

PURCHASE AGREEMENT

THIS AGREEMENT is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 NW 1st Avenue, Delray Beach, FL 33444 and Hardrives of Delray, Inc. d/b/a Hardrives, Inc. (hereinafter referred to as "Supplier"), a Florida corporation, whose address is 2101 South Congress Avenue, Delray Beach, FL 33445, this ____ day of _____, 2017.

WHEREAS, the City issued a solicitation ITB #2017-015 for Road Construction Materials on November 1, 2016.

WHEREAS, Supplier submitted a response to the solicitation dated November 1, 2016 for asphalt road materials only.

WHEREAS, the City desires to purchase products and services from Supplier subject to the terms and conditions of ITB #2017-015 and Supplier's Bid response to #2017-015.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration of which the parties hereto acknowledge, the parties agree as follows:

1 The above recitals are true and correct and are incorporated herein by reference.

2 The Supplier shall provide to the City asphalt road materials in accordance with and pursuant to the terms, conditions, and pricing of ITB #2017-015.

3 This Agreement is in full force and effect upon full execution by the City of Delray Beach for an amount not to exceed Seventy Five Thousand Dollars (\$75,000) per year. The term of the Agreement shall be from the ____ day of _____, 2017 through the ____ day of _____, 2018, unless terminated earlier by the City, with three, one-year options to renew.

4 The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

5 Supplier shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Supplier, its employees,

agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Supplier shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Supplier under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by City.

6 This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court.

7 IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUPPLIER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

- a. Supplier shall comply with public records laws, specifically to:
 - i. Keep and maintain public records required by the City to perform the service.
 - ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Supplier does not transfer the records to the City.
 - iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Supplier or keep and maintain

public records required by the City to perform the service. If the Supplier transfers all public records to the City upon completion of the Agreement, the Supplier shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Supplier keeps and maintains public records upon completion of the Agreement, the Supplier shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- v. If the Supplier does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

8 Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For City:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager

With copy to:

City Attorney
City of Delray Beach
200 NW 1st Avenue
Delray Beach, FL 33444

For Supplier:

Hardrives, Inc.
2101 South Congress Avenue
Delray Beach, FL 33445
Attn: Vice President

9 Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party.

10 Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Supplier and its subcontractors and lower tier subcontractors. Supplier understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Supplier or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

11 The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- a. Terms and conditions as contained in this Agreement.
- b. Terms and conditions of the Purchase Order issued pursuant to this Agreement.
- c. Supplier's response to ITB #2017-015 and any subsequent information submitted by Supplier during the evaluation process.

[Remainder of page intentionally left blank]

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

ATTEST:

CITY OF DELRAY BEACH

Chevelle Nubin, City Clerk

By: _____
Cary D. Glickstein, Mayor

Approved as to form and legal sufficiency:

R. Max Lohman, City Attorney

HARDRIVES OF DELRAY, INC. D/B/A
HARDRIVES, INC.

By: _____

Print Name: _____

Title: _____

(SEAL)

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as _____ (name of officer or agent, title of officer or agent), of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ (type of identification) as identification

Notary Public – State of Florida