

There came on for consideration at a duly constituted meeting of the Mayor and Members of the City Council of the City of Gulfport, Mississippi, held on the \_\_\_\_ day of \_\_\_\_\_, 2014, the following Resolution:

**A RESOLUTION BY THE GULFPORT CITY COUNCIL AWARDED BID FOR  
“TERM CONTRACT GROUP C3 – PRODUCTS AND SERVICES FOR VARIOUS  
TYPES OF HOT BITUMINOUS PAVEMENT”, APPROVING AGREEMENT  
BETWEEN THE CITY OF GULFPORT AND LANDSHAPERS, INC., AND  
AUTHORIZING THE MAYOR TO EXECUTE THE SAME ON BEHALF OF THE CITY**

**WHEREAS**, the City of Gulfport desires to enter into a contract for the delivery of certain commodities (Group C3 – Products and Services for Various Types of Hot Bituminous Pavement) for a stipulated price for a specified term; and

**WHEREAS**, pursuant to authority of this City Council, advertisements for bids were published and five (5) bids were received on the commodity noted above, with LANDSHAPERS, INC., of Hattiesburg and Gulfport, Mississippi, being the low bidder for those items noted on the bid tabulation sheet under the LANDSHAPERS, INC., name and shaded in gray, as referenced in the Memorandum of Connie Debenport and tabulation sheet which is contained among those documents attached hereto as Exhibit “A”; and

**WHEREAS**, a proposed Agreement Between The City Of Gulfport And Commodity Supplier On The Basis Of A Stipulated Price, is contained among those documents attached hereto as Exhibit “A”.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY  
COUNCIL OF THE CITY OF GULFPORT, MISSISSIPPI, AS FOLLOWS, TO WIT:**

**Section 1.** That the matters, facts and things recited in the Preamble hereto are hereby adopted as the official findings of the Governing Authority.

**Section 2.** That the proposed Agreement Between The City Of Gulfport And Commodity Supplier On The Basis Of A Stipulated Price, be and it is hereby approved in the form as attached hereto as Exhibit “A” and the Mayor is hereby authorized to execute the same on behalf of the City of Gulfport.

**Section 3.** That this Resolution be, and it is hereby ordered to be spread on the minutes of the governing Authority, and to be in full force and effect immediately upon its passage and enactment according to law.

The above and foregoing Resolution, after having been first reduced to writing and ready by the Clerk, was introduced by \_\_\_\_\_, seconded by \_\_\_\_\_, and was adopted by the following roll call vote:

**AYES**

**NAYS**

**ABSENT**

**WHEREUPON**, the President declared the motion carried and the Resolution adopted this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**(SEAL)**

**ATTEST:**

**ADOPTED:**

\_\_\_\_\_  
**CLERK OF THE COUNCIL**

\_\_\_\_\_  
**PRESIDENT**

The above and foregoing Ordinance was submitted to and approved by the Mayor, this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**APPROVED:**

\_\_\_\_\_  
**MAYOR**

**AGREEMENT BETWEEN THE CITY OF  
GULFPORT AND COMMODITY  
(Group C3 – Products and Services for Various Types Hot Bituminous)  
SUPPLIER ON THE BASIS OF A STIPULATED PRICE**

**THIS AGREEMENT** is dated as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2014, by and between the City of Gulfport, Mississippi (hereinafter called CITY) and LANDSHAPERS, INC., (hereinafter called SUPPLIER).

CITY and SUPPLIER, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article I. Commodities.**

SUPPLIER shall provide all commodities, goods, and deliverables as specified or indicated in the Bid Proposal submitted by SUPPLIER to CITY at the price contained therein (for those items for which SUPPLIER was the lowest and best bid as found on the bid tabulation sheet as approved by the CITY Council ( i.e., for those items noted on the bid tabulation sheet under the LANDSHAPERS, INC., name and shaded in gray)). SUPPLIER assures that all such deliverables shall meet industry standards of quality and as further set forth herein. The CITY will issue and submit to SUPPLIER a job specific purchase order or other written documentation of order to provide certain and various of the commodities, goods, or deliverables found in the Bid Proposal. Each purchase order or similar document shall contain the specific item(s) and the number of each item needed. The CITY is not guaranteeing that any specific number of items will be purchased hereunder and is not guaranteeing that such items will not be purchased in another manner or from another source. It is further understood and acknowledged that the items ordered at the end of one (1) year may be significantly more or less than the total bid submitted. There is no minimum number or amount of commodities, goods, or deliverables required for any purchase or similar order set out hereunder.

**Article II. Contract Times.**

SUPPLIER must agree to commence delivery of items requested via purchase order or other written documentation of order within the time frames set out in the bid documents (i.e., bid specifications and bid proposal) (to the extent that a time frame is set out in the bid documents). Failure to make delivery within any required time frame will be justification by the CITY for termination of this Agreement.

This Contract will be effective for three hundred sixty-five (365) calendar days, such period to commence on the last date of execution of this agreement herein ("Contract Term"). It is agreed that there is one (1) optional period of three hundred sixty-five (365) calendar days, such option period to commence upon expiration of the Contract Term ("Option Term"). Such Option Term shall be effective if both CITY and SUPPLIER agree to exercise this option and extend the Contract Term for this second three hundred sixty-five (365) day term, with all prices remaining constant during such time.

**Article III. Contract Price.**

CITY shall pay SUPPLIER for the delivery of items ordered under this contract in accord with the unit price set forth for each item in SUPPLIER's Bid Proposal for which SUPPLIER was awarded this contract which is attached hereto as Exhibit "A" and incorporated herein.

Any request for price increase during the term of contract will be rejected. Should this rejection result in the cancellation of the contract, the SUPPLIER shall be removed from the qualified bidders list for twenty-four (24) months. If adverse conditions exist industry wide, modifications to disqualifications may be made as circumstances warrant.

#### **Article IV. Payment Procedures.**

Payment of items delivered under any/all purchase orders issued hereunder shall be in accordance with the usual practices and ordinances of the CITY of Gulfport and the applicable statutes and regulations of the State of Mississippi.

#### **Article V. Contract Documents.**

The Contract Documents which comprise the entire agreement between CITY and SUPPLIER consist of this Agreement, Bid Specifications and the Bid Proposal submitted by SUPPLIER. There are no Contract Documents other than those listed or incorporation herein.

#### **Article VI. Warranties.**

SUPPLIER expressly warrants that all commodities, goods, and deliverables furnished or provided under this agreement will be new, will be free from defect in material and workmanship, and shall be free and clear of all liens, mortgages, security interests or other encumbrances. SUPPLIER further warrants that all such commodities, goods, and deliverables will conform to any specifications, drawings, statements or representations made to the CITY or otherwise appearing on the containers or labels or advertisements for such items and that any such commodities, goods, and deliverables will be adequately contained, packaged, marked and labeled. SUPPLIER also warrants that all commodities, goods, and deliverables furnished hereunder or in connection with this agreement will be merchantable and will be safe and appropriate for the purpose for which items of that kind are normally used. If SUPPLIER knows or has reason to know the particular purpose for which the CITY intends to use the commodities, goods, or deliverables, SUPPLIER warrants that such items will be fit for such particular purpose. SUPPLIER shall not limit or exclude any implied warranties and any attempt to do so shall render this agreement voidable at the option of the CITY. SUPPLIER agrees to promptly replace or correct defects of any commodities, goods, or deliverables not conforming to the foregoing warranties, without expense to the CITY, when notified of such nonconformity by the CITY for up to one year after acceptance of the same, provided the CITY elects to provide the SUPPLIER the opportunity to do so. If SUPPLIER fails to correct defects in or replace nonconforming commodities, goods, or deliverables, the CITY, after reasonable notice to SUPPLIER, may make such corrections or replace such goods and services and charge SUPPLIER for the cost incurred by the CITY in doing so. SUPPLIER recognizes that the CITY's requirements may require immediate repairs, re-working, or replacement of defective commodities, goods, or deliverables, without notice to the SUPPLIER. In such event, SUPPLIER shall reimburse the CITY for the costs, delays, or other damages which the CITY has incurred. In the event of a conflict with the length or duration of any warranties involving commodities, goods, or deliverables provided or sold to the CITY in connection with this agreement and any other warranties, whichever warranty is longer in duration or tenure shall prevail.

#### **Article VI. Miscellaneous.**

No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by

law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

CITY and SUPPLIER each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements, representations, and obligations contained in the Contract Documents.

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CITY and SUPPLIER, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

SUPPLIER certifies that the SUPPLIER and its principals and agents are eligible to participate in this transaction, enter into this agreement, and perform in accordance herewith and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that SUPPLIER is in compliance with the State of Mississippi statutes and rules relating to procurement and that SUPPLIER is not listed on the federal government's terrorism watch list as described in any governing or existing federal law or Executive Order, including, but not limited to, Executive Order 13224.

#### **Article VII. Hold Harmless.**

SUPPLIER further agrees that it will, and hereby does, fully indemnify, defend and hold harmless the CITY of Gulfport from and against any and all claims, damages, losses, costs and expenses of every kind and nature, including court costs and attorney fees and claims for damages resulting from or arising out of any infringement claim or claim of bodily injury, death or damage to real or tangible personal property caused in any way by contractor and/or its partners, principals, agents, employees or subcontractors in the performance of the Contract Documents or any provisions set forth or incorporated therein and the breach of the Contract Documents or in any way arising therefrom or relating thereto. The CITY of Gulfport will notify the SUPPLIER in writing of any claim to be indemnified hereunder, of which CITY has knowledge, and SUPPLIER in turn will promptly notify CITY of any such claim. SUPPLIER shall, at its sole expense, control the defense of such suit to the extent allowed by Mississippi law. The parties agree to cooperate with one another in the defense of any such matter.

IN WITNESS WHEREOF, CITY and SUPPLIER have signed this Agreement in duplicate. One counterpart each has been delivered to CITY and to SUPPLIER.

This Agreement will be effective on \_\_\_\_\_, 2014 (latest of the dates below and the effective date of this Agreement).

CITY:

SUPPLIER:

CITY OF GULFPORT, MISSISSIPPI

LANDSHAPERS, INC.

BY: \_\_\_\_\_

BY: \_\_\_\_\_

ADDRESS:

ADDRESS:

P.O. Box 1780  
Gulfport, MS 39502

\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_