

**NEW YORK CITY**  
**DEPARTMENT OF TRANSPORTATION**

**DEMONSTRATION AGREEMENT**

**AGREEMENT** made as of this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_ by and between \_\_\_\_\_ (the “Company”), a business having an office at \_\_\_\_\_ and the **City of New York** (the “City”), acting by and through the **Department of Transportation** (“NYCDOT”) having an office at 55 Water Street, New York, New York 10041.

**BACKGROUND**

**WHEREAS**, the parties hereto anticipate a significant opportunity to utilize the benefits of a demonstration of several different “\_\_\_\_\_ Pavement Marking Products” (the “System”); and

**WHEREAS**, NYCDOT has identified potential advantages in using the System for roadway markings during temperatures below that required for the standard Thermoplastic pavement markings; and

**WHEREAS**, both parties hereto have carefully assessed the capabilities and interests of the other, and have concluded that a complete demonstration of the Company's System would be beneficial in assessing the applicable use of the new product;

**NOW, THEREFORE**, in consideration of the promises and mutual covenants herein, the parties hereto agree as follows:

**ARTICLE 1. SERVICES**

1.1 The Company shall demonstrate the System at a Site or Sites to be determined by NYCDOT (collectively referred to as the “Site”).

**ARTICLE 2. NYCDOT'S RESPONSIBILITIES**

2.1 In consideration of the services being provided to it, NYCDOT agrees as follows:

2.1.1 NYCDOT shall notify the Company of any known defective part or component of the System.

2.1.2 NYCDOT shall maintain all technical and operational data manuals or other material provided by the Company subject to the requirements of Article 5 below.

### **ARTICLE 3. RESPONSIBILITIES OF THE COMPANY**

3.1 The Company shall provide and install the System at the Site pursuant to this Agreement, which shall include the items identified in Exhibit B herein.

3.2 The Company shall ensure that the System remains fully functional at the Site until the expiration or termination of this Agreement.

3.3 The Company shall respond promptly to any request of NYCDOT for any repairs, replacements, modifications or adjustments to the System and keep NYCDOT apprised of the status of any request.

3.4 The Company will take all necessary steps to ensure that the System is in compliance with all local, state or federal laws, rules, regulations, and NYCDOT specifications, standards and policies.

### **ARTICLE 4. FEES**

4.1 The Company shall provide the System to NYCDOT at the Site pursuant to the terms of this Agreement without cost to the City or NYCDOT.

### **ARTICLE 5. CONFIDENTIALITY**

5.1 The prior written approval of the Commissioner of NYCDOT or his/her authorized representative (collectively referred to as the "Commissioner") shall be required before the Company or any of its employees, servants, agents or independent contractors may, at any time, either during or after expiration or termination of this

Agreement, make any statement to the press or release any information or material to the public or for publication through any media or communication, having a bearing on or referring to this Agreement or any work performed hereunder.

5.2 Without disclosing its source, NYCDOT may use information or knowledge obtained from demonstration of the System for the purpose of writing specifications to be used in any bid document or in any Requests for Proposals (“RFPs”) or any Requests for Information (“RFIs”) or any Requests for Expression of Interest (“RFEIs”) which may be issued at any time during or subsequent to this Agreement.

5.3 Any information generated by the System, including, but not limited to, electronic copies of all data collected or produced, such as videos, photographs or numerical data, shall be the exclusive property of NYCDOT and may be used by NYCDOT at its sole discretion.

## **ARTICLE 6. TERM**

6.1 The term of this Agreement for the System shall be for a period of one (1) year from the effective date of the Notice to Proceed, which shall be provided in writing to the Company by NYCDOT. The term of the Agreement may be extended for additional one (1) year term upon the mutual written agreement of the parties under the same terms and conditions set for in this Agreement. NYCDOT represents and the Company understands that there is no guarantee of any City business after the expiration or termination of this Agreement.

6.2 If NYCDOT issues a RFP or advertises a contract for the System services, or any similar type system, in any location in New York City, the Company will not receive any favored consideration as a result of this demonstration.

## **ARTICLE 7. TERMINATION**

7.1 This Agreement shall terminate (i) by expiration of its term, (ii) by giving of a notice of termination pursuant to section 7.2. below, or (iii) by mutual agreement.

7.2 If at any time NYCDOT notifies the Company that it wishes to terminate this Agreement, such termination will be effective on the date on which NYCDOT specifies in its notice as the termination date.

7.3 Upon expiration or termination of this Agreement, the Company shall remove all of its equipment and leave the Site in a clean and safe condition.

## **ARTICLE 8. NOTICES**

8.1 Any notices to be given under this Agreement shall be given in writing and delivered, with proof of receipt, as follows:

If to the Company:

Company Name  
Street Address  
City, State zip code  
ATT: Name – phone number – email

If to NYCDOT:

New York City Department of Transportation  
28-11 Queens Plaza North – 7<sup>th</sup> Floor  
New York, New York 11101  
Attn: Randy Wade

8.2 The address for notice listed above may be changed at any time upon written notice to the other party.

## **ARTICLE 9. SEVERABILITY**

9.1 Should any provision of this Agreement be deemed to be invalid or unenforceable by any Court of competent jurisdiction, such provision shall be severed from this Agreement and the remainder of this Agreement shall continue in full force and effect, unless such provision is a material provision of the contract.



## **ARTICLE 10. CLAIMS AND ACTIONS THEREON**

10.1 No action shall lie or be maintained against the City upon any claims arising from this Agreement unless such action shall be commenced within six (6) months of the expiration or termination of this Agreement or within six (6) months after the accrual of the Cause of Action, whichever occurs first.

10.2 In the event any claim is made or any action brought in any way relating to the Agreement herein, the Company shall diligently render to NYCDOT and/or the City, without additional compensation, any and all assistance which NYCDOT and/or the City may require of the Company.

10.3 The Company shall report to NYCDOT in writing within three (3) working days of the initiation by or against the Company of any legal action or proceeding in connection with or relating to this Agreement.

## **ARTICLE 11. GENERAL**

11.1 Failure to act upon any right or remedy contained in this Agreement shall not constitute a waiver or such right or remedy nor shall it preclude a subsequent enforcement of such right or remedy.

11.2 Waiver by NYCDOT of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by NYCDOT or the City as required and attached to the original Agreement.

11.3 NYCDOT and the Company may waive their respective rights, powers or privileges under this Agreement; provided that any such waiver shall be in writing and provided further, that no failure or delay on the part of any party to exercise any right, power or privilege under this Agreement will operate as waiver thereof, nor will any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any such waiver operate or be construed as a future waiver of such right, power or privilege thereunder.

11.4 The following Exhibits to this Agreement shall be deemed part of this Agreement:

Exhibit A – Investigations Clause

Exhibit B – System Specifications

11.5 All captions and headings contained in this Agreement are for ease of identification only and do not constitute part of this Agreement.

**ARTICLE 12. FORUM PROVISION**

12.1 This Agreement shall be construed pursuant to the laws of the State of New York. Any dispute arising from this Agreement shall be adjudicated in the courts located in the City of New York.

**ARTICLE 13. CONFLICT OF INTEREST**

13.1 No officer, agent, employee, or representative of the City or NYCDOT received any payment or other consideration for the making of this Agreement nor has any legal interest, directly or indirectly, in this Agreement.

**ARTICLE 14. ASSIGNMENT**

14.1 The Company shall not assign or otherwise transfer this Agreement nor any privilege or right granted hereunder without the prior written consent of NYCDOT..

**ARTICLE 15. MERGER**

15.1 This Agreement may only be amended by a writing, executed by the party or parties to be affected by such amendment.

15.2 This written Agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto or to vary any of the terms contained herein.

## **ARTICLE 16. INDEMNIFICATION**

16.1 The Company agrees to be solely responsible for, and shall defend, indemnify and hold harmless the City from liability upon any and all claims for any and all loss or damage to any property and any injury to or death of any person resulting from the performance of this Agreement or the use by NYCDOT of the System provided hereunder by the Company, except to the extent such loss or damage, injury or death is caused by NYCDOT's willful misconduct, fraud or gross negligence.

16.2 The rights and remedies to the City provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

## **ARTICLE 17. INSURANCE**

17.1 The Company shall at all times maintain, at its sole cost and expense:

17.1.1 Commercial General Liability Insurance with limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence, and two million dollars (\$2,000,000) aggregate, and naming the City as additional insureds; and

17.1.2 Commercial Automobile Liability Insurance covering all owned, non-owned, hired and borrowed vehicles of not less than one million dollars (\$1,000,000) for any one occurrence.

17.2 The Company shall also obtain and maintain a policy of Workers' Compensation Insurance, including disability benefits, Unemployment Insurance and Employer's Liability Insurance in compliance with the laws of the State of New York.

17.3 Prior to execution of this Agreement by the City, the Company shall deliver to NYCDOT certificates of insurance from an insurer authorized to do business in the State of New York. Said policies shall provide that no cancellation, termination, or alteration shall be made without thirty (30) days advance written notice to NYCDOT. All certificate(s) of insurance shall be accompanied by either a duly executed certification by broker in the form acceptable to NYCDOT or completed copies of all policies referenced in the



certificate(s) of Insurance. Failure to maintain or renew the required insurance coverages shall be deemed a material breach of this Agreement.

17.2 All required insurance policies shall be maintained with companies licensed and authorized to do business in the State of New York by the New York State Department of Insurance and with an A.M. Best rating of at least A-7 or a Standard & Poor rating of at least AA.

17.3 The minimum insurance coverages which the Company is required to maintain and the specific conditions which the City requires to be satisfied are as follows:

17.3.1 Commercial General Liability Insurance: of not less than one million dollars (\$1,000,000) combined single limit per occurrence, and two million dollars (\$2,000,000) aggregate.

17.3.2 Workers' Compensation and Disability Benefits Insurance: in accordance with the Laws of the State of New York.

17.3.3 Employer's Liability Insurance: in accordance with the Laws of the State of New York.

17.3.4 Automobile Liability Insurance: Commercial Automobile Liability Insurance covering all owned, non-owned, hired and borrowed vehicles of not less than one million dollars (\$1,000,000) for any one occurrence.

17.3.5 Unemployment Insurance: as required by statute.

17.4 All insurance policies provided shall include, without limitation, the following endorsements/requirements:

17.4.1 All policies, other than Worker's Compensation and Disability Benefits Insurance and Employer's Liability Insurance shall name the City, together with its officers, employees and agents as Additional Insureds; and

17.4.2 Notice under this Policy to the City as Additional Insured shall be addressed to each of the following: (i) the Commissioner; (ii) the Comptroller of

the City of New York, attn: Office of Contract Administration, Municipal Building, Room 835, New York, NY 10007; and

17.4.3 In addition to any other requirements concerning notice of cancellation, this Policy shall not be cancelled, terminated, modified or changed unless thirty (30) days' prior written notice is sent by the Insurance Company to the Named Insured by Registered Mail and also sent to the Commissioner of NYCDOT, 55 Water Street, New York, NY 10041 and to the Comptroller of the City of New York, attn: Office of Contract Administration, Municipal Building, Room 835, New York, NY 10007; and

17.4.4 The insurer waives all rights of subrogation against the City, NYCDOT and their officers, agents and employees; and

17.4.5 Each policy shall also provide that the insurer is obligated to provide a legal defense in the event any claim is made against the City arising under the License.

17.5 Each certificate shall be marked "Premium Paid". If, at any time, any of said policies shall become unsatisfactory to the City as to form or substance, or if a company issuing any such policies shall become unsatisfactory to the City, the Company shall promptly (within not more than 30 business days) obtain a new policy, and submit the same to NYCDOT for written approval, which shall not be unreasonably withheld, and for retention thereof as hereinabove provided. Failure of the Company to take out and/or maintain any required insurance shall not relieve the Company from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or limit the obligations of the Company concerning indemnification.

17.6 Where circumstances warrant, NYCDOT may, at its discretion and subject to acceptance by the Corporation Counsel and/or the Comptroller, accept letters of credit or custodial accounts in lieu of specific insurance requirements.

17.7 Should the policies providing for any of the insurance coverage required by this Agreement expire during the Agreement term, certificates confirming renewal of such insurance coverage shall be presented to NYCDOT for its approval and retention not less than thirty (30) days prior to the expiration date of coverage. In addition, a copy of the

actual renewal policy, with all endorsements, shall be provided to NYCDOT no later than thirty (30) days after the expiration of the policy previously provided to NYCDOT. Failure to provide any renewal policy shall be grounds for revocation of the Agreement.

17.8 Prior to execution of this Agreement by the City, the Company shall deliver to NYCDOT certificates of insurance in a form acceptable to NYCDOT, which shall certify the issuance and effectiveness of the types of insurance specified in this Agreement, each with the specified minimum limits and evidence of the compliance with the additional insured or named insured requirements, as applicable. All certificate(s) of insurance shall be accompanied by either a duly executed certification by broker in the form acceptable to NYCDOT or completed copies of all policies referenced in the certificate(s) of Insurance. Failure to maintain or renew the required insurance coverages shall be deemed a material breach of this Agreement..

17.9 The presence on the insured premises of engineers, inspectors, or other contractors, subcontractors, agents or employees of the City or NYCDOT shall not invalidate any of the required insurance policies.

17.10 Failure to comply with the terms of this Article 17 shall be deemed a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

**ARTICLE 18. COUNTERPARTS**

18.1 This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

Company Name

By \_\_\_\_\_

Name/Title \_\_\_\_\_

**CITY OF NEW YORK**  
**DEPARTMENT OF TRANSPORTATION**

By\_\_\_\_\_

Name/Title\_\_\_\_\_

## EXHIBIT A

### INVESTIGATIONS

- A.** The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry.
- B.** If any person who has been advised that his or her statement and any information from such statement will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract or license entered into with the City, the State or any political subdivision or public authority thereof, the Port Authority of New York and New Jersey, any local development corporation within the City or any public benefit corporation organized under the laws of the State of New York, or
- C.** If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental Agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in and is seeking testimony concerning the award of or performance under any transaction, agreement, lease, permit, contract or license entered into with the City, the State, any political subdivision thereof or any local development corporation within the City, then
- D.** The Commissioner or Agency Head whose Agency is a party in interest to the transaction, submitted proposal, contract, lease, permit or license shall convene a

hearing, upon not less than five (5) days' written notice to the parties involved, to determine if any penalties shall attach for the failure of a person to testify.

- E.** If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to Section (G) below without the City incurring any penalty of damages for delay or otherwise.
- F.** The penalties which may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

  - (1)** The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, transacting business with or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
  - (2)** The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which have been pledged to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals or fees accrued prior to the cancellation or termination shall be paid by the City.
- G.** The Commissioner or Agency Head shall consider and address in reaching his/her determination and in assessing an appropriate penalty the factors in Subsections (G)(1) and (G)(2) below. He/She may also consider, if relevant and appropriate, the criteria established in Subsections (G)(3) and (G)(4) below, in addition to any other information which may be relevant and appropriate:

  - (1)** The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not

limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

- (2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
- (3) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
- (4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section (G) above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Section (D) above, gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

**H. Definitions:**

- (1) The term “license” or “permit” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
- (2) The term “person” as used herein shall be defined as any natural person doing business alone or associated with another person or entity as partner, director, officer, principal or employee.
- (3) The term “entity” as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.

(4) The term “member” as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

I. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may, in his/her sole discretion, terminate this Agreement upon not less than three (3) days’ written notice in the event the Company fails to promptly report in writing, to the Commissioner of Investigation of the City of New York, any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by the non-City party or parties, or affecting the performance of this Agreement.



## **EXHIBIT B**

As part of the System, the Company shall:

1. The vendor should apply a \_\_\_\_\_ marking material for a minimum of \_\_\_\_\_ linear feet of 4" equivalent lane lines divided equally between different products using at a minimum the polyuria of three different manufacturers;
2. Configure and program the Equipment and provide equipment details and VIN numbers to DOT project manager;
3. Provide All equipment and manpower necessary to perform the test
4. Remove all garbage from the site that is created by \_\_\_\_\_ as the result of the demonstration program.
5. Insurance to be provided to DOT in form and amount acceptable to DOT's Traffic Management and maintained throughout the duration of this demonstration agreement.
6. Equipment, material and labor for application of \_\_\_\_\_ at temperatures below 45 degrees.
7. The work must be performed at temperatures below 45 degrees. If the installer has any other contracting with the city they will not receive any remuneration for the assigned striping work under this contract except the accepted bid price agreed upon under this contract.
8. DOT will give written instructions about when to commence work and specific job details.
9. Vendor to shot blast or use the equivalent of Stripe Hog water blasting equipment ensuring pavement is dry before material application.
10. Vendor will supply written procedures for the preparation of the roadbed and application of the product prior to being given a notice to proceed.
11. Vendor to provide a certificate of insurance, as per the Demonstration Agreement, naming the City of New York as also insured.
12. Vendor to provide appropriate work zone safety, pedestrian and traffic protections. Any road segment to be closed at a maximum of one hour at a time, preferably a rolling work zone. Any marking material that takes more than 5 minutes to be drive-able will be rejected.
13. The products will be evaluated and compared primarily on these key features: Length of dry time, installation temperature, and durability.
14. Term shall be 12 months from the date DOT issues the Notice to Proceed with DOT continuing its evaluation for three years.