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LANCASTER COUNTY  
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**CONTRACT DOCUMENTS**

**CITY OF LINCOLN/LANCASTER COUNTY  
NEBRASKA**

**ANNUAL SUPPLY  
OF  
Asphaltic Joint Sealant  
Bid No. 13-170**

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

**CITY OF LINCOLN/LANCASTER COUNTY, NEBRASKA  
CONTRACT AGREEMENT**

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

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

For providing Annual Supply of Asphaltic Joint Sealant, Bid No. 13-170 and,

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

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

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

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

**Agreement to full proposal**

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

The Owners 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 Owners 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 \$ 22,360.00 during the contract term without approval by the Board of Commissioners. The total cost of products or services for City Departments shall not exceed \$84,400.00 during the contract term without approval.

3. Equal Employment Opportunity. In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.
  
4. E-Verify. In accordance with Neb. Rev. Stat. 4-108 through 4-114, the contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The contractor shall require any subcontractor to comply with the provisions of this section.
  
5. Termination. This Contract may be terminated by the following:
  - 5.1) Termination for Convenience. Either party may terminate this Contract upon thirty (30) days written notice to the other party for any reason without penalty.
  - 5.2) Termination for Cause. The Owners may terminate the Contract for cause if the Contractor:
    - 5.2.1) Refuses or fails to supply the proper labor, materials and equipment necessary to provide services and/or commodities.
    - 5.2.2) Disregards Federal, State or local laws, ordinances, regulations, resolutions or orders.
    - 5.2.3) Otherwise commits a substantial breach or default of any provision of the Contract Document. In the event of a substantial breach or default the Owners will provide the Contractor written notice of said breach or default and allow the Contractor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the contract shall terminate.
  
6. Independent Contractor. It is the express intent of the parties that this contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the Owners and employees of the Owners shall not be deemed to be employees of the Contractor. The Contractor and the Owners shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the Owners' employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.
  
7. Owner Inclusion. It is understood and agreed by all parties that "Owner/s" shall include the City of Lincoln and Lancaster County, Nebraska. Whenever in the Contract documents, including the instructions to bidders, specifications, insurance requirements, bonds, and terms and conditions or any other documents which are a part of the Contract, a singular entity is referenced (i.e., "the City" or "the County") it shall mean the "Owners" encompassing the City of Lincoln, and Lancaster County.

8. Contract Term. This Contract shall be effective upon execution by all parties. The term of the Contract shall be a one (1) year term.
  
9. The Contract Documents comprise the Contract, and consist of the following:
  1. Contract Agreement
  2. Accepted Proposal/Supplier Response
  3. Special Provisions
  4. Instructions to Bidders
  5. Sales Tax Exemption Form 13

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

The Contractor and the Owners 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 Owners do hereby execute this contract.

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

ATTEST:

Teresa J. Meier  
City Clerk



CITY OF LINCOLN, NEBRASKA

Chris Brown  
Mayor

Approved by Executive No. 086241

Dated July 9, 2013

**EXECUTION BY LANCASTER COUNTY, NEBRASKA**

Contract Approved as to Form:

Brian Behrens  
-for Lancaster County Attorney

The Board of County Commissioners of  
Lancaster, Nebraska

Deborah  
Sam Dwyer  
Larry Hudson  
Jim Hulp  
Ken Blum

Dated 7/23/13

**EXECUTION BY CONTRACTOR**

IF A CORPORATION:

ATTEST:

*Dale L. Bezy* (SEAL)  
Secretary



IF OTHER TYPE OF ORGANIZATION:

Maxwell Products, Inc.  
Name of Corporation

650 Delong St., Salt Lake, UT 84104  
(Address)

By: *Ken Maxwell*  
Duly Authorized Official

President  
Legal Title of Official

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

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

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

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

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

IF AN INDIVIDUAL:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

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

Bid Information		Contact Information		Ship to Information
Bid Creator	Shelly Hinze, Buyer	Address	Purchasing	Address
Email	rhinze@lincoln.ne.gov		440 S. 8th St.	
Phone	1 (402) 441-8313		Lincoln, NE 68508	
Fax	1 (402) 441-6513	Contact	Shelly Hinze, Buyer	Contact
			Purchasing	
Bid Number	13-170	Department		Department
Title	Annual Supply of Asphaltic Joint Sealant - City/County	Building	Suite 200	Building
Bid Type	Bid	Floor/Room		Floor/Room
Issue Date	05/15/2013	Telephone	1 (402) 441-8313	Telephone
Close Date	5/24/2013 12:00:00 PM CT	Fax	1 (402) 441-6513	Fax
Need by Date		Email	rhinze@lincoln.ne.gov	Email

## Supplier Information

Company Maxwell Products, Inc.  
 Address 650 S. Delong St.  
  
 SLC, UT 84104  
 Contact Dave McIntosh  
 Department  
 Building  
 Floor/Room  
 Telephone 1 (801) 9722090  
 Fax 1 (801) 972-5536  
 Email dave.m@maxwellproducts.com  
 Submitted 5/21/2013 10:55:01 AM CT  
 Total \$77,540.82

Signature \_\_\_\_\_

## Supplier Notes

I currently work with Rose Equipment in distributing our material in Nebraska, we also hold a state contract currently for polymer modified mastic material.

## Bid Notes

## 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	Special Provision Term Contract Provisions	I acknowledge reading and understanding the Special Provision Term Contract Provisions.	Yes
3	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
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	Term Clause of Contract	I acknowledge that the term of the contract is a one (1) year term from the date of the executed contract.  (a) Are your bid prices firm for the first one (1) year contract period. YES or NO  (b) Are your bid prices subject to escalation/de-escalation YES or NO  (c) If (b), state period for which prices will remain firm: through _____	a
7	Product	List your Product Name:	elastflex 61
8	Delivery	State number of delivery days ARO. FOB to the City/County at the location specified with all transportation charges paid.	14
9	Contact	Name of person submitting this bid:	Dave McIntosh
10	Electronic Signature	Please check here for your electronic signature.	Yes

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## Line Items

#	Qty	UOM	Description	Response
1	168,567	Pounds	Rubberized asphalt joint sealant packaged in a meltable polyethylene bags contained in cardboard boxes.  Product shall be delivered on pallets and covered with clear plastic and banded weighing approximately 2000 pounds.  Sealant shall meet the requirements in ASTM D 3405.	\$0.46

Manufacturer: Dreyer 102 or Crafc0 34221 or a proven equivalent

Item Notes: <BR>BID COST PER POUND<BR><BR>Price must include delivery to either location:<BR>City of Lincoln Street Maintenance<BR> 901 North 6th<BR> Lincoln, NE<BR><BR>Lancaster County Engineering<BR> 444 Cherrycreek Road<BR> Lincoln, NE<BR><BR>City of Lincoln purchased 122,567 lbs. in the last year<BR>Lancaster County purchased 46,000 lbs. in the last year.<BR>Purchasing shall have the right to request a sample of any item that is not Dreyer 102 or Crafc0 34221.

Supplier Notes: For your information the new federal spec number for 3405 is astm d 6690-type II, Maxwell Products elastoflex 61 meets this spec.

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Response Total: \$77,540.82

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