

RESOLUTION NO. 23-117

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH FORTILINE, INC. D/B/A FORTILINE WATERWORKS RELATING TO THE PURCHASE OF PERMANENT COLD ASPHALT PATCHING MIX FOR THE UTILITIES AND PUBLIC WORKS DEPARTMENTS AT THE FIXED COST PER PALLET OF \$917.50.

BE IT RESOLVED that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Agreement between Fortiline, Inc. d/b/a Fortiline Waterworks relating to the purchase of permanent cold asphalt patching mix for the Utilities and Public Works Department at the fixed cost per pallet of Nine Hundred Seventeen Dollars and Fifty Cents, (\$917.50), in substantially the form **attached** as Exhibit A and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 9th day of February, 2023.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

PCB23-27 ITB – BULK PURCHASE OF PERMANENT
COLD ASPHALT PATCHING MIX

BID PROPOSAL FORM

TO: City of Panama City Beach, Florida SUBMITTED: January 19, 2023.

PCB23-27 BULK PURCHASE OF PERMANENT COLD ASPHALT PATCHING MIX

The Undersigned, as Bidder, hereby declares that they have examined the bid specifications and informed themselves fully regarding all conditions **pertaining to the product requirements.**

The Bidder proposes and agrees, if this proposal is accepted, to contract with the **City of Panama City Beach** for the firm fixed unit prices as listed for the periodic purchase of materials as specified in **PCB23-27 ITB BULK PURCHASE OF PERMANENT COLD ASPHALT PATCHING MIX** bid specifications.

ADDENDUM: It is the sole responsibility of the bidder to determine if any addenda has been issued.

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>60 lb. bags per pallet</u>	<u>Unit Price per Bag</u>	<u>Total Bid Amount</u>
1	Furnish Perma-Patch Part #PP-60-C	1 Pallet	50	\$ <u>18.35</u>	\$ <u>917.50</u>
2	OR Equivalentent _____	1 Pallet	50	\$ _____	\$ _____

*NOTE: QUANTITIES OF PRODUCTS ARE ESTIMATES, ACTUAL QUANTITIES MAY VARY.
BIDDERS PROPOSING AN EQUIVALENT MATERIAL SHALL PROVIDE THE PRODUCT SPECIFICATION SHEET WITH THE BID.

NOTE:

1. BIDS shall exclude Florida sales tax. All other applicable taxes and fees shall be included.
2. All prices are to be quoted FOB DESTINATION - FREIGHT AND DELIVERY INCLUDED.
3. The City reserves the right to reject any and all bids received and may award the contract based upon either lowest bid or combination of bid and delivery time whichever the City deems to be in his best interest.

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By submission of this BID, each Bidder certifies that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any other competitor.

BIDDER:

Fortiline, Inc. d/b/a Fortiline Waterworks
Name of Business

Todd Jenkins / Azure Mackey
Name of Bidder

1417 Transmitter Road, Springfield, FL 32405
Address

850-225-7078
Phone Number

azure.mamckey@fortiline.com
Email Address


Signature of Authorized Representative of Firm/Contractor

1/18/2023
Date

[END OF BID PROPOSAL FORM]

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PERMANENT COLD ASPHALT PATCHING MIX AGREEMENT

THIS PERMANENT COLD ASPHALT PATCHING MIX AGREEMENT is made and entered into this _____ day of February, 2023, by and between the **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation (City) and Fortiline, Inc. d/b/a Fortiline Waterworks (Vendor).

PREMISES

1. SCOPE OF WORK

Vendor will deliver permanent cold asphalt patching mix, as more particularly described in the Specifications listed in Invitation to Bid number PCB23-27.

If the Vendor believes that any particular product is not within the scope of the contract, is a material change, or will otherwise require more compensation to the Vendor, the Vendor must immediately notify the City's Representative in writing of this belief. If the City's Representative believes that the particular scope of the contract as written, the Vendor will be ordered to and shall continue with supplying the product and at the cost stated within the scope. The Vendor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of this agreement.

2. COMPENSATION

As compensation for supplying the product contemplated herein and performance rendered by Vendor of its duties and obligations hereunder, City shall pay Vendor according to the bid unit price submitted on PCB 23-27 ITB Permanent Cold Asphalt Patching Mix. The City shall pay to the Vendor as full consideration for the delivery of product required by this Agreement, at the UNIT PRICE contained in the Vendor's cost proposal, upon the basis of actual measured quantities as the same may be finally determined by the City Manager or his designee(s).

- A. Extra and/or Additional Work Changes. Should City at any time during the progress of said work request any alterations, deviations, additions or omissions from said specifications or other contract documents, it shall be at liberty to do so by written authorization to Vendor, and the same shall in no way affect or make void the Agreement. The unit price of any such addition or deletion from the contract Bid price, must be mutually agreed upon by both parties.

3. PAYMENT

Vendor will invoice for payment to the City when the delivery and satisfactory inspection of the Permanent Cold Asphalt Patching Mix has been completed. The invoice(s) shall be delivered to accounts payable at City Hall, 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413.

4. TERM

Unless terminated sooner pursuant to the provision of the Termination clauses contained in paragraph 5, and subject to the availability of funds appropriated for this purpose, this

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Agreement shall take effect on the executed date of award and be valid for a period of one year with two (2) one-year optional renewals.

5. PRICE ADJUSTMENTS

- A. Increases – Vendor must guarantee the unit price for the first year of the contract. In the event Vendor desires to increase price in optional renewal terms, City must be notified immediately. Price adjustments may not be requested more than twice during any optional years. Price increases must be approved by City and no payment for additional materials or services, beyond the amount stipulated in the Contract shall be paid without prior approval. All price increases must be supported by Producer Price Index or manufacturer documentation and justification. Vendor must honor previous prices for thirty (30) days after approval and written notification from City. It is the Vendor's responsibility to keep all pricing up to date and on file with City. All price changes must be provided to City using the same format as was provided and accepted in the Vendor's proposal.
- B. Reductions – Price reductions may be offered at any time during Contract. City may request a price reduction, which Vendor shall permit, when such request is supported by Producer Price Index.

6. TERMINATION OF CONTRACT

- A. City Termination for Cause. The Agreement may be terminated by the City for cause in the event of any breach hereof, including, but not limited to, Vendor's: (1) failing to carry forward and complete the Work as provided herein; (2) failing to comply with applicable laws, regulations, permits, or ordinances; (3) failing to timely correct defective Work; (4) making a general assignment for the benefit of its creditors; (5) having a receiver appointed because of insolvency; (6) filing bankruptcy or having a petition for involuntary bankruptcy filed against it; (7) failing to make payments when due to subcontractors, vendors, or others for materials or labor used in the Work; (8) making a material misrepresentation to the City regarding the Work, (9) arrest or conviction of felony or fraud, or (10) any other material breach of this Agreement. In such event, the City shall provide Vendor with written notice of its intention to terminate this Agreement, stating the nature of the deficiency and the effective date of termination. At the City's sole judgment and discretion, the City may afford Vendor an opportunity to cure said deficiency, in which event the notice shall specify the time allowed. Upon termination, the City may take possession of the premises and of all materials thereon and finish the Work by whatever means it deems expedient.
- B. City Termination for Convenience. Notwithstanding any other provision hereof, the City may at any time terminate this Agreement, in whole or in part, without cause, upon thirty (30) days advanced written notice to Vendor. In such event, Vendor shall be compensated for any product ordered prior to the date of termination, which shall become City property. Upon receipt of notice, Vendor shall place no further orders for product. Vendor may not claim any compensation not specifically provided for herein, including, but not limited to loss of anticipated profits, idle equipment, labor, and facilities; any additional claims of subcontractors and vendors.

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7. COMPLIANCE WITH LAWS.

The Vendor shall be responsible to know and to apply all applicable federal and state laws, all local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work. Vendor shall always observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees. The Vendor shall protect and indemnify City of Panama City Beach and all its officers, agents, servants, or employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by Vendor, its representatives, sub-contractors, sub-consultants, professional associates, agents, servants, or employees. Additionally, Vendor shall obtain and maintain at its own expense all licenses and permits to conduct business pursuant to this contract from the federal government, State of Florida, Bay County, or municipalities when legally required, and maintain same in full force and effect during the term of the contract.

8. WARRANTY

The Vendor agrees that, unless otherwise specified in the specifications of the invitation to bid, the product furnished as a result of this invitation and award thereto shall be covered by the most favorable commercial warranty the Vendor gives to any customer for comparable quantities of such products and that the right and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other provision of the invitation/offer.

9. INSURANCE AND INDEMNIFICATION

Bidder shall at its expense maintain in force during the Term the insurance on policies and insurers acceptable to the City as required by the City's Insurance Requirements attached hereto as Exhibit "A."

1. Within thirty days of the date of the Award, and thereafter upon the written request of the City, Bidder shall furnish to the City such certificates of coverage and certified copies of policies pursuant to the City's Insurance Requirements. In order to satisfy this provision, the documentation required by this part must be sent to the following address: Attn: Carrie Jagers, 17007 Panama City Beach Parkway, Panama City Beach, FL 32413.
2. Regardless of the coverage provided by any insurance, the successful Bidder shall indemnify, save harmless and defend the City, its agents, servants, or employees from and against any and all claims, liability, losses and/or causes of action which may arise from any negligent act or omission of the successful Bidder, its sub-Bidders, agents, servants or employees during the course of performing services or caused by the goods provided pursuant to these Bid documents and/or resultant contract.

If any third-party claim is made against the City that, if sustained, would give rise to indemnification liability of the Bidder under this Agreement, the City shall promptly cause notice of the claim to be delivered to the successful Bidder and shall afford the Bidder and its counsel, at the Bidder's sole expense, the opportunity to join in defending or compromising the claim. The covenants contained in this paragraph shall survive the termination of this Agreement.

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10. ATTORNEY'S FEES

In the event of any litigation hereunder, each party shall be responsible for its own attorney's fees and court costs at all trial and appellate levels and at any mediation or arbitration.

11. TIME

Time is of the essence in this Agreement.

12. FORCE MAJEURE

The Vendor's failure or inability to perform the stated scope of work at any time as a result of circumstances beyond its control, such as, but not limited to, war, terrorism, strikes, fires, floods, hurricanes, acts of God, power failures, or damage or destruction of any facility related thereto, shall not be deemed a breach of this Agreement.

13. REMEDIES

In the event of failure of the Vendor to deliver product in accordance with the contract terms and conditions, the City, after due written notice, may procure the products from other sources and hold the Vendor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the City may have. Failure to cure a breach of a material term hereunder within twenty-four (24) hours of Vendor's receipt of written notice thereof shall entitle the City to terminate this Agreement. All rights and remedies conferred upon the parties in this Agreement shall be cumulative and in addition to those available under the laws of the State of Florida.

14. ASSIGNMENT

This Agreement is not assignable.

15. SEVERABILITY

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

16. MODIFICATIONS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City and Vendor.

17. WAIVER

Failure by the City to enforce any provision of this Agreement shall not be deemed a waiver of the provision or modification of this Agreement. A waiver by the City of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

18. NOTICES

Any notice required by this Agreement shall be directed to the parties as follows:

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C. As to City:

City Representative: Leah Bailey

Title/Position: Utilities Business Manager

17007 Panama City Beach Pkwy., PCB, FL 32413

Phone: (850) 233-5100, ext. 2420

D. As to Vendor:

Contract Representative: Azure Mackey

Title/Position: Municipal Outside Sales

Email address: azure.mackey@pcbfl.gov

Mailing address: 1417 Transmitter Road, Springfield, FL, 32405

Phone/Cell: (850) 225-7078

19. ENTIRE AGREEMENT

This Agreement, and any exhibits or appendixes attached hereto and incorporated herein, constitutes the entire agreement between parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions of the parties, whether oral or written, and there are no representations, warranties, covenants or other agreements among them.

The term "Agreement" means and includes the following documents, all of which are incorporated into this Agreement by reference:

- Advertisement for Bids
- Information for Bidders
- Scope of Work/Specifications
- Bid Proposal Form
- Drug Free Work Place Statement
- Public Entity Crimes Statement
- Non-Collusion Affidavit
- E-Verify
- Terms and Conditions
- Notice of Award
- Agreement
- Exhibit A
- Any Additional Exhibits or Appendices

ADDENDA (S)

No. _____, dated _____, 20 _____

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No. _____, dated _____, 20 _____

No. _____, dated _____, 20 _____

No. _____, dated _____, 20 _____

IN WITNESS WHEREOF, the Vendor has executed this Agreement as of the day and year first above written.

Signed in the presence of: Vendor

Witness 1 _____

(Print Name): _____

By: _____

Witness 2 _____

(Print Name): _____

**THE CITY OF PANAMA
CITY BEACH, FLORIDA,**
a municipal corporation

By: _____

Drew Whitman , City Manager

ATTEST:

City Clerk