILITY INSURANCE:

8. The CONTRACTOR shall not commence work under this Agreement until he has obtained all insurance required under this paragraph and such insurance has been approved by the CITY, nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all similar insurance required of subcontractor has been so obtained and approved. It is a requirement that the CITY be named as an Additional Insured on the General Liability and Automobile Liability policies.

Commercial General Liability to include products and completed operations, and blanket contractual. The limits of liability shall be as follows:

Bodily Injury and Property Damage	\$1,000,000
Personal Injury and Advertising Injury	\$1,000,000
Per Project Aggregate	\$1,000,000
General Aggregate	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000
Medical Payments	\$10,000

(b) Business Automobile Liability

The CONTRACTOR shall maintain and cause all sub-contractors and lower tier contractors to maintain business automobile liability insurance covering all owned, non-owned, leased, rented or hired automobiles (symbol 1). The limits of liability shall be as follows:

Bodily Injury and Property Damage	\$1,000,000
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Automobile physical damage coverage shall be at the option of the CONTRACTOR, all sub-contractors and lower tier contractors. The CITY shall not be liable for physical loss or damage to any owned, non-owned, leased, rented or hired automobile.

Workers' Compensation Insurance

The CONTRACTOR shall maintain and cause all sub-contractors and lower tier contractor's to maintain Workers' Compensation and Employers Liability in accordance with the laws and regulations of the State of Maine. The limits of liability provided shall be as follows:

Coverage A:	Statutory
Coverage B:	\$100,000/\$500,000/\$100,000

Professional Liability

If the CONTRACTOR is an Architect, Engineer or Surveyor, they shall maintain a policy of insurance to pay on their behalf whatever amounts that may become legally required to pay on account of an error, omission or negligent act.

Limits of Liability shall be as follows:

\$1,000,000 per occurrence and in the aggregate site specific.

It is a requirement that this policy be maintained for a period of three (3) years following completion of the project.

Certificates of Insurance of the types and in the amounts required shall be delivered to the CITY prior to the commencement of any work by the CONTRACTOR, subcontractor or lower tier contractor or any person or entity working at the direction or under control of the CONTRACTOR. The CONTRACTOR shall assume the obligation and responsibility to confirm insurance coverage for all sub-contractors or lower tier contractors who will participate in the project.

The Certificate of Insurance and the policies of insurance shall include a sixty (60) day notice to the CITY of cancellation, non-renewal or material change in coverage or form.

The CONTRACTOR and his surety shall indemnify and save harmless the CITY, his officers and employees from all suits, actions or claims of any character brought because of any injuries or damage received or sustained by any person, persons or property on account of the operations of the said CONTRACTOR; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in construction of the work; or because of any act or omission, neglect, or misconduct of said CONTRACTOR; or because of any claims or amounts recovered from any infringements or patent trademark, or copyright; or from any claims or amounts arising or recovered under the "Workmen's Compensation Act" or of any other law, ordinance, order or decree; and so much of the money due to the said CONTRACTOR under and by virtue of his/her contract as shall be considered necessary by the CITY for such purpose, may be retained; or in case no money is due, his surety may be held until such suit or suits, action or actions, claim or claims, for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the CITY.

Waiver of Subrogation

Payment of any claim or suit including any expenses incurred in connection therewith by the CITY, or any insurance company on behalf of the CITY shall not constitute a waiver of subrogation against the CONTRACTOR, sub-contractors or any lower tier contractor in the event that such claim or suit was caused by or contributed to as a result of the negligent acts of the CONTRACTOR, any sub-contractors or lower tier contractors.

Construction Agreement

The CONTRACTOR shall and does hereby agree to indemnify, save harmless and defend the CITY from the payment of any sum or sums of money to any person whomsoever on account of claims or suits growing out of injuries to persons, including death, or damages to property, caused by the CONTRACTOR, his employees, agents or sub-contractors or in any way attributable to the performance and execution of the work herein contracted for, including (but without limiting the generality of the foregoing), all claims for service, labor performed, materials furnished, provisions and suppliers, injuries to persons or damage to property, liens, garnishments, attachments, claims, suits, costs, attorney's fees, costs of investigation and defense. It is the intention of this paragraph to hold the CONTRACTOR responsible for the payment of any and all claims, suits, or liens, of any nature character in any way attributable to or asserted against the CITY, or the CITY and the CONTRACTOR, which the City may be required to pay. In the event the liability of the CONTRACTOR shall arise by reason of the sole negligence of the CITY and/or the sole negligence of the CITY's agents, servants or employees, then and only then, the CONTRACTOR shall not be liable under the provisions of this paragraph.

DAMAGES:

9. The CONTRACTOR shall defend, indemnify and save harmless the CITY and all persons acting for or in behalf of it against all claims for injuries (including death), loss or damage, arising out of the performance out this contract.

LIENS:

10. Neither the final payment nor any part of the retained percentage shall become due until the CONTRACTOR, if required, shall deliver to the CITY a complete release of all liens arising out of the Agreement, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as it has knowledge or information the releases and receipts include all the labor and material for which a lien could be filed; but the CONTRACTOR may, if any SUB-CONTRACTOR refuses to furnish a release or receipt in full, furnish a bond satisfactory to the CITY to indemnify it against any lien. If any lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to the CITY all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

ASSIGNMENT:

11. Neither party to the Agreement shall assign the Agreement or sublet it as a whole without the written consent of the other, nor shall the CONTRACTOR assign any moneys due or to become due to it hereunder, without the previous written consent of the CITY.

SUBCONTRACTS:

12. The CONTRACTOR shall not sublet any part of this Agreement without the written permission of the CITY. The CONTRACTOR agrees that it is as fully responsible to the CITY for the acts and omissions of its SUB-CONTRACTORS and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

USE OF PREMISES:

13. The CONTRACTOR shall confine its apparatus, the storage of materials and operations of its workers to limits indicated by law, ordinance and permits and shall not otherwise unreasonably encumber the premises with its materials. If any part of the project is completed and ready for use, the CITY may, by written and mutual consent, without prejudice to any of its rights or the rights of the CONTRACTOR, enter in and make use of such completed parts of the project. Such use or occupancy shall in no case be construed as an acceptance of any work or materials.

CLEANING UP:

14. The CONTRACTOR shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its employees or work, and at the completion of the work it shall remove all its rubbish from and about the project, and all its tools, scaffolding and surplus materials and shall leave its work "broom-clean" or its equivalent, unless more exactly specified. In case of dispute, the CITY may remove the rubbish and charge the cost to the CONTRACTOR.

PAYMENTS:

15. Unless otherwise agreed to, the CITY shall make payments on account of the Agreement as follows:

Within 30 days, as invoices are submitted for work completed to the satisfaction of the CITY.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

BY: _____
Witness

BY: _____
Finance Director

BY: _____
Witness

BY: _____
Contractor