

**1. Requested Motion:**

**Meeting Date: June 2, 2014**

Approve Contract # CC-14-05-PW with Preferred Materials, Inc. Asphalt Division in the amount of \$154,654.81 to resurface certain roadways and streets within the corporate limits of the Town as described in *Article 1.Work* section of the contract.

**Why the action is necessary:**

This action authorizes Town staff to begin the road resurfacing projects for the year utilizing the "piggy-back" provision of the Town's purchasing manual.

**What the action accomplishes:**

This action authorizes the Town to enter into this contract.

**2. Agenda:**

Consent  
 Administrative

**3. Requirement/Purpose:**

Resolution  
 Ordinance  
 Other

**4. Submitter of Information:**

Council  
 Town Staff – *Public Works*  
 Town Attorney

**5. Background:**

Each year the Town approves expenditures in the budget for resurfacing roadways within the corporate limits of the Town. The scope of work for FY 2014 is as follows:

- *Connecticut-Estero Blvd. to Gulf of Mexico*
- *Natureview Court – Bay Road to cul-de-sac*
- *Sterling Ave. to cul-de-sac*
- *Lovers Lane – Estero Blvd. to cul-de-sac*
- *Shell Mound-Connecticut Street to Voorhis Avenue*

Lee County contracts with vendors for large road projects on an on-going basis. The Town's purchasing policies allow the Town to purchase goods under a contract awarded by another governmental entity if the purchase is advantageous for the Town.

**6. Alternative Action:**

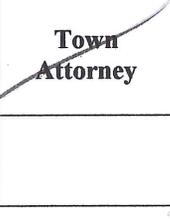
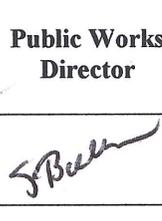
Deny this request and do not enter into any agreement to for road resurfacing for FY 2014.

**7. Management Recommendations:**

Approve requested motion

**8. Recommended Approval:**

Authorize approval of contract with Preferred Materials, Inc.

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

**9. Council Action:**

Approved  Denied  Deferred  Other

**TOWN OF FORT MYERS BEACH CONSTRUCTION CONTRACT  
AGREEMENT FORM**

Contract No.: CC-14-05-PW  
Award Date: 05/092014

**AGREEMENT**

This Agreement is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Fort Myers Beach, Florida, a municipal corporation (TOWN) and the Contractor described below (CONTRACTOR)

Preferred Materials, Inc. Asphalt Division  
Name

5701 E. Hillsborough Ave., Ste. 1122  
Address

Tampa, FL 33610  
City, State, Zip Code

(904) 497-3106  
Phone Number

Check Appropriate Line:  
 Individual  
 Partnership  
 Incorporated in the  
State of Florida

In consideration of the mutual covenants herein set forth, the parties agree as follows:

**ARTICLE 1. WORK**

The CONTRACTOR shall perform all the work required by the Contract Documents to resurface the following: Connecticut—*Estero Blvd. to Gulf of Mexico*; Natureview Court—*Bay Road to cul-de-sac*; Sterling—*Estero Blvd. to Seminole Way*; Seminole Way—*Sterling Ave. to cul-de-sac*; Lovers Lane—*Estero Blvd. to cul-de-sac*; and Shell Mound—*Connecticut Street to Voorhis Ave.*, including ancillary work items associated with this as further described in Exhibit "A" and proposal dated 12/13/2013, attached hereto and made a part of herein.

**PROJECT NAME:** Street Resurfacing - 2014

**LOCATION:** Fort Myers Beach, Florida

**ARTICLE 2. AMOUNT OF CONTRACT**

2.1 The TOWN shall pay the CONTRACTOR in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the sum of (express in words and numerals) One Hundred Fifty Four Thousand Six Hundred Fifty Four Dollars and Eighty One Cents (\$154,654.81).

**ARTICLE 3. PROGRESS PAYMENTS**

Applications for payment shall be submitted to the OWNER upon completion of the work. Payment in full will be issued upon final inspection and acceptance of work outlined in Article 1.

**ARTICLE 4. CONTRACT DOCUMENTS**

The CONTRACTOR shall furnish all labor, equipment, and materials and perform the Work above described for the amount stated above in strict accordance with this Agreement and the Proposal received on December 13, 2013, all of which are made a part hereof and enumerated as follows:

4.1 Certificate of Insurance

4.5 Notice to Proceed

**ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

5.1 Work to be started on the date specified in the Official Notice to Proceed.

5.2 Final completion shall be achieved not later than sixty (60) days from Notice to Proceed.

5.3 Liquidated Damages: The TOWN and CONTRACTOR recognize that time is of the essence of this agreement and that the TOWN will suffer financial loss if the work is not completed within the times specified above, plus any extensions thereof allowed by Change Order. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the TOWN if the work is not completed on time. Accordingly, instead of requiring any such proof, TOWN and CONTRACTOR agree that as Liquidated Damages for delay (but not as a penalty) the sum of \$50.00 per day shall be deducted from monies due the CONTRACTOR or paid by the CONTRACTOR to the TOWN for each calendar day that expires after the time specified for Substantial Completion and the project fails to reach Substantial Completion. The CONTRACTOR shall also be liable for any Actual Damages sustained by the TOWN due to the CONTRACTOR'S failure to fully complete the work by the time agreed upon for Final Completion in the Contract Documents. Actual damages may include, but not be limited to: costs related to supervision, inspection, rentals, testing, consulting fees, attorney fees and/or lost productivity. The TOWN shall have the right to deduct all damages due from the final payment request as well as retainage. However, the TOWN shall give the CONTRACTOR seven (7) calendar days notice prior to issuing the final payment with deduction of liquidated damages.

**ARTICLE 6. MISCELLANEOUS PROVISIONS**

6.1 Insurance. The Provider shall have, and maintain, during the entire period of this Agreement, all such insurance (or self-insurance) as set forth below. Each Certificate of Insurance shall include the name and type of policy and coverage provided; the amount or limit applicable to each coverage provided; the date of expiration of coverage; the designation of the Town of Fort Myers Beach as additional insured and as certificate holder, except as to Workers' Compensation Insurance. Should any of these policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice to the Town.

Workers Compensation Coverage for all employees to comply with Statutory Limits in compliance with the applicable State and Federal laws;

Commercial General Liability Insurance with minimum limits of \$ 1,000,000 each occurrence combined single limit or \$ 1,000,000 each occurrence/\$ 1,000,000 general aggregate.

Business Automobile Liability Insurance with minimum limits of \$ 1,000,000 each occurrence Combined Single Limit or \$ 1,000,000 each occurrence/\$ 1,000,000 general aggregate.

6.2 Final payments, constituting the entire due and unpaid balance of the Contract Price, shall be paid by the TOWN to the CONTRACTOR when the work has been completed, the Contract fully performed, and a final Certificate for Payment, has been approved by the TOWN.

6.3 The TOWN and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

6.4 The CONTRACTOR shall not assign or transfer any of its rights, benefits, or obligations, except for transfer that result from transfer or consolidation with a third party, without the prior written approval of the TOWN.

The CONTRACTOR shall have the right to employ other persons and/or firms to serve as sub-contractors in connection with the requirements of the Contract Documents.

6.5 The CONTRACTOR agrees through the signing of this agreement by an authorized party or agent that he shall hold harmless and defend the TOWN and its agents and employees from all suits and action, including attorney's fees, and all cost of litigation and judgments of every name and description arising out of and incidental to the performance of this Contract Document or work performed thereunder, whether or not due to or caused by negligence of the TOWN, excluding only the sole negligence of the TOWN. This provision shall also pertain to any claims brought against the TOWN by any employee of the CONTRACTOR, or sub-contractor(s), or anyone directly or indirectly employed by any of them. The CONTRACTOR'S obligation under this provision shall not be limited in any way to the agreed-upon Contract Price as shown in this agreement or the CONTRACTOR'S limit of or lack of sufficient insurance protection.

In witness whereof, TOWN and CONTRACTOR have signed this agreement in triplicate. One counterpart has been retained by the Town Clerk, one to the Project Sponsoring Department, and one has been delivered to the CONTRACTOR. All portions of the Contract Document have been signed or identified by TOWN and CONTRACTOR.

Signed, sealed, and delivered in the presence of:

\_\_\_\_\_  
\_\_\_\_\_  
Secretary  
(Corporate Seal)

\_\_\_\_\_  
\_\_\_\_\_  
(Correct Name of Business)  
BY: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**TOWN OF FORT MYERS BEACH, FLORIDA**

**ATTEST:**

BY: \_\_\_\_\_  
Donald Stilwell, Town Manager

BY: \_\_\_\_\_  
Michelle D. Mayher, Town Clerk

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

**APPROVED AS TO FORM**

BY: \_\_\_\_\_  
Town Attorney

**EXHIBIT "A"**

TO THE CONSTRUCTION CONTRACT DATED THIS 7<sup>th</sup> DAY of May, 2014 BETWEEN THE TOWN AND **PREFERRED MATERIALS, INC. ASPHALT DIVISION**, PROVIDER.

SCOPE OF SERVICES:

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
10	MOB	1.0	LS	7809.50	7909.50
15	MOT	1.0	LS	12,263.76	12,263.76
20	Clip Roadway Edges/Install Manhole Rings	1.0	LS	23,666.88	23,666.88
22	Bump Milling at Drives and Street Connections	195.0	SY	31.75	6191.25
25	Seminole Way Widening Grading	1.0	LS	2,902.96	2,902.96
30	Type S-3 Wearing Surface (1.5")	860.0	TN	110.00	94600.00
40	Asphalt Base Course III (6")	16.0	SY	97.00	1552.00
50	Pavement Markings	1.0	LS	5,568.46	5,568.46
<b>Grand Total</b>					<b>\$154,654.81</b>

The attached contractors quote is for reference purposes.

I N S E R T I N S U R A N C E C E R T I F I C A T E



## Preferred Materials, Inc Asphalt Division

5701 E. Hillsborough Ave., Ste. 1122

Tampa, FL 33610

Town of Fort Myers Beach Street Resurfacing

Quote To: Town of Fort Myers Beach  
 2523 Estero Blvd  
 Fort Myers Beach, FL 33931  
Phone: 239-765-0202  
Fax: 239-765-0909  
ATTN: Scott Baker

Estimator/Phone Jerry Fletcher 904-497-3106  
Bid Date 12/13/13  
Quote Date: 12/13/13  
Plans None-site visit

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
10	MOB	1.00	LS	7,909.50	7,909.50
20	MOT	1.00	LS	12,263.76	12,263.76
30	CLIP ROADWAY EDGES/INSTALL MANHOLE RINGS	1.00	LS	23,666.88	23,666.88
40	BUMP MILLING (DRIVES & STREET CONNECTIONS)	195.00	SY	31.75	6,191.25
50	SEMINOLE WAY WIDENING/GRADING	1.00	LS	2,902.96	2,902.96
60	S-3 WEARING SURFACE (1.5")	860.00	TN	110.00	94,600.00
70	ASPHALT BASE COURSE III (6")	16.00	SY	97.00	1,552.00
80	PAVEMENT MARKINGS	1.00	LS	5,568.46	5,568.46
<b>GRAND TOTAL</b>					<b>\$154,654.81</b>

**NOTES:**

\* Unless "Lump Sum" or "LS" appears next to an item of work, it is understood and agreed that the quantities referred to above are estimates only and that payment shall be made at the stated unit prices for actual quantities of work performed by Preferred Materials, Inc. This proposal expires thirty (30) days from the effective date of this Proposal.

\* Preferred Materials, Inc will mobilize the asphalt paving crew on the project one (1) time. Preferred Materials, Inc shall have no obligation to perform in increments, quantities, or portions of the work that Preferred Materials, Inc plans to perform in a single operation; nor shall Preferred Materials, Inc have any obligation to perform work in a different sequence than planned by Preferred Materials, Inc. Any additional asphalt paving crew mobilizations shall require additional compensation of \$ 1,500.00 per mobilization.

\* Asphalt pricing is based on F.D.O.T. specifications for asphalt materials and includes the use of recycled asphalt products. This quotation is predicated on Preferred Materials, Inc receiving all F.D.O.T. Fuel and Asphalt Liquid Index Adjustments (If Applicable).

\* Payment and performance bonds are not included (Please add 1/2 %, if required).

\* Pricing excludes any permits, fees, testing, as-builts, surveying, staking, utility location and adjustment or relocation, asphalt patching, asphalt leveling, asphalt saw-cutting, asphalt milling, asphalt removal, temporary/permanent striping, and light towers.

\* Pricing does not include any maintenance of traffic. Prime contractor to provide maintenance of traffic devices (i.e. flagmen, temporary signs, barricades, arrow boards, variable message boards, off-duty law enforcement officers, "MAS System" etc.) that may be required. Maintenance of Traffic deficiencies on this project that cause delays to APAC's work shall result in back charges for "stand-by" time.

- \* Pricing does not include any additional work to adhere to the F.D.O.T. Index 600 drop-off criteria.
- \* This quote is contingent upon Preferred Materials, Inc's satisfaction with credit conditions.
- \* Preferred Materials, Inc cannot be held responsible for any damage caused to any concrete surfaces while performing our portion of the proposed work. Preferred Materials, Inc cannot be held responsible for any cleaning of any concrete surfaces while performing our portion of the proposed work.
- \* Pricing based on performing work during daytime operational hours and in accordance with Preferred Materials, Inc's normal operational schedule.
- \* Asphalt yield is estimated at 165 lbs/sy for 1 1/2" of asphalt and 220 lbs/sy for 2" of asphalt. Any asphalt overruns due to irregular base conditions, improper curb height, etc. to be invoiced at an additional \$ 115.00 per ton of asphalt. Any asphalt leveling can be performed at a unit price of \$ 125.00 per ton of asphalt. Any asphalt patching can be performed at a unit price of \$ 250.00 per ton of asphalt.
- \* Pricing excludes any tack cleanup on existing concrete, asphalt, etc. Prime contractor to provide any sanding if required to protect these areas.
- \* Pricing does not include placement of "asphalt wedges" at asphalt transitions or the removal of these "asphalt wedges" prior to asphalt paving.

## TERMS AND CONDITIONS

Payment in full for all work performed during any month shall be made no later than the tenth (10th) day of the month next following. Final and complete payment for all work performed hereunder shall be made no later than fifteen (15) days after the completion of such work. Interest at the highest rate allowable under the laws of the state in which the work is performed, or one and one half percent (1 1/2%) per month, whichever is less, shall be charged and paid on all unpaid balances from the due date to the date we receive payment. You agree to pay in full all costs and expenses incurred by APAC in collecting the amounts owed by you under the Agreement, including any and all court costs and attorney's fees. Payments received will be applied against open items on unpaid invoices in an order and sequence determined by Preferred Materials, Inc in its sole discretion. Any monies paid to you for our work shall be held in trust for our benefit.

We shall not become obligated to perform the work called for under this Proposal and Contract until we check and approve your credit. ~~This Proposal and Contract shall be null and void if your credit is not approved. If credit conditions become~~ unsatisfactory at any time prior to our completion of the work hereunder, you will furnish adequate security upon our request. To the extent you fail to provide adequate security, we may stop work.

This document is the full agreement between us, regardless of any prior proposals or communications. Any deviations from the specifications or modification of the terms of this contract and any extra or incidental work, or reductions in work, shall be set forth in writing and signed by both parties prior to the making of such change. We will be compensated for any increase in our costs caused by such change, on the basis of the increase plus ten percent (10%) profit.

If a time is set for the performance of work, and if, in our judgment, such change or other circumstances beyond our reasonable control will increase the time necessary for our performance, we will be granted a reasonable time extension.

We will provide and pay for Workers' Compensation covering our employees, as well as General Liability and Property Damage Insurance. You agree to carry General Liability and Property Damage Insurance sufficient to protect yourself against any and all claims and liabilities arising from the performance of the work, including but not limited to claims arising under your agreement to indemnify and hold us harmless under this contract.

We shall be provided with suitable access to the work area. If our work is dependent upon or must be undertaken in conjunction with the work of others, such work shall be so performed and completed as to permit us to perform our work hereunder in a normal uninterrupted single shift operation.

Unless a time for the performance of our work is specified, we shall undertake in the course of our normal operating schedule. We shall not be liable for any failure to undertake or complete the work for causes beyond our control, and we may suspend the work for causes beyond our control, including but not limited to fire, flood or other natural disaster, war, government restriction, the inability to obtain necessary materials or transportation, or other casualty; the presence on or beneath the work site of utilities, facilities, substances, or objects, including but not limited to any substance that in our opinion is hazardous or toxic or the reporting, remediation, or clean-up of which is required by any law or regulation (together "subsurface conditions"); labor disputes or other disagreement; and accidents or other mishaps, whether affecting this work or other operations in which we are involved, indirectly or indirectly. We shall be entitled to an increase in compensation commensurate with any increased cost of performance resulting from delays arising from causes beyond our reasonable control.

If for causes beyond our control our work is not completed within twelve (12) months after the date of your acceptance of the proposal, we may cancel this agreement at any time thereafter on ten (10) days notice. In such event (i) we shall be relieved of any further obligation with respect to the balance of the work; and (ii) we shall be entitled to receive final and complete payment for all work performed by us to the date of cancellation within fifteen (15) days thereafter.

We shall not be responsible for, and you agree to indemnify and hold us harmless from any suit, claim, liability, cost or expense arising from or in any way related to: sidewalks, driveways, or other improvements located within our work area or designated areas of access, and to adjacent property and improvements: subsurface conditions; and any and all other alleged damages to persons or property, including but not limited to personal injury and death, arising from the performance of the work, unless such alleged damages arise from our sole negligence. You further agree to indemnify and protect us and save us harmless from any and all loss, damage, costs, expenses and attorney's fees suffered or incurred on account of your breach of any obligations and covenants of this contract. It is further understood that we shall not be responsible for any damage to or deterioration of any of our work, whether completed or in process, resulting from any cause or causes beyond our reasonable control, including but not limited to design, failure of subgrade or other subsurface conditions, or failure or inadequacy of any labor or materials not furnished and installed by us, whether or not such failure or inadequacy was or could have been known at the time our work was undertaken or work performed under adverse weather conditions. You agree that proper jurisdiction and venue for adjudication concerning this contract is Lee County, Florida, and you waive any right to jurisdiction and venue in any other place.

If you agree to these terms, prices and conditions, please acknowledge acceptance by signing in the space provided on the third page and returning the original to us, retaining a copy for your files. The person signing for Preferred Materials, Inc represents that he or she is fully authorized to enter into this Agreement.

ACCEPTED:

Contractor Name: \_\_\_\_\_

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

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

Preferred Materials, Inc.  
Asphalt Division

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

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