BOARD OF PUBLIC WORKS AND SAFETY
Agenda Request Form

(Form B-01-2012)

Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard.

Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.

Date Submitted:	8/28/2014	Requested Meeting Date:	TBD
		Confirmed Meeting Date:	
Received by:			

Contact Information: Please provide all requested information in the fields below. (Print or Type)

On Behalf of Organization or Individual:		Planning and Engineering Department	
Name:	Travis Underhill	Telephone:	736-3631
Title or Position:	City Engineer		
E-Mail:	tunderhill@franklin.in.gov		
Address:	70 E. Monroe Street		
City:	Franklin	State: IN	ZIP: 46131

Who will attend the meeting and present the request?

Name:	Travis Underhill	Telephone:	736-3631
Title or Position:	City Engineer		
E-Mail:	tunderhill@franklin.in.gov		

Please describe the purpose or title of your presentation.

Approval of Contract for 2014 Maintenance Improvement Program; Crack Seal

Supporting documents: All supporting documents should be submitted with the request form.

1. Crack Seal Contract
2.
3.
4.

Questions about this application or the process described should be directed to the Clerk Treasurer's Office at 70 E. Monroe Street, Franklin Indiana 46131 or by email at jalexander@franklin.in.gov or call 317-736-3609.

AGREEMENT

BETWEEN

THE CITY OF FRANKLIN

AND
F.E. Harding Asphalt Companies INC.

FOR

2014 Maintenance Improvement Program Crack Seal

THIS AGREEMENT, executed by and between the City of Franklin, Indiana (hereinafter "CITY"), and **F.E. Harding Asphalt Companies INC.** (hereinafter "CONTRACTOR");

WITNESSETH THAT:

WHEREAS, CITY is desirous of retaining CONTRACTOR'S services for Construction of **2014 Maintenance Improvement Program Crack Seal** (more particularly described in Attachment A, "Scope of Work;" and

WHEREAS, CONTRACTOR is capable of performing all applicable work required of the project as per its bid on the Bid Summary sheet; and

WHEREAS, said bid was determined to be the lowest, responsible and responsive bid per said Bid Summary sheet.

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree as follows:

ARTICLE 1. TERM

1.01 This Agreement shall be in effect upon execution of this Agreement by all parties.

ARTICLE 2. SERVICES

2.01 CONTRACTOR shall complete all work required under this Agreement by 75 days of issuance of Notice to Proceed. Substantial Completion shall be considered to be completion of all work.

2.02 It is hereby understood by both parties that time is of the essence in this Agreement. Failure of CONTRACTOR to complete all work as herein provided will result in monetary damages to CITY. It is hereby agreed that CITY will be damaged for every day the work has not been performed in the manner herein provided and that the measure of those damages shall be determined by reference to the then current INDOT Schedule of Liquidated Damages for Each Day of Overrun in Contract Time. CONTRACTOR agrees to pay CITY said damages or, in the alternative, CITY, at its sole discretion, may withhold monies otherwise due CONTRACTOR. It is expressly understood by the parties hereto that these damages relate to the time of performance and do not limit CITY's other remedies under this Agreements, or as provided by applicable law.

2.03 CONTRACTOR agrees that no charges or claims for damages shall be made by it for any delays or hindrances, from any cause whatsoever during the progress of any portion of the services specifies in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for reasonable period as may be mutually agreed upon between the parties, it being understood, however, that permitting of CONTRACTOR to proceed to complete any service, or any part of the, after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of CITY or any of its rights herein.

ARTICLE 3. COMPENSATION

3.01 CONTRACTOR shall provide services as specified in Attachment A, "Scope of Work", attached hereto and incorporated into this Agreement.

3.02 Upon the submittal of approved claims, CITY shall compensate CONTRACTOR in lump sum of $ **144,235.21** _____.
CITY may withhold payment, in whole or in part to the extent necessary to protect itself from a loss on account of any of the following:

1. Defective work.
2. Evidence indicating the probable filing of claims by other parties against CONTRACTOR which may adversely affect CITY.
3. Failure of CONTRACTOR to make payments due to subcontractors, material suppliers or employees.
4. Damage to CITY or a third party.

3.03 The submission of any request for payment shall be deemed a waiver and release by CONTRACTOR of all liens and claims with respect to the Work and period to which such payment request pertains except as specifically reserved and noted on such request. The payment of the claim shall constitute a waiver and release by Contractor of all liens and claims for payment with respect to the work and period to which payment was submitted.

3.04 CONTRACTOR shall maintain proper account records for the scope of all services of this Agreement and provide an accounting for all charges and expenditures as may be necessary

for audit purposes. All such records shall be subject to inspection and examination by CITY'S representatives at reasonable business hours.

3.05 CONTRACTOR shall submit time sheets (WH-347) for his own and all subcontracted employees, to City Contract Compliance Officer or his/her representative for approval and review, including review for compliance with Prevailing Wage requirements, if applicable to the project.

ARTICLE 4. GENERAL PROVISIONS

4.01 The Work performed by the Contractor shall be at the risk of that Contractor exclusively. To the fullest extent permitted by law, Contractor shall indemnify, defend (at their sole expense) and hold harmless the **City of Franklin** and their employees ("Indemnified Parties"), from and against any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorneys' fees and costs, and consultants' fees and costs) ("Claims") which arise or are in any way connected with the Work performed, materials furnished, or Services provided under this Agreement by the Contractor or its agents. These indemnity and defense obligations shall apply to any acts or omissions, negligent or willful misconduct of the Contractor, its employees or agents, whether active or passive. The Contractor's indemnification and defense obligations hereunder shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated.

4.02 Abandonment, Default and Termination

4.02.01 CITY shall have the right to abandon the work contracted for in this Agreement without penalty. If CITY abandons the work described herein, CONTRACTOR shall deliver to CITY all surveys notes, drawings, specifications and estimates completed or partially completed and these shall become the property of CITY. The earned value of the work performed shall be based upon an estimate of the proportion between the work performed by CONTRACTOR under this Agreement and the work which CONTRACTOR was obligated to perform under this Agreement. This proportion shall be mutually agreed upon by CITY and CONTRACTOR. The payment as made to CONTRACTOR shall be paid as a final payment in full settlement of his services hereunder.

4.02.02 If CONTRACTOR defaults or fails to fulfill in a timely and proper manner the obligations pursuant to this Agreement, CITY may, after seven (7) days written notice to has been delivered to CONTRACTOR, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to CONTRACTOR. In the alternative, CITY, at its option, may terminate this Agreement and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by CONTRACTOR, and may finish the project by whatever method it may deem expedient, and if the such action exceeds the unpaid balance of the sum amount, CONTRACTOR or his surety, shall pay the difference to CITY.

4.02.03 Default: If CONTRACTOR breaches this Agreement or fails to perform the work in an acceptable manner, he shall be considered in default. Any one or more of the following will be considered a default:

1. Failure to begin the work under this Agreement within the time specified.
2. Failure to perform the work with sufficient supervision, workmen, equipment and materials to insure prompt completion of said work.
3. Unsuitable performance of the work as determined by the City Engineer, Director of Planning and Engineering Department Administrator or his/her representative.
4. Neglecting or refusing to remove defective materials or failure to perform anew such work as shall have been rejected.
5. Discontinuing the prosecution of the work or any part of it.
6. Inability to finance the work adequately.
7. If, for any other reason, CONTRACTOR breaches this Agreement or fails to carry on the work in an acceptable manner.

4.02.04 CITY shall send CONTRACTOR a written notice of default. If CONTRACTOR, or his Surety, within a period of (10) days after such notice, fails to remedy the default, then CITY shall have full power and authority, without violation of the Agreement, to take the prosecution of the work out of the hands of said CONTRACTOR, to appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable, and may at his option, turn the work over to the Surety, or enter into an agreement with another Contractor for the completion of the Contract according to the terms and provisions thereof, or CITY may use such other methods as, in its opinion, shall be required for the completion of said Contract in an acceptable manner.

4.02.05 All cost of completing the work under the Contract shall be deducted from the monies due or which may become due said CONTRACTOR. In case the expenses so incurred by CITY shall be less than the sum which would have been payable under the Contract if it had been completed by said CONTRACTOR, CONTRACTOR shall be entitled to receive the difference. However, in case such expense shall exceed the sum which would have been payable under the Contract, CONTRACTOR and its Surety will be liable and shall pay to CITY the amount of said excess. By taking over the prosecution of the work, CITY does not forfeit the right to recover damages from CONTRACTOR or his Surety for his failure to complete the work in the time specified.

4.02.06 Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of the Agreement by CITY are at any time not forthcoming or are insufficient, through failure of any entity to appropriate the funds or otherwise, then CITY shall have the right to terminate this Agreement without penalty by giving prior written notice documenting the lack of funding in which instance unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriation were received.

4.02.07 CITY agrees that it will make its best effort to obtain sufficient funds, including but not limited to, including in its budget for each fiscal period during the term hereof a request for sufficient funds to meet its obligations hereunder in full.

4.03 Successors and Assigns

4.03.01 Both parties agree that for the purpose of this Agreement, CONTRACTOR shall be an Independent Contractor and not an employee of CITY.

4.03.02 No portion of this Agreement shall be sublet, assigned or otherwise disposed of by CONTRACTOR except with the written consent of the CITY being first obtained. Consent to sublet, assign, or otherwise dispose of any portion of this Agreement shall not be construed to relieve CONTRACTOR of any responsibility of the fulfillment of this Agreement.

4.04 Extent of Agreement: Integration

4.04.01 This Agreement consists of the following parts, each of which is as fully a part of this Agreement as if set out herein:

1. This Agreement
2. Technical Specifications (Attachment A, "Scope of Work")
3. Where applicable, Bid Prices (Attachment B)
4. Upfront Specifications (Definitions and Bidder's Responsibilities)
5. Information for Bidders
6. Advertisement
7. CONTRACTOR'S submittals
8. The current construction design standards and specifications for City of Franklin.
9. The current Indiana Department of Transportation Standard Specifications and the latest addendums.
10. The current construction specifications and details for Indiana American Water Company for water mains.
10. All plans as provided for the work that is to be completed.
11. Affidavit of Compliance with applicable law.
12. N/A

4.04.02 In resolving conflicts, errors, discrepancies and disputes concerning the Scope of Work to be performed by CONTRACTOR, and other rights and obligations of CITY and CONTRACTOR, the document expressing the greater quantity, quality or other scope of work in question, or imposing the greater obligation upon CONTRACTOR and affording the greater right or remedy to CITY shall govern; otherwise the documents shall be given precedence in the order as enumerated above.

4.05 Insurance

4.05.01 CONTRACTOR shall, as a prerequisite to this Agreement, purchase and thereafter maintain such insurance as will protect it from the claims set forth below which may arise out of or result from CONTRACTOR'S operations under this Agreement, whether such operations be by CONTRACTOR or by any SUBCONTRACTORS or by anyone directly or indirectly employed by any or all of them, or by anyone for whose acts any of them maybe liable.:

	Coverage	Limits
A.	Workmen's Compensation & Disability	Statutory Requirements
B.	Employer's Liability Bodily Injury by Accident	$500,000 each accident
	Bodily Injury by Disease	$500,000 policy limit
	Bodily Injury by Disease	$500,000 each employee
C.	Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property damage, contractual liability, products-completed operations	$1,000,000
	General Aggregate Limit (other than Products/Completed Operations	$2,000,000
	Products/Completed Operations Aggregate	$2,000,000
	Personal & Advertising Injury Limit	$1,000,000
	Each Occurrence	$1,000,000
	Fire Damage (any one fire)	$ 50,000
	Medical Expense Limit (any one person)	$ 5,000
D.	Comprehensive Auto Liability (single limit, owned, hired and non-owned)	$1,000,000 each accident
	Bodily injury and property damage	$1,000,000
	Umbrella Excess Liability	$2,000,000each occurrence and

The Deductible on the Umbrella Liability $ 10,000 shall not be more than

4.05.02 CONTRACTOR'S comprehensive general liability insurance shall also provide coverage for the following:

1. Premises and operations;

2. Contractual liability insurance as applicable to any hold-harmless agreements.

3. Completed operations and products; which also must be maintained for a minimum period of two years after final payment and CONTRACTOR shall continue to provide evidence of such coverage to city on an annual basis during the aforementioned period; and

3. Broad form property damage - including completed operations;

4. Fellow employee claims under Personal Injury;

5. Independent Contractors.

4.05.03 With the prior written approval of CITY, CONTRACTOR may substitute different types or amounts of coverage for those specified as long as the total amount of required protection is not reduced.

4.05.04 Certificates of Insurance, naming the City of Franklin as an "additional insured", showing such coverage then in force (but not less than the amount shown above) shall be on file with CITY prior to commencement of work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled or non-renewed until at least thirty (30) days prior written notice has been received by CITY.

4.06 **Necessary Documentation** CONTRACTOR certifies that it will furnish CITY any and all documentation, certification, authorization, license, permit or registration required by the laws or rules and regulations of the City of Franklin, the State of Indiana and the United States. CONTRACTOR further certifies that it is now and will maintain in good standing with such governmental agencies and that it will keep its license, permit registration, authorization or certification in force during the term of this Agreement.

4.07 **Applicable Laws** CONTRACTOR agrees to comply with all federal, state, and local laws, rules and regulations applicable to CONTRACTOR in performing work pursuant to this Agreement, including, but not limited to, discrimination in employment, prevailing wage laws, conflicts of interest, public notice, accounting records and requirements. Unless otherwise specified, this Agreement shall be govern by the laws of the United States, and the State of Indiana, and by all Municipal Ordinances and Codes of the City of Franklin.

4.08 Non-Discrimination

4.08.01 CONTRACTOR and subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, training, conditions or privileges of employment, because of race, sex, color, religion, national origin, ancestry, age, handicap, or disabled veteran status. Breach of this covenant may be regarded as a material breach of the Agreement.

4.08.02 CONTRACTOR certifies for itself and all its subcontractors compliance with exiting laws of the State of Indiana and the United States regarding:

1. Prohibition of discrimination in employment practices on the basis of race, sex, color, religion, national origin, ancestry, age, handicap, or any other legally protected classification; Strongly encourages the use of project site local small businesses, minority-owned business and women-owned business in its operations.

4.08.03 **FURTHER, PURSUANT TO IC 5-16-6-1, CONTRACTOR AGREES:**

A) That in the hiring of employees for the performance of work under this Agreement or any subagreement hereunder, no contractor, or subcontractor, nor any person acting on behalf of such CONTRACTOR or subcontractor, shall be reason of race, sex, color, religion, national origin, ancestry, or any other legally protected classification, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates.

B) That no contractor, subcontractor, or any person of their behalf, shall, in any manner, discriminate against or intimidate any employee hired for performance of work under this Agreement on account or race, religion, color, sex, national origin, ancestry, handicapped, or any other legally protected classification.

C) That there may be deducted from the amount payable to CONTRACTOR, by CITY, under this Agreement, penalty of Five Dollars ($5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement. Any such person discriminated against retains the right to file a discrimination complaint with the appropriate civil rights agency or court.

D) That this Agreement may be canceled or terminated by CITY and all money due or to become hereunder may be forfeited, for a second or any subsequent violations of the terms or conditions under this section of the Agreement.

4.09 Workmanship and Quality of Materials:

4.09.01 CONTRACTOR shall guarantee the work for a period of one (s) (1) year(s) from the date of substantial completion. Failure of any portion of the work within one (1) year due to improper construction, materials of construction, or design may result in a refund to CITY of the purchase price of that portion which failed or may result in the forfeiture of CONTRACTOR'S Performance Bond.

4.09.02 OR EQUAL: Wherever in any of the Contract Documents an article, material or equipment is defined by using the name of a manufacturer or vender, the term "Or Equal" or the term "The Equivalent" is done for the express purpose of establishing a basis of durability and efficiency and not for the purpose of limiting completion. Whenever material or equipment is submitted for approval as being equal to that specified, the submittal shall include sufficient information and data to demonstrate that the material or equipment conforms to the Contract requirements. The decision as to whether or not such material or equipment is equal to that specified shall be made by the city of Franklin Engineer or his/her representative. The approval by the ADMINISTRATOR of alternate material or equipment as being equivalent to that specified, shall not in any way relieve CONTRACTOR of responsibility for failure of the material or equipment due to faulty design, material, or workmanship, to perform the function required by the Contract Documents.

4.09.03 CITY shall be the sole judge of the sufficiency of workmanship and quality of materials. Disputes shall be resolved by the City of Franklin Engineer and are not subject to arbitration.

4.10 Safety. CONTRACTOR shall be responsible for the safety of employees at all times and shall provide all equipment necessary to insure their safety. CONTRACTOR shall ensure the enforcement of all applicable safety rules, regulations, ordinances and laws, whether federal, state or local.

4.11 Amendments/Changes

4.11.01 Except as provided in Paragraph 4.11.02, this Agreement may be amended only by written instrument signed by both CITY and CONTRACTOR.

4.11.02 Without invalidating the Agreement and without notice to any surety, CITY may at any time or from time to time, order, in writing, additions, deletions or revisions in the Work. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents.

4.11.03 If CONTRACTOR believes that any direction of CITY under paragraph 4.11.02, or any other event or condition, will result in an increase in the Contract time or price, [No claim for any adjustment of the Contract time or price will be valid if not submitted in accordance with this Paragraph] Contractor shall immediately file written notice with the City after the event giving rise to the claim and stating the general nature of the claim with supporting data. Any adjustments increasing the Contract price or time shall be agreed upon in writing.

4.11.04 CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with CITY. No work shall be delayed or postponed pending resolution of any dispute or disagreement except as CONTRACTOR and CITY may otherwise agree in writing.

4.12 **Bond/Surety** CONTRACTOR shall provide CITY with a Performance Bond and Payment Bond in the amount of one hundred percent (100%) of the contract amount.

4.12.01 Failure by CONTRACTOR to perform the work in a timely or satisfactory fashion may result in forfeiture of CONTRACTOR'S Performance Bond.

4.12.02 If the surety on any bond furnished by CONTRACTOR becomes a party to supervision, liquidation, rehabilitation action pursuant I.C. 27-9 et seq. or its right to do business in the State of Indiana is terminated, CONTRACTOR shall, within thirty days thereafter, substitute another bond and surety, both of which must be acceptable to CITY.

4.13 **Payment of Subcontractors** CONTRACTOR shall pay all subcontractors, laborers, material suppliers and those performing services to CONTRACTOR on the project under this Agreement. CITY may, as a condition precedent to any payment hereunder, require CONTRACTOR to submit satisfactory evidence of payments of any and all claims of subcontractors, laborers, material suppliers, and those furnishing services to CONTRACTOR. Upon receipt of a lawful claim, CITY shall withhold money due to CONTRACTOR in a sufficient amount too pay the subcontractors, laborer, material suppliers, and those furnishing services to CONTRACTOR.

4.14 **Remedies.** Should Contractor fail to perform its obligations under the terms of this agreement, Contractor agrees that in addition to all other remedies available, Franklin shall be entitled to recover from Contractor the City of Franklin's costs and expenses, including reasonable attorney fees incurred in enforcing this agreement.

4.15 **Written Notice** Written notice shall be considered as served when delivered in person or sent by mail to the individual, firm, or corporation, or to the last business address of such known to CONTRACTOR who serves the Notice. Notice shall be sent as follows:

TO CITY:

Name: Travis Underhill

Title: City Engineer

Address: 70 E Monroe Street

City/State/Zipcode: Franklin, IN 46131

TO CONTRACTOR:

Company Name: F.E. Harding Asphalt Companies INC.

Name:

Address: 10151 Hague Road

City/State/Zipcode: Indianapolis, IN 46256

4.15 **Severability and Waiver** In the event that any clause or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any other provision of this Agreement. Failure of either party to insist on strict compliance with the provision of this Agreement shall not constitute wavier of that party's right to demand later compliance with the same or other provisions of this Agreement.

4.16 **Notice to Proceed** CONTRACTOR shall not begin the work pursuant to the "Scope of Work" of this Agreement until it receives an official written Notice to Proceed from the City. Contractor shall start active and continuous work on the contract within 15 calendar days after the date of the Notice to Proceed. In no case shall work begin prior to the date of the Notice to Proceed. If a delayed starting date is indicated in the proposal, the 15 calendar day limitation will be waived. Work day charges will then begin on a date mutually agreed upon, but not later than the delayed starting date specified. In the event that any contract is canceled after an award has been made but prior to the issuing of the Notice to Proceed, no reimbursement will be made for any expenses accrued relative to this contract during that period.

4.17 **Steel Product**

4.17.01 To comply with Indiana Code 5-16-8, affecting all contracts for the construction, reconstruction, alteration, repair, improvement or maintenance of public works, the following provision shall be added: If steel products are to be utilized or supplied in the performance of any contract or subcontractor, only domestic steel products

shall be used. Should CITY feel that the cost of domestic steel is unreasonable, CITY will notify CONTRACTOR in writing of this fact.

4.17.02 Domestic Steel products are defined as follows:

"Products rolled, formed, shaped, drawn extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two (2) or more of such operations, from steel made in the United States by open hearth, basic oxygen, electric furnace, bessemer or other steel making process."

4.17.03 The United States is defined to include all territory subject to the jurisdiction of the United States.

4.17.04 CITY may not authorize or make any payment to CONTRACTOR unless CITY is satisfied that CONTRACTOR has fully complied with this provision.

4.18 **Iranian Investments:** The undersigned, both individually and on behalf of the contracting entity certify pursuant to IC 5-22-16.5 that they/it is not engaged in any investment activities in Iran as said investment activity is prohibited by law.

WHEREFORE the parties as represented by the signature below agree to all terms set forth within this contract and acknowledge receipt, review and agreement to the provisions contained herein.

"CONTRACTOR"

F.E. Harding Asphalt Companies INC.
By: _____
Name: _____
Address: _____

"FRANKLIN"
City of Franklin

INTRODUCED & APPROVED by the Board of Public Works and Safety of the City of Franklin, Johnson County, Indiana this _____ day of _____, _____.

City of Franklin, Indiana, By its Board of Public Works and Safety:

Voting Affirmative: Voting Opposed:

_____ _____
Mayor Joseph E. McGuinness Mayor Joseph E. McGuinness

Steve Barnett	Steve Barnett
Robert Swinehammer	Robert Swinehammer

Attest:

Janet P. Alexander, Clerk Treasurer

Prepared by: Lynnette Gray
Attorney No.: 11567-41