

**CITY OF FAIRMONT  
WEST VIRGINIA**



**RFQ/RFP NUMBER: FY25-33  
MILLING AND PAVING FOR CITY OF FAIRMONT STREETS**

**RESPONSES DUE AND OPENING DATE & TIME:**

10:30 A.M.  
WEDNESDAY, APRIL 30, 2025

**BID OPENING LOCATION:**

CITY OF FAIRMONT  
200 JACKSON STREET, ROOM 305  
3<sup>RD</sup> FLOOR – J. HARPER MEREDITH BUILDING  
FAIRMONT, WV 26554



REQUEST FOR QUALIFICATIONS AND  
PROPOSALS

INVITATION TO BID

RFQ/RFP NUMBER: FY25-33

MILLING AND PAVING FOR CITY OF FAIRMONT STREETS

RFQ/RFP DUE: WEDNESDAY, APRIL 30, 2025 at 10:30 A.M. (EST)

**INFORMATION TO BIDDERS**

**SECTION 1: NOTICE OF REQUEST FOR QUALIFICATIONS AND PROPOSALS**

The City of Fairmont, West Virginia is seeking Qualifications and Proposals from persons, firms, or corporations to provide milling and paving services for streets within the corporate limits of Fairmont, West Virginia.

Persons, firms or corporations interested in responding to this Request for Qualifications and Proposals are encouraged to access and print the complete RFQ/RFP documents at [www.fairmontwv.gov/bids.aspx](http://www.fairmontwv.gov/bids.aspx), which contains detailed submission requirements and instructions. Questions regarding this RFQ/RFP document must be submitted in writing and directed to Toni Delimpo, Purchasing Coordinator by email at [tdelimpo@fairmontwv.gov](mailto:tdelimpo@fairmontwv.gov). Hours of operation for the Purchasing Department are Monday–Friday, 8:30 a.m. – 4:30 p.m. (EST), excluding holidays. Only questions in writing by the question deadline will be responded to by the city.

Submissions must be in strict compliance with the requirements and instructions set forth in the complete RFQ/RFP document. Failure to comply with the provisions of the complete RFQ/RFP document may result in disqualification.

Sealed responses to the RFQ/RFP containing one (1) original and two (2) copies will be received until Wednesday, April 30, 2025 at 10:30 a.m. (EST) in the City Manager's Office, City Hall, 200 Jackson Street, Room 305, Fairmont, WV 26554.

Each sealed envelope that contains a submission must be clearly marked on the outside as:  
**"RFQ/RFP FY25-33 MILLING AND PAVING FOR CITY OF FAIRMONT STREETS"**

The envelope should also bear on the outside of the envelope, the name and address of the submitter. The City of Fairmont assumes no responsibility for the premature opening of a submission not properly addressed and identified.

The City of Fairmont will not be responsible in any way for any costs incurred by any Respondent in preparation of its submission to this RFQ/RFP.

The City of Fairmont will not be responsible in the event the U.S. Postal Service or any other courier system fails that may be used to deliver the submissions to the City of Fairmont by the given deadline.



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The City of Fairmont is an Equal Opportunity Employer. Small and or Woman/Minority enterprises are encouraged to submit their qualifications and proposal.

The City of Fairmont may make such investigations as deemed necessary to determine the ability of the respondent to perform the obligations of the contract. The respondent shall furnish to the City all such information and data as requested. The City reserves the right to reject any submission if the investigation fails to satisfy the City that the respondent is properly qualified to carry out the obligations of the Agreement.

The City of Fairmont reserves the right to reject any or all submissions or waive any irregularity in this submission or in responses, to negotiate with all qualified sources, or to cancel, in part or in its entirety, this Request for Qualifications and Proposals in the best interest of the City of Fairmont. The City also reserves the right to re-advertise for qualifications and proposals using the same or a different Request for Qualifications and Proposals.

**Submissions are subject to the Freedom of Information Act (FOIA) except as otherwise provided by law.** Responses to this Request for Qualifications and Proposals will become the exclusive property of the City of Fairmont. All materials, unless defined and labeled by the respondent as "trade secrets" or "proprietary business information" may be subject to disclosure upon request under the West Virginia Freedom of Information Act found in West Virginia Code §29B-1-1 et seq. The City shall not be liable for the disclosure of any such information.

This Request for Qualifications and Proposals will be advertised in the Times West Virginian as a Class II legal ad on Wednesday, April 9, 2025 and again on Thursday, April 17, 2025.

## SECTION 2: OBJECTIVE & KEY DEFINITIONS

It is the City's desire to create a better quality of life for the residents of Fairmont by providing a healthy and safe environment. To that end, the city is seeking a person, firm or corporation to:

- Provide efficient and economical milling and paving services for our streets.
- Maintain positive communications with the City and our residents.
- The term "City" shall mean the City of Fairmont and the area within its corporate limits.
- The term "City Manager" shall mean the City Manager of the City of Fairmont, WV.
- The term "Selected Proposer" shall mean the person, firm, corporation or business entity authorized by the City of Fairmont to provide milling and paving services.



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### SECTION 3: INFORMATION FOR SUBMISSION

The City of Fairmont and/or the Evaluation Committee reserves the right to disqualify proposer submission for any missing required information and documents in whole or in part.

1.) **Respondent Information**

State the name of your business entity, home office address, and the name, address, phone number, FAX number, e-mail address, website address and title of the person to be contacted concerning the submission. If the Respondent is a subsidiary, state the name of the parent company, the home office address, telephone number and website of the parent company, and describe the parent company's relationship to the Respondent. State whether the person signing the documents has the authority to sign on behalf of the Respondent. State also the name of the companies that will share significant and substantive responsibilities with you, as joint venture partners or in another manner in performing milling and paving services. Include documentation that the Respondent is a duly organized and validly existing business entity in good standing and licensed to do business in the City of Fairmont and the State of West Virginia. If the Respondent is not licensed to do business in the city and or the State, then the Respondent must provide a sworn statement that it will take all necessary actions to become so licensed if ultimately selected to provide milling and paving services in the City of Fairmont.

2.) **Experience**

Describe fully the experience of your Company (the firm, business entity or partnership) in providing the City services requested in this RFQ/P, most specifically what experience does your Company (the firm, business entity or partnership) have in providing the requested milling and paving services to a similar size city or cities such as the City of Fairmont. Please list the Cities where your company (the firm, business entity or partnership) currently provides these services. Also provide a reference contact (including contact name, title, organization, mailing address and contact information) for these Cities.

In addition to providing company experience, Contractor is to provide the City with a description of services your company provides, describe any similar projects, and in the scope of services, annual revenues, tonnages and number of customers. Provide references (including contact name, title, organization, mailing address and contact information) for all similar projects described.



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3.) Resumes

Supply the names and resumes of the principal officers, partners or other officials of each business entity involved in performing substantive responsibilities for the project.

Also provide the names and resumes of the individuals who will be responsible for implementation of the project. At a minimum, include the general manager, operations manager(s), financial officer and customer service manager(s). Describe the ownership, managerial and/or fiduciary role of each of the participating business entities. Include the names, company affiliation, telephone numbers and e-mail addresses of key individuals integrally involved in the submission. Provide an organizational chart or other means of explaining the interrelationships between the team members.

4.) Subcontractors

List all items of work, materials (including asphalt), machinery or services to be performed or supplied by Subcontractors, and the names, qualifications and resumes of the Subcontractors.

5.) Litigation and Violations

List any company, partner, holding company, subsidiary or other business entity or interest involved in the Response, or any corporate officer, that has been involved within the past five years in litigation or arbitration arising out of performance of a milling and paving contract, arising or connected with violation of state or federal anti-trust laws, arising from or connected with allegations of corrupt practices or arising from operating permits and other operating requirements, including local, state and federal rules and regulations. In the case of national companies with multiple affiliated regional companies, the above disclosure should be limited to Mid-Atlantic operations and personnel. Explain details fully. In the event a disclosure is limited by court authorized non-disclosure provisions, then general circumstances shall be described and disclosure requirements stated.

6.) Financial Documents

Provide the following financial documents for the most recent operating year for the proposing company (the firm, business entity or partnership) or for the proposing joint venture: certified audit, balance sheet, income statement, and statement of the sources and uses of funds.

If the Respondent is a newly formed joint venture that lacks sufficient history to have generated the requisite financial statements, provide the financial statements for each company making up the joint venture. If Respondent is a subsidiary, provide financial statements for both the subsidiary and the parent company for the most recent operating



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year. If Respondents wishes to protect any of these statements from public disclosure, the statements must be clearly labeled as proprietary. However, the Respondent should be aware that all documents submitted, including financial statements, may be subject to public disclosure.

7.) **Insurance**

The Respondent, if ultimately selected by the City of Fairmont to provide milling and paving services shall at all times maintain in full force and effect insurance coverages in the forms and limits as set out on the ACORD Certificate of Liability Insurance and Certificate of Insurance Requirements Edition 05/15/2017.

The Respondent shall certify that it will be capable of compliance with the City's insurance requirements by completing and providing in their response to this RFQ/RFP.

8.) **Sample Contract**

Any negotiated contract hereunder shall be substantially in the form of the sample contract attached.

**SECTION 4: INSTRUCTIONS FOR RESPONDENTS**

Sealed responses to the RFQ/RFP must contain one (1) original and two (2) copies of all submittals. Responses will be received until Wednesday, April 30, 2025 at 10:30 a.m. (EST) in the City Manager's Office, located at 200 Jackson Street, 3<sup>rd</sup> Floor, Fairmont, WV 26554.

Responses must be in strict compliance with the requirements and instructions set forth in this complete RFQ/RFP document. Failure to comply with the provisions of the complete RFQ/RFP document may result in disqualification.

**SECTION 5: EVALUATIONS OF RESPONSES**

The City of Fairmont has established an Evaluation Committee for the purposes of reviewing and grading all submissions in response to the Notice of Request for Qualifications and Proposals for Milling and Paving with City of Fairmont Streets. The Evaluation Committee shall consist of the City Manager or their designee and representatives of the Finance Department, and a representative of the Public Works Department. The Evaluation Committee shall establish grading criteria and make a recommendation to City Manager regarding a contract to provide.



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Milling and Paving service to the respondent who received the overall highest evaluation, is fiscally sound and is deemed to provide the best and highest quality service. Although price is a consideration, it is not the only criteria graded and will not be the determining factor in choosing the provider.

The Evaluation Committee shall review each of the respondent's submissions, first, according to whether all the required documentation have been included in the proposal. If all documentation is not included, the city may disqualify the submission at this point. If all required documentation is included, the Evaluation Committee shall move to the grading phase.

The Evaluation Committee, if deemed necessary, may schedule interviews if further clarification is needed.

The Evaluation Committee and/or the City of Fairmont reserves the right to reject any or all submissions, in whole or in part, to waive defects and formalities in such submissions, and to hold all submissions for a period of up to thirty (30) days without taking action thereon.

The City of Fairmont reserves the right to withdraw this RFQ/RFP at any time and for any reason, to issue clarifications, modifications and/amendments as it deems necessary. Receipt of a submission by the City of Fairmont or a submission of a response to the City of Fairmont offers no rights upon the Respondent nor obligates the City of Fairmont in any manner.

## **SECTION 6: LOBBYING ACTIVITIES**

A Respondent or a Respondent's agent/representative is prohibited from contacting city officials, including elected officials and employees regarding the process from the time of issuance of the RFQ/RFP until the contract has been acted upon by the Fairmont City Manager. If contact is made, it shall be with the Purchasing Coordinator, Toni Delimpo through the process outlined in Section 1 of this RFQ/RFP or through instruction by the Evaluation Committee.

Violation of this provision shall result in disqualification.

A lobbyist or agent of the Respondent may not commit any act or shall refrain from any act for the express purpose and intent of placing any official under a personal obligation to the lobbyist or agent of the respondent.



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**SECTION 7: TIMETABLE SCHEDULE**

The anticipated schedule for the bid process is as follows:

- Wednesday, April 9, 2025 1<sup>st</sup> Public Notice (Bid documents available)
- Thursday, April 17, 2025 2<sup>nd</sup> Public Notice
- Wednesday, April 23, 2025 Deadline for submission of questions (3:00 pm)
- Friday, April 25, 2025 Final addenda will be posted online
- Wednesday, April 30, 2025 Bid documents due at 10:30 am  
\*Bids will be opened and read publicly at that time.

As it may become necessary, the City of Fairmont and the Evaluation Committee reserves the right to adjust the above anticipated timetable schedule with or without notice.

**SECTION 8: GENERAL AGREEMENT PROVISIONS**

For RFQ/RFP specifications refer to the Sample Contract provided.

The selected proposer shall be the City's exclusive agent for the milling and paving of certain city streets within the City of Fairmont, West Virginia.

The agreement is for the Spring 2025 paving season for the streets listed in the proposals, with an option to have additional add-ons. Paving is to begin as soon as the asphalt plants are open and have milling and paving **100% completed by June 15, 2025.**

Any negotiated contract hereunder shall be substantially in the form of the sample contract attached.

The respondent shall present its proposal to the City on the terms and conditions as herein set forth accompanied by written evidence demonstrating that the respondent owns or has available a milling and paving equipment for milling and paving for the City of Fairmont.



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Throughout the term of any Agreement; including any extensions or renewal thereof, the parties shall acknowledge that the provisions of the Agreement may be affected by new laws or by changes or modifications of existing laws, regulations, rules, ordinances, or executive orders which may result in changes to the right and obligations of the parties. In the event of any such change or modification, the parties shall make the necessary adjustments to terms and conditions of the Agreement so as to ensure compliance with all applicable laws.

It is agreed that the City of Fairmont is accepting these proposals on an informal basis and the City Manager reserves the right to negotiate with any and all respondents so as to obtain the most cost-effective price for of the City of Fairmont. Receipt of a submission by the City of Fairmont or a submission of a response to the City of Fairmont offers no rights upon the respondent nor obligates the City of Fairmont in any manner. The City of Fairmont will not be responsible in any way for any costs incurred by any respondent in the preparation of its submission to this RFQ/RFP.

In the event, the selected respondent shall fail to perform any obligation required under the terms of the final Agreement, the City through its City Manager shall notify the respondent in writing of its failure to do so and of the particulars thereof. The respondent shall have forty-eight (48) hours to remedy its failure to perform and at the conclusion of forty-eight (48) hours it has not done so, the City reserves the right to impose the sum of one thousand dollars (\$1,000.00) per day as penalty for its failure to perform.

This remedy is in addition to and not a substitute for such other remedies as the city may elect to pursue.

## SECTION 9: ADDITIONAL INFORMATION

The Contractor will be responsible for any or all traffic control and proper signage.

The Contractor is to notify the City of their overall work schedule, for the Public Works Director's approval, a minimum of 48-72 hours prior to wanting to begin work. The Contractor is to notify the City a minimum of 24-48 hours prior to any milling and paving is to begin on a street scheduled for milling and paving. This will allow ample time for the City to notify the Public of the road work.

A bid bond executed by the proposer and a surety company, or a certified check payable to the City of Fairmont in the amount of ten percent (10%) of the total maximum bid shall be submitted with the bid.



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The city will require the selected respondent to obtain a Performance Bond equal to 100% of the Contract Price.

The city will require the selected respondent to obtain a Payment Bond.

**All work on this specified milling and paving project shall be completed by June 15, 2025.**

The city shall have the right to reject defective materials and/or workmanship. Material and/or workmanship not in conformance with the specifications will be considered defective.

Rejected materials and/or workmanship, at no additional cost to the City, shall be satisfactorily corrected in place, or replaced with work conforming to the specifications, or subject to an appropriate adjustment in price.

When specified, the respondent shall provide surface milling for heel-in-joints at locations where the new pavement surface to existing pavement surface.

The respondent must have the ability to perform wedge curbing.

Point of Contact: All dealing, contacts, etc., between the successful respondent and the City shall be directed to Ron Miller, Public Works Director and/or Thomas Anderson, Operations Supervisor at 304-363-3883.



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## SECTION 10: REQUIRED DOCUMENTS FOR SUBMISSION

The City of Fairmont and/or the Evaluation Committee reserves the right to disqualify proposer submission for any missing required information and documents in whole or in part.

The following information will need to be submitted with your RFQ/RFP:

1. Street Paving List
2. Bid Proposal Form
3. Addendum Acknowledgement
4. Signed Addendum (If any are issued during the bid process)
5. Certification and Signature Page
6. Bid Bond Form (10% of Contract Price)
7. Proof of ability to provide Insurance Coverage based on Accord Certificate of Liability Insurance
8. Proof of ability to obtain a Performance Bond and Payment Bond
9. Non-Discrimination in Workplace Conformance Affidavit
10. Drug Free Workplace Conformance Affidavit
11. Non- Litigation Certificate
12. Valid State of WV Business License
13. Valid City of Fairmont Business License

The following fully executed documents will be required of awarded bidder within five (5) business days after Notification of Award.

1. Contract (signed)
2. Performance Bond
3. Payment Bond
4. Bid Bond
5. Certificate of Liability Insurance
6. Copy of Work Compensation Certificate

If awarded bidder is not an active vendor of the City of Fairmont, a current W9 will be requested so a profile can be created in our vendor list.



**FY25-33 STREET PAVING LISTS**

**(LIST 1 OF 2)**

<b>STREET</b>	<b>FROM</b>	<b>TO</b>	<b>SQ FOOT</b>	<b>TONS</b>
WHITE AVENUE	FOX HILL	CITY LINE	4844	59
CADET STREET	WHITE AVENUE	DEADEND	7980	98
FOX HILL LANE	MARY LOU RETTON	DEADEND	20688	253
KATHERINE STREET	BARRY STREET	HOUSE #1287	13888	169
BRIGHT DRIVE	LOCUST AVENUE	BELL RUN ROAD	12000	147
AVALON	SANDS DRIVE	HENRY DRIVE	35140	429
BENONI AVENUE	6 <sup>TH</sup> STREET	9 <sup>TH</sup> STREET	52992	647
CARDINAL PLACE	BELL RUN ROAD	VILLAGE WAY	7680	94
5 <sup>TH</sup> STREET	FAIRMONT AVENUE	GASTON AVENUE	9984	122
GASTON AVENUE	5 <sup>TH</sup> STREET	7 <sup>TH</sup> STREET	28830	352
VIRGINIA AVENUE	5 <sup>TH</sup> STREET	7 <sup>TH</sup> STREET	33490	409
MAPLE AVENUE	SPENCE STREET	FITZGERALD	54468	665
ROBINSON STREET	CHEW STREET	BENNETT STREET	22792	279
BALTIMORE STREET	ODGEN AVENUE	WASHINGTON STREET	10500	128
MONTGOMERY AVENUE	SPRING STREET EXT	DEADEND	17000	171
YODIE STREET	SUTTON DRIVE	MCCLURE STREET	8000	98
MORGANTOWN AVENUE	LAFAYETTE STREET	CITY LINE	25218	308
ALLEY	BETWEEN SUNCREST	HOULT ROAD	3430	42
		<b>TOTAL</b>	<b>368,924</b>	<b>4470</b>



**FY25-33 STREET PAVING LISTS**

**(LIST 2 OF 2)**

<b>STREET</b>	<b>FROM</b>	<b>TO</b>	<b>SQ FOOT</b>	<b>TONS</b>
<b>DUSTY TRAIL</b>	<b>PINCHGUT ROAD</b>	<b>VALLEY VIEW LANE</b>	<b>18000</b>	<b>220</b>
<b>JUSTIN DRIVE</b>	<b>PINCHGUT ROAD</b>	<b>VALLEY VIEW LANE</b>	<b>18000</b>	<b>220</b>
<b>KAREN STREET</b>	<b>JUSTIN DRIVE</b>	<b>DEADEND</b>	<b>18000</b>	<b>220</b>
<b>VALLEY VIEW LANE</b>	<b>JUSTIN DRIVE</b>	<b>DEADEND</b>	<b>9000</b>	<b>110</b>
		<b>TOTAL</b>	<b>63000</b>	<b>770</b>

**NOTES PERTAINING TO PAVING:**

- 1. HEEL IN JOINTS AS NEEDED**
- 2. PAVER REQUIRED TO HAVE WEDGE CURB MACHINE**
- 3. THE RESPONDENT WILL BE PURCHASING THE ASPHALT**
- 4. MUST SHOW PROOF OF CONTRACT SHOWING LOWER BIDDER ON ASPHALT**
- 5. HAUL MILLINGS: 5 MILES FROM MID CITY PARKING LOT TO SHOOTING RANGE**
- 6. CALCULATE 2" TO 8" MILLING AS NEEDED AND AGREED UPON BETWEEN CONTRACTOR AND PUBLIC WORKS DIRECTOR**
- 7. THERE IS A POSSIBILITY OF ADDITIONAL ADD-ONS**



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**BID PROPOSAL FORM**

Bidder (company) \_\_\_\_\_

Bidder agrees to furnish the City of Fairmont with the unit specified on this Bid Proposal Form and as outlined in the bid documents for the prices indicated below:

1. Milling: per ton \$ \_\_\_\_\_ x \_\_\_\_\_ ton = \$ \_\_\_\_\_ for milling
2. Paving: per ton \$ \_\_\_\_\_ x \_\_\_\_\_ ton = \$ \_\_\_\_\_ for paving
3. Traffic Control: \_\_\_\_\_
4. Miscellaneous: \_\_\_\_\_
5. Miscellaneous: \_\_\_\_\_

**GRAND TOTAL** \$ \_\_\_\_\_

Spell total out in words \_\_\_\_\_

Representative (print) \_\_\_\_\_

Representative (signature) \_\_\_\_\_

Phone Number \_\_\_\_\_

Email Address \_\_\_\_\_

Date \_\_\_\_\_

**PERFORMANCE BOND**

**FY25-33: MILLING AND PAVING OF CITY OF FAIRMONT STREETS**

CONTRACTOR (Name and Address):

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

SURETY (Name, and Address of Principal Place of Business):

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

OWNER (Name and Address):

City of Fairmont  
200 Jackson Street  
Fairmont WV 26554

CONSTRUCTION CONTRACT

Effective Date of Agreement: \_\_\_\_\_

Amount: \_\_\_\_\_

Description (Name and Location):

\_\_\_\_\_

**BOND**

Bond Number: \_\_\_\_\_

Date (Not earlier than Effective Date of Agreement): \_\_\_\_\_

Amount: \_\_\_\_\_

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

\_\_\_\_\_  
Contractor's Name and Corporate Seal (Seal)

SURETY

\_\_\_\_\_  
Surety's Name and Corporate Seal (Seal)

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

## PERFORMANCE BOND

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein in its entirety by reference, including all provisions of such Construction Contract which require the payment of liquidated damages by the Contractor to the Owner, subject to the following terms.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this bond shall arise after:
  - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend, unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contract shall be allowed a reasonable time to perform the Construction Contract, but such as an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
  - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
  - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirements in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
  - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
  - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with Performance and Payment Bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
  - 5.4. Waive its right to perform and complete, arrange for completion or obtain a new contractor, and with reasonable promptness under the circumstances:
    - 5.4.1. After investigation, determine the amount for which it may be liable to the Owner and soon as practicable after the amount is determined, make payment to the Owner; or
    - 5.4.2. Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has

denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
  - 7.1. the responsibilities of the Contract for correction of defective work and completion of the Construction Contract;
  - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
  - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
8. If the Surety elects to act under Paragraph 5.1, 5.3 or 5.4, the Surety liability is limited to the amount of this Bond.
9. The Surety shall not be liable to the Owner or others for obligations of the contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which the signature appears.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Construction was to be performed, any provision in this Bond conflicting with said statutory or other legal requirements shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Owner shall be and is hereby declared a first party beneficiary to all insurance policies or insurance contracts between Contractor and Surety which in any manner related to this Bond or the Contractor's performance of the obligations of the Construction Contract.
15. Definitions
  - 15.1 Balance of the Contract Price: The total amount payable to the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

- 15.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
- 15.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise, to comply with a material term of the Construction Contract
- 15.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 15.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.
- 15.6 If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

PERFORMANCE BOND - END OF SECTION

**PAYMENT BOND**

**FY25-33: MILLING AND PAVING OF CITY OF FAIRMONT STREETS**

**CONTRACTOR** (Name and Address):

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

**SURETY** (Name, and Address of Principal Place of Business):

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

**OWNER** (Name and Address):

City of Fairmont  
200 Jackson Street  
Fairmont WV 26554

**CONSTRUCTION CONTRACT**

Effective Date of Agreement: \_\_\_\_\_

Amount: \_\_\_\_\_

Description (Name and Location):

\_\_\_\_\_

**BOND**

Bond Number: \_\_\_\_\_

Date (Not earlier than Effective Date of Agreement): \_\_\_\_\_

Amount: \_\_\_\_\_

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

\_\_\_\_\_  
(Seal)  
Contractor's Name and Corporate Seal

**SURETY**

\_\_\_\_\_  
(Seal)  
Surety's Name and Corporate Seal

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

## **PAYMENT BOND**

Section 00600-4

**1095.01614-2012**

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
  - 5.1. Claimants who do not have a direct contract with the Contractor,
    - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and,
    - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
  - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and,
  - 7.2. Pay or arrange for payment of any undisputed amounts.
  - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant *have* reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or *give* notice on behalf of Claimants, or otherwise *have* any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Owner shall be and is hereby declared a first party beneficiary to all insurance policies or insurance contracts between Contractor and Surety which in any manner relate to this Bond or the Contractor's performance of the obligations of the Construction Contract.
17. Definitions
  - 17.1 Claim: A written statement by the Claimant including at a minimum:
    1. The name of the Claimant;
    2. The name of the person for whom the labor was done, or materials or equipment furnished;
    3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
    4. A brief description of the labor, materials, or equipment furnished;
    5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
    6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
    7. The total amount of previous payments received by the Claimant; and
    8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
  - 17.2 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of

the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be "asserted in the jurisdiction where the labor, materials, or equipment were furnished.

17.3 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

17.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as Required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

17.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

18. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

PAYMENT BOND - END OF SECTION



**INVITATION TO BID**

**RFQ/RFP NUMBER: FY25-33**

**MILLING AND PAVING FOR CITY OF FAIRMONT STREETS**

**RFQ/RFP DUE: WEDNESDAY, APRIL 30, 2025 at 10:30 A.M. (EST)**

**NON-LITIGATION CERTIFICATE**

By signing below, I \_\_\_\_\_ on behalf of \_\_\_\_\_, hereinafter Company, do hereby certify that Company has not within the past three (3) years been a party and is currently not a party to any actual or threatened litigation, mediation or arbitration arising out of performance of any construction contract with any local, state or federal government entity.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Company Name

By: \_\_\_\_\_  
Name

\_\_\_\_\_  
Printed Name of Authorized Representative

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**INVITATION TO BID**

**RFQ/RFP NUMBER: FY25-33**

**MILLING AND PAVING FOR CITY OF FAIRMONT STREETS**

**RFQ/RFP DUE: WEDNESDAY, APRIL 30, 2025 at 10:30 A.M. (EST)**

**NON-DISCRIMINATION IN WORKPLACE AFFIDAVIT**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, To Wit:

I, \_\_\_\_\_, after being duly sworn, depose and state as follows:

I am an employee, principal or duly authorized agent of \_\_\_\_\_;  
(Company Name)

and, I do hereby attest that \_\_\_\_\_ does not  
(Company Name)

discriminate against any employee or applicant for employment because of race, color, creed, sex, or national origin, or any other form of discrimination in hiring, placement, upgrading, transfer or demotion, recruitment, advertising, or solicitation for employment, training, rates of pay or other forms of compensation, selection for apprenticeship layoff or termination.

The above statements are sworn to under penalty of false swearing.

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

Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Taken, subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_, \_\_\_\_\_ of  
Name Title

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_



**INVITATION TO BID**

**RFQ/RFP NUMBER: FY25-33**

**MILLING AND PAVING FOR CITY OF FAIRMONT STREETS**

**RFQ/RFP DUE: WEDNESDAY, APRIL 30, 2025 at 10:30 A.M. (EST)**

**DRUG FREE WORKPLACE CONFORMANCE AFFIDAVIT  
WEST VIRGINIA CODE §21-1D-5**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, To Wit:

I, \_\_\_\_\_, after being duly sworn, depose and state as follows:

I am an employee, principal or duly authorized agent of \_\_\_\_\_;  
(Company Name)

and, I do hereby attest that \_\_\_\_\_ maintains  
(Company Name)

a valid written drug free workplace policy and that such policy is in compliance with the provisions of West Virginia Code §21-1D-5.

The above statements are sworn to under penalty of false swearing.

By: \_\_\_\_\_  
Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Taken, subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_  
Name Title of

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_



INVITATION TO BID  
RFQ/RFP NUMBER: FY25-33

MILLING AND PAVING FOR CITY OF FAIRMONT STREETS

RFQ/RFP DUE: WEDNESDAY, APRIL 30, 2025 at 10:30 A.M. (EST)

### ADDENDUM ACKNOWLEDGEMENT

Proposal of: \_\_\_\_\_  
(hereinafter called "BIDDER"), organized and existing under the laws of the State of \_\_\_\_\_ doing business as \_\_\_\_\_  
to the **CITY OF FAIRMONT, WEST VIRGINIA** (hereinafter called "OWNER").

In compliance with the Invitation to Bid, BIDDER hereby proposes to provide the City of Fairmont in strict accordance with the contract documents, at the prices stated within the proposal.

By submission of this bid, each BIDDER certifies, and in the case of a joint bid each party thereto certifies as to his own organization, 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 competitor.

BIDDER acknowledges receipt of the following **ADDENDUM** (If there is not an addendum issued during the bidding process, BIDDER will leave this section blank):

Addendum # _____	Dated _____	Bidder to initial _____
Addendum # _____	Dated _____	Bidder to initial _____
Addendum # _____	Dated _____	Bidder to initial _____
Addendum # _____	Dated _____	Bidder to initial _____

**\*NOTE: Insert "a corporation", "a partnership", or "an individual" as applicable.**

Respectfully submitted:

\_\_\_\_\_  
Signature Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone # Date

(Seal – if BID is by a corporation)

Attest \_\_\_\_\_



INVITATION TO BID

RFQ/RFP NUMBER: FY25-33

MILLING AND PAVING FOR CITY OF FAIRMONT STREETS

RFQ/RFP DUE: WEDNESDAY, APRIL 30, 2025 at 10:30 A.M. (EST)

CERTIFICATION AND SIGNATURE PAGE

By signing below, I \_\_\_\_\_ on behalf of \_\_\_\_\_, hereinafter Company, certify that I have reviewed the City of Fairmont's solicitation for bid or request for proposal for **BID FY25-33: MILLING AND PAVING FOR CITY OF FAIRMONT STREETS** in its entirety; that the requirements, terms and conditions, and other information contained therein are clearly understood; that the Company is submitting this bid or proposal or response for the City of Fairmont's review and consideration; that the Company agrees to hold firm the terms and conditions of this bid or proposal or response for a period of ninety (90) days, the bid hold period; that if during the bid hold period, the City of Fairmont accepts the terms and conditions of this bid, proposal or response, that the terms and conditions, including but not limited to terms and conditions relating to price, quantities, and shipping and delivery, constitute a binding and valid contract between the Company and the City of Fairmont for the time period stated in the solicitation for bid or request for proposal; that I am authorized by the Company to execute this certification and any documents relating thereto on the Company's behalf; that I am authorized to bind the Company in a contractual relationship with the City of Fairmont; and that this certification and signature page together with the attached proposal or response and the solicitation for bid or request for proposal are sufficient to indicate that a contract for the sale of goods described therein has been made between the Company and the City of Fairmont.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Representative Name & Title (Print)

\_\_\_\_\_  
Representative Signature

\_\_\_\_\_  
Contact Phone

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Date

**10% BID BOND**

**FY25-33: MILLING AND PAVING OF CITY OF FAIRMONT STREETS**

**CONTRACTOR** (Name and Address):

**SURETY** (Name, and Address of Principal Place of Business):

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

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

**OWNER** (Name and Address):

City of Fairmont  
200 Jackson Street  
Fairmont, WV 26554

**CONTRACT**

Effective Date of Agreement: \_\_\_\_\_

Amount: \_\_\_\_\_

Description (Location/Locations): \_\_\_\_\_  
\_\_\_\_\_

**BOND**

Bond Number: \_\_\_\_\_

Date (Not earlier than Effective Date of Agreement of the FY25-32 Contract): \_\_\_\_\_

Amount: \_\_\_\_\_

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

\_\_\_\_\_  
Contractor's Name and Corporate Seal

\_\_\_\_\_  
Surety's Name and Corporate Seal

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

## BID BOND

1. The Contractor and Surety are jointly and severally bound to the Owner in the amount set forth on the Bid Bond above, for the payment of which the Contractor and Surety bind themselves, their heirs, their executors, their administrators, their successors and assigns as provided herein.
2. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid document, or within such time period that is agreed to between the Owner and Contractor, or the Contractor either
  - a. enters into an agreement or contract with the Owner in accordance with the terms of such bid and gives such bond or bonds as specified in the bidding or in the Contract Document, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance and completion of such Contract and for the prompt payment of labor and materials furnished in the prosecution thereof; or
  - b. pays to the Owner the difference between the amount specified in said bid and such larger amount, not to exceed the amount of this Bond, for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise is to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids which is specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.
3. The surety hereby waives notice of change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
4. If this Bond is issued in association with a subcontractor's bid to a Contractor, the term 'Contractor' in this Bond shall be deemed to be the 'Subcontractor' and the term 'Owner' shall be deemed to be the 'Contractor.'
5. When this Bond has been furnished to comply with a statutory or other legal requirement in the location the Project was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be implied as a statutory bond and not as a common law bond.

BID BOND - END OF SECTION



CITY OF FAIRMONT  
INSURANCE AND CERTIFICATE OF INSURANCE REQUIREMENTS  
Edition 05/15/17

Prior to the commencement, proof of coverage must be approved by the City of Fairmont via a certificate of insurance. The certificate shall be signed by the authorized representative of the insurance company and include the following conditions:

1. The Certificate Holder, The City of Fairmont, PO Box 1428, Fairmont, WV 26554 shall be listed as additional insured to include the City's boards and commissions.
2. Defense costs are outside of policy limits of coverage. All stated limits shall be above any and all defense costs and expenses such as law costs, fees for lawyers and investigators, and expenses for litigation, settlement, adjustment and investigation of claims and suits.
3. The certificate shall contain a provision that the policy shall not be cancelled or materially changed without 30 days prior written notice to the certificate holders.
4. All liability coverage shall be primary and not contributory.
5. The Workers' Compensation and Employers Liability policy will contain a waiver of subrogation by the Insured and insurance company against the certificate holders (to the extent permitted by applicable state law). Employers' liability must be "broad form" and include coverage to protect certificate holders for claims brought under Section 23-4-2 of the West Virginia code.
6. Indicate that the Certificate Holders have been included as additional insureds under all policies.
7. All liability policies must include a waiver on the part of the insurer, by subrogation or otherwise, of all rights against the certificate holders and additional insureds.
8. The certificate must identify states where coverage applies.
9. Contract may require Contractor to provide All Risk Builders Risk/Installation Floater to include rigging and moving on a completed value basis to include material on site and in transit with limits equal to the total value of the contract; and include certificate holders as additional insured, when the materials purchased for the City of Fairmont are included in this contract.
10. Maximum deductible \$5,000 on any insurance policy, deductible cost is to be borne by the contractor.
11. Maximum self-insurance amount \$5,000 on any insurance policy, self-insurance amount to be borne by the contractor.
12. The insurer or its agent, upon written request, will provide evidence of additional coverage as required by certificate holders.
13. All companies must have a Financial Rating of "A" or better rating by A. M. Best & Company and be admitted carrier by State of West Virginia.
14. All liability forms are to be occurrence basis, with Comprehensive General Liability or Commercial Liability to include Bodily Injury and Property Damage, including Contractors Liability, Completed Operations; Products Liability, Broad Form Property Damage, Explosion, Collapse, Underground Hazard, Personal Injury, Coverage for all losses, expenses and damages due to interruption of production, distribution and/or sale of potable water by the City of Fairmont including loss of use and any and all incidental and consequential losses, including financial losses and expenses, and Coverage for environmental impairment and pollution, including sudden and accidental pollution losses.

## AGREEMENT ADDENDUM

(Rev. 3/14/24)

This Addendum shall become part of any contract by and between the successful vendor and the City of Fairmont. Any conflict between any such contract or any general terms and conditions of relating to or attached to said contract and this Addendum, shall be controlled by this Addendum:

**Disputes:** Any referenced in the agreement to mandatory mediation, arbitration or to the jurisdiction of any court is hereby deleted. Disputes arising out the agreement shall be exclusively presented to the Circuit Court of Marion County, West Virginia.

**Hold Harmless/Indemnification:** Any provision requiring the City of Fairmont to indemnify or hold harmless any party is deleted in its entirety per the provisions of West Virginia Code §5A-3-62.

**Governing Law:** The agreement shall be exclusively governed by the Laws of the State of West Virginia. This provision replaces any provision of the Agreement to the contrary.

**Payment:** Any references to pre-payment are deleted. All payments shall be in arrears.

**Interest or Late Fees:** All provisions for interest, late fees or charges for late payments is deleted. The City has no statutory authority to pay interest or late fees;

**No Waiver:** Any language in the Agreement requiring the City to waive any rights, claims, defenses or damages is deleted.

**Limitation on Liability:** The City of Fairmont is a political subdivision and its board and commissions are statutorily created public entities, and as such neither the City nor its boards and commissions can agree to assume the potential liability of the other party to this Agreement. Accordingly, any provision limiting liability for direct damages to a certain dollar amount or to the amount of fees, including subscription fees, paid or to the amount of the agreement is hereby deleted. Limitations on incidental, indirect or consequential damages are acceptable. Limitations on special damages are void. In addition, any limitation that precludes any action for injury to person or property is null and void.

**Statute of Limitations:** Any provision which purports to limit the time within which the City may assert a claim under or pursuant to the agreement is deleted.

**Lien Waiver:** If payment and performance bonds are required, the provisions of West Virginia Code 38-2-39 apply. To the extent that payment and performance bonds are not required, any provision of any agreement, which purports to authorize or give rise to a lien against the City of Fairmont is null and void and any all such liens are hereby waived.

**Fees and Costs:** Any provision obligating the City of Fairmont or its boards and commission to pay attorneys' fees, court costs or litigation expenses of the other party is deleted. The City of Fairmont will only recognize an obligation to pay attorneys' fees, court costs or litigation expenses of the other party if the same are ordered by a court of competent jurisdiction.

**Fiscal Year Funding:** Service performed under the agreement and thus the term of this agreement shall be for periods of one fiscal year each. The initial term of this agreement shall be from the date of the agreement until June 30 of the then fiscal year. Services performed under the agreement may be continued in succeeding fiscal years contingent upon funding being appropriated by the City of Fairmont and made available for this service. In the event the funds are not appropriated or otherwise made available for this service, this agreement shall terminate without penalty on June 30 of the then fiscal year. After that date, the agreement becomes of no effect and is null and void. However, best efforts to have the amounts contemplated under the agreement included in the City of Fairmont budget for the ensuing fiscal year will be made. Non-appropriation or non-funding shall not be considered an event of default. The City of Fairmont will make reasonable effort to provide at least thirty days' notice of the Boards non-appropriation of funds.

**Confidentiality:** Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. Municipal contracts are public records under the West Virginia Freedom of Information Act. Final documents produced and delivered to the City of Fairmont are subject to the Act. To the extent that the Act provides an exemption for information which may be protected and exempted from disclosure, the exemption will be asserted

**Right to Relief:** Any right to relief whether at law or equity, including injunctive relief, shall only be available upon satisfactory proof made to a court of competent jurisdiction. Any provision that purports to establish a presumption of harm or damages shall be considered null and void.

**Insurance:** Any provision requiring the City of Fairmont to purchase or maintain insurance for the benefit of any party other than the City of Fairmont is deleted. The City of Fairmont will provide a certificate of insurance describing the coverages and limits of its insurance upon request.

**Application to Exhibits:** This addendum shall apply with equal force to any conflict between the terms of this Addendum and any exhibit attached to the contract between the parties.

**Amendments:** All amendments, modifications, alterations or changes to the agreement shall be writing and signed by the parties. No amendment, modification, alteration or change may be made to this addendum or the agreement without the express written approval of the Utility Manager.

**Insurance Requirements:** Vendor shall purchase and maintain, during the term of its contract with the City of Fairmont. comprehensive property and general liability insurance and the City of Fairmont is to be named as an additional insured or certificate holder on all such insurance. A certificate of insurance evidencing such insurance must be provided to the City of Fairmont prior to the commencement of work. Coverages shall not be written for less than the amounts and coverages provided required by the CITY OF FAIRMONT INSURANCE AND CERTIFICATE OF INSURANCE REQUIREMENTS a copy of which is attached.

**City of Fairmont**

\_\_\_\_\_

By: Travis Blosser

Its City Manager

Date: \_\_\_\_\_

**Bidder**

Company: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_





**AGREEMENT (EXAMPLE)**  
**FY25-33 MILLING AND PAVING FOR CITY OF FAIRMONT STREETS**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by and between \_\_\_\_\_, hereinafter Contractor, and the City of Fairmont, a municipal corporation, 200 Jackson Street, 3<sup>rd</sup> Floor, Fairmont, WV 26554, hereinafter Owner.

WITNESSETH, that for and in consideration of the terms and conditions hereinafter set forth and the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Contractor and Owner hereby mutually agree as follows:

**1. Statement of Work:**

(a) Contractor shall furnish all labor, materials, equipment, machinery, technical personnel, tools, supervision and services, including traffic control, utility and transportation services to perform and complete all work and additional add-ons, including all supplemental, handwork, milling, grading and excavating, to complete the Owner's street paving project as described on "RFQ/RFP FY25-33 MILLING AND PAVING" street paving lists, which will be attached.

(b) Contractor shall be responsible for the removal of all material of every kind, preparation of the subgrade and other incidentals required to complete the work in all respects. All milling pavements and surplus excavated material shall be hauled from the site of the work and legally disposed as agreed to by and between Contractor and Owner.

**2. Materials:**

(a) An asphaltic top course of Bituminous Top Course, Wearing #1 which conforms to the most recent West Virginia Department of Transportation standards shall be installed to a compacted depth of 1 ½" to 2." The wearing course shall be laid to the elevations as directed by the Owner. The wearing course shall be installed consistent with the Bituminous Top Course Installation Recommendations Standards of the West Virginia Department of Transportation.

(b) A tack coat shall be applied to all exposed surfaces and edges that are to receive the top course.

(c) If necessary for areas that may have never been paved or which have been excavated or milled to a depth to remove all existing pavement or so as to expose the soil or subsurface, the contractor shall place and compact a layer of acceptable granular or crushed fill to a compressed thickness as agreed to by the Owner. All milling shall be done consistent with the Milling and Removal of Bituminous Pavement Requirements and Standards of the West Virginia Department of Transportation.



**3. Maintenance and Protection of Existing Utilities:**

Utility structures shall include, but not be limited to, manhole covers, valve boxes, gate boxes, storm grates, and other such utility structures under the direction and control of Owner. The Owner shall be responsible for supplying all materials and equipment necessary to adjust utility structures to finished grade for streets scheduled for milling and paving according to FY25-33 Street Paving Lists and will include any additional add-ons during the term of this agreement.

Once the Owner installs the material or equipment necessary to adjust the utility structure to finished grade, Contractor shall be required to pave to finished grade and expose the utility structure by removing any and all superfluous asphalt which may have covered or otherwise impacted the utility structure.

Prior to paving as directed by Owner, contractor shall be responsible for milling around storm grates and drains to ensure that upon the installation of asphalt and finished paving, a positive flow of water to the storm drain shall be restored,

**4. Quantity of Materials and Services:**

(a) The Quantity of materials, services, and milling and all other costs to be paid for by Owner to complete the Statement of Work shall be determined on a weekly basis by actual numbers based on the unit prices set forth on the Bid Proposal form that was prepared by Contractor dated, \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. Actual numbers shall be invoiced by Contractor on a weekly basis and upon verification by Owner's Director of Public Works. Invoices shall be presented to Owner's Finance Department for payment. The estimates of the anticipated quantities expressed on the Street Paving Lists, including options of additional add-ons, shall under no circumstances become part of this Agreement and Contractor shall have no claim for payment from Owner for any such estimated or anticipated quantity that may be greater than the actual numbers relating to the completion of the Statement of Work. Actual numbers shall not exceed the amounts provided by the aggregate of Owner's Purchase Order for this milling and paving project.

(b) **Time for Payment:** Payment shall be made by Owner to Contractor within ten (10) days of presentation of an itemized invoice by Owner's Director of Public Works to Owner's Finance Department.

(c) **General Provisions:** Payment shall be further subject to the following:

(i) Prior to payment, Contractor shall be current in the payment of the all City of Fairmont's Business and Occupation Taxes due at the rate then in effect or the City may withhold said taxes from the final payment due Contractor and pay it over to the City Finance Department.



(ii). Prior to payment, Contractor will withhold from the final payment to any subcontractor an amount equal to the amount of the City of Fairmont's Business and Occupational Taxes due on the subcontracted amount until the subcontractor pays to the City of Fairmont the total amount of business and occupation taxes due, and until receipt of a written release from the Director of Finance of the City of Fairmont certifying that the business and occupation taxes of the subcontractor have been paid. The amount withheld by the Contractor from the final payment to any subcontractor shall be paid to the City of Fairmont by Contractor upon demand of the Director of Finance, if the subcontractor has not paid the City of Fairmont the business and occupation taxes due on the subcontract.

**5. Site and Site Conditions:**

Site shall mean the streets, alley ways, lots and optional additional add-ons to be paved as set forth on the Streets Paving Lists. Contractor has been provided the right and license to enter upon the site, with such employees, representatives and agents and with such tools, machinery and equipment as may deem necessary to examine and inspect the site and to make and conduct any preliminary tests and inspections, including but is not limited to physical inspections, soil, geotechnical, surface and subsurface, studies and analysis as deemed necessary. Contractor acknowledges that it has informed itself fully as to all site conditions relating to the work. Contractor's failure to have fully informed itself or Contractor's failure to have examined and inspected the site will not relieve Contractor of its obligations to perform this Agreement fully. Owner has not made or provided any express or implied representations or warranties whatsoever regarding any physical, surface, subsurface, or geotechnical conditions of the site. Contractor knows and accepts the surface, subsurface, soil and geotechnical conditions of the site and knowingly, voluntarily and intelligently waives any and all claims for differing, latent or unknown site conditions.

**6. Delay Claims:**

Contractor knowingly, voluntarily and intelligently waives any and all non-excusable compensable delay claims and delay damages, including but not limited to claims for extended operations, unabsorbed home office overhead, and lost profits.

**7. Commencement and Completion Dates:**

Contractor shall commence work on or before \_\_\_\_\_. Subject to force majeure that as set in paragraph 21, if for any reason all work is not completed in full on or before **June 15, 2025**, (the "Completion Date"), there shall be deducted from Contractor's final invoice, the contract price a penalty of One Thousand Dollars (\$1,000.00) per day for each day beyond the Completion Date that the work is not completed, the foregoing One Thousand Dollars (\$1,000.00) per day penalty is not a liquidated damages provision. Owner, may, in addition to deducting said penalty, exercise any rights and remedies which may be provided in this Agreement or by law for the failure by Contractor to timely complete the work under this Agreement.



**8. Independent Contractor:**

Contractor warrants and represents to the Owner that it is fully experienced in and capable of performing the Statement of Work and that it is properly equipped, organized and financed to perform the work until completed. Contractor shall finance its own operations, shall operate as an independent contractor and not as the agent of the Owner.

**9. Owner's Role:**

No legal relationship is intended to be created by and between the Owner and the Contractor and no such relationship exists other than expressly provided herein. The Owner is not a co-partner, co-venturer, guarantor, indemnitor, agent, employer, employee, of the Contractor for any purpose whatsoever.

**10. Best Efforts of Contractor:**

Notwithstanding the Completion Date deadline as hereinabove described, in paragraph 7 and subject to force majeure, as hereinabove described, in paragraph 21, Contractor will at all times exert its reasonable and diligent efforts to complete the work at the earliest possible time prior to the Completion Date. Contractor will at all times furnish sufficient labor, materials, equipment, safety clothing/gear and traffic control to assure the most efficient and speediest progress and will have a competent foreman or superintendent on the Site at all times supervising the work. If Contractor fails to perform the work diligently or abandons or ceases work for a period of three (3) or more consecutive work days or fails in any way to perform the conditions hereunder or fails to pay laborers, mechanics, materialmen and suppliers when due or shall become insolvent or unable to meet its obligations as they become due or shall make an assignment for the benefit of creditors or shall commence any proceeding in bankruptcy, or if any such proceedings are commenced against it, the Owner may, following written notice to Contractor and Contractor's failure to provide the Owner with adequate assurance within twenty-four (24) hours of its receipt of such notice from the Owner of its ability to timely complete the work and without prejudice to any other rights it may have under this Agreement, including, without limitation, its rights under the Payment Bond and Performance Bond is to be furnished by Contractor pursuant to paragraph 13 below, by giving twenty-four (24) hours written notice of its election to Contractor following Contractor's failure to provide adequate assurance, take over the work, or any part thereof, and finish the work by whatever method it deems expedient. In such event, Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance due to Contractor exceeds the expense of completion of the work, the excess shall be paid to Contractor. If the expense to complete the work exceeds the unpaid balance due to Contractor, Contractor shall promptly pay the difference on demand plus any penalty payable due to Contractor's failure to complete all the work by the Completion Date.



**11. Extras/Additions-Prior Change Order:**

No claim for payment for extra labor, services or materials or additions of any kind shall be made by Contractor or shall be payable to Contractor by the Owner unless the same have been performed or furnished to Owner pursuant to a written change order or directive executed by the Owner *prior to the performance* of or furnishing of the labor, services, materials, or additions by the Contractor.

**12. Permits and Licenses:**

Contractor shall, at its own cost and expense, apply for and obtain all necessary permits and licenses, and provide evidence of the same to Owner. Contractor shall, at its own cost and expense, pay all fees, including tipping fees, if any, connected with, the work in accordance with the requirements of all agencies and authorities having jurisdiction thereof.

**13. Performance and Payment Bonds:**

Contractor shall, at its sole expense, furnish a bond or bonds in favor of the Owner assuring completion and faithful performance of the work and the payment of and all obligations arising in connection with performance of the work, including the payment of any suppliers, materialmen, subcontractors and others in the form and with a surety or sureties that are approved by the Owner and in an amount equal to the total aggregate estimated amount set forth on Proposed Pricing Sheet, formulated by Contractor, in the amount of \$\_\_\_\_\_. The Bond or Bonds shall remain for at least the period in West Virginia Code §38-2-1 et Seq.,

**14. Public Liability and Property Damage Insurance:**

Contractor shall purchase and maintain, during the term of this Agreement, comprehensive property and general liability insurance and the Owner is to be named as an additional insured on such insurance. A certificate of insurance evidencing such insurance must be provided to the Owner prior to the Commencement Date. Coverage shall be written for the types of insurance and at least the limits specified in the Accord Certificate and made a part hereof and shall name the City of Fairmont as an additional insured. All insurance shall be in accordance with the City of Fairmont Insurance and Certificate of Insurance Requirements dated May 15, 2017. Before commencement of work hereunder, the Contractor shall furnish the City with certificates of insurance or other evidence satisfactory to the City to the effect that such insurance has been procured and is in force.

In the event of reduction or exhaustion of the limit, Contractor shall then immediately secure additional insurance or shall have excess insurance available to meet the coverage requirements. The obligation to carry insurance as herein provided shall not limit nor modify in anyway any other obligations assumed-by Contractor under this Agreement nor shall the Owner be under any duty to examine such policies, certificates, or other



evidence of insurance or to advise Contractor in the event that its insurance is not in compliance with this Agreement.

All insurance policies shall be issued by insurance companies satisfactory to the Owner and shall contain the following two clauses:

- (a) Thirty (30) days written notice of cancellation or change, to be effective upon receipt thereof, shall be given to the Owner before any cancellation or change-of a policy will be effective.
- (b) The insurer shall waive any right to subrogation against the Owner, its agents and employees, which might arise by reason of any payment under a policy.

**15. Workers' Compensation Insurance:**

Contractor shall carry full coverage of Worker's Compensation Insurance during the term of this Agreement fully covering all persons engaged in the performance of the work in accordance with West Virginia law. If Contractor's worker's compensation insurance does not cover the employees of subcontractors, if any, such subcontractors shall provide insurance coverage for their employees. Contractor shall furnish the Owner with certificates of coverage for all employees, both its employees and its subcontractors' employees, performing any of the work.

**16. Indemnification:**

Contractor shall indemnify, defend and hold the Owner harmless against all liabilities, claims and demands for personal injury or property damage arising out of or caused by any act or omission of Contractor, its subcontractors, agents, or employees in performing the work. Contractor shall use proper care in the performance of the work so as to not cause damage to any adjacent property and Contractor shall indemnify, defend and hold the Owner harmless from any liabilities, claims or demands from damage to such adjoining property, If any suit is instituted against the Owner arising out of or in any way connected with an act or omission of Contractor in performing the work, Contractor will assume the defense of Owner and pay all costs and legal expenses in defense of such suit.

**17. Assignment and Subcontracting:**

Contractor shall not assign this Agreement or any amount payable hereunder without the prior written consent of the Owner. Contractor shall disclose to the Owner for approval the names of all subcontractors, if any, or other persons with whom it contracts or intends to contract with or hereafter contracts within connection with the performance of the work and shall not subcontract all or any portion of the work without the prior written consent of the Owner. All subcontractors approved by the City must have a valid State of West Virginia's Contractor's License, a valid City of Fairmont Contractor's License, and produce evidence of the insurances required by this Agreement.



**18. Hours of Work:**

Hours of work shall be any deemed suitable by Contractor, provided however, that if Contractor elects to work at night, it shall give notice in writing to the Director of Public Works of the City of Fairmont and secure his prior approval and shall comply with any and all ordinances relating to same. This provision does not apply emergency work at night. Emergencies are defined as unforeseen occurrences and combinations of circumstances in which are involved public safety, the protection of completed work or the protection of life and property, all requiring immediate or sustained work on the demolition. Such emergency work does not require prior approval by the Director of Public Works however, said Director may, under such emergency conditions, direct Contractor to work at other than the usual hours, However, failure of the Director of Public Works to declare emergency conditions will not in any way relieve Contractor of its responsibility for the protection of completed work, the safety of its employees, and the protection of life and property.

**19. Safety:**

Contractor shall comply with all applicable state federal and local safety regulations at all times during the term of this Agreement.

**20. Traffic Control:**

Contractor shall be responsible for furnishing, maintaining, and placing needed traffic control devices in and around the Site to adequately protect the public and workers. Traffic control shall be conducted in a manner that will interfere as little as possible with travel upon walks, streets, highways, roads, and driveways.

**21. Force Majeure:**

In the event that any unforeseeable cause beyond the reasonable control of and not resulting from the fault or negligence of the party affected thereby, such as Acts of God; acts of the public enemy; insurrections; riots; labor disputes; strikes; lockouts; fires; explosions; floods; snow or rain in excess of  $\frac{3}{4}$  of an inch, temperatures below 40 degrees Fahrenheit, interruptions of transportation; asphalt plant failure, embargoes; orders or acts of any duly authorized civil, governmental or military authority; or any other cause of a like or similar nature (herein referred to as "force majeure") wholly or partly prevents a party from performing its obligations and responsibilities hereunder (other than obligations of either party to pay or expend money for or in connection with the performance of this Agreement), then if the party affected by such force majeure gives to the other party written notice of the extent and probable duration of such force majeure, the obligations and responsibilities of the party giving such notice shall be suspended to the extent made necessary by such force majeure and during its continuation; provided, however that the cause of such force majeure is eliminated insofar as possible with all reasonable dispatch.



**22. Notices:**

Any notice to be given under this Agreement shall be sufficient if delivered in person or mailed first class, postage prepaid, the following addresses shall prevail until notice of change is given:

Owner: City of Fairmont  
Ron Miller, Director of Public Works  
P.O. Box 1428  
Fairmont, WV 26554  
Telephone: (304) 363-3883  
Cell: (304) 694-1560  
Email: [rmiller@fairmontwv.gov](mailto:rmiller@fairmontwv.gov)

Contractor: Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Cell: \_\_\_\_\_  
Email: \_\_\_\_\_

**23. Governing Laws:**

This Agreement shall be construed in accordance with the laws of the State of West Virginia,

**24. Binding Effect:**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and, their respective successors and assigns as the case may be,

**25. Headings:**

Headings in this Agreement are for convenience only and shall not be used to interpret or constitute its provisions.

**26. Time of Essence:**

Time is of the essence of this Agreement and each of the provisions hereof.



**27. Entire Agreement:**

This Agreement supersedes all agreements previously made, if any, between the parties relating to its subject matter. There are no other understandings or agreements between them concerning its subject matter.

**28. Counterparts:**

This Agreement is executed in two counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. One counterpart has been delivered to each party hereto and shall remain in the possession thereof.

In witness whereof the parties have executed this agreement, all of which has been duly authorized, as of the date and year first above written.

**Contractor:**

Name: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**City of Fairmont**

A Municipal Corporation,  
By: \_\_\_\_\_  
Travis Blosser, City Manager  
Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk