



SPENDING AUTHORIZATION FORM

Pursuant to Whitestown Ordinance No. 2009-10, all purchases over \$5,000 must be pre-approved by a body having authority to approve claims.

Name of Requestor: Danny Powers Department: DPW

Total Amount Requested: \$48,060.00 Budget Line Number: 2202.000231

General Description of Purchase (Attach additional materials as appropriate):

Crack Sealer for the Street Department.

Signature of Requestor: _____

Clerk-Treasurer Office Verification:

Sufficient funds are available in the budget line numbers set forth above for the purchase amount requested above:

Signature of Clerk-Treasurer Designee: _____

Printed Name: _____

Board Approval:

On _____, the _____ of the Town of Whitestown approved the above requested spending authorization in an amount not to exceed \$ _____.

Signature of Board President or Secretary

*All payments must follow applicable claims approval procedures.

**Requestor is responsible for ensuring any applicable bidding procedures (statute and/or ordinance) are followed.



Pavement Products & Equipment

1010 EAST SUMNER AVENUE
INDIANAPOLIS, IN 46227
Phone: 317-780-1310

Remit To:
SEALMASTER
1010 EAST SUMNER AVENUE
INDIANAPOLIS, IN 46227

SALES QUOTE

Customer: 433
TOWN OF WHITESTOWN (IN)
6210 VETERANS DRIVE
WHITESTOWN, IN 46075

Job Site:
TRUCKLOAD 1190
6210 VETERANS DRIVE
WHITESTOWN, IN 46075

Job Tel#: 317-447-3125

Invoice #... 510887-0000
System date. 2/26/24
Quote date.. 3/27/24

Job Loc..... 6210 VETERANS DRIVE, WHITESTO
Job No..... 1 - TRUCKLOAD 1190
P.O. #..... TRUCKLOAD 1190
Ordered By.. LEACH, BRYAN
Terms..... Net 30 Days
Sales Rep: TRENT WEST
Written by.. TRENT WEST

Qty	Item number	Unit	Price	Amount
54000.00	CRACKMASTER 1190NR 1190NR	LB	.890	48060.00
Sub-total:				48060.00
Total:				48060.00

PRICING IS CONFIDENTIAL

WWW.SEALMASTER.NET

WWW.JBEQUIP.NET

- The total charges are an estimate based on the estimated rental period and other information provided by Customer.
- Customer assumes all risks associated with the equipment during the rental period, including injury and damage to persons, property and the equipment.
- Customer is responsible for and shall only permit properly trained and authorized individuals to use the equipment.
- If the equipment does not operate properly, is not suitable for customers intended use, does not have operating and safety instructions or customer has any questions regarding use of the equipment, customer shall not use the equipment and shall contact SealMaster immediately.
- Equipment misuse or using damaged or malfunctioning equipment may result in serious bodily injury or death and customer agrees that customer or its agents assume all risk associated thereunder, and indemnifies SealMaster/Bernath LLC/Bernath Transportation/JDB Manufacturing and all entities for all claims or damages as a result of misuse or use of damaged or malfunctioning equipment.
- Customer must contact SealMaster to request pickup of equipment, customer is responsible for equipment until actually retrieved by SealMaster.
- A signature indicates customer agrees with all contractual obligations on the back side of this contract.

_____ CUSTOMER SIGNATURE	_____ DATE	_____ NAME PRINTED	_____ DATE	_____ DELIVERED BY	_____ DATE
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1. DEFINITIONS. "Authorized Individuals" are those individuals that Customer directly or indirectly allows to use the Equipment, who are properly trained to use the Equipment and are not under the influence of any drugs, alcohol, substances or otherwise impaired. "Customer" is identified earlier and includes any of its representatives, agents, officers, employees or anyone signing this Contract on its behalf. "Environmental Fee" is the charge described in Section 16. "Equipment" is the equipment and/or services identified earlier, together with all replacements, repairs, additions, attachments and accessories and all future Equipment rented. "Incident" is any fire, citation, theft, accident, casualty, loss, vandalism, injury, death or damage to person or property, claimed by any person or entity that appears to have occurred in connection with the Equipment. Equipment is considered "Lost" when it is either stolen, its location is unknown or Customer is unable to recover it for a period of 30 days. "MSLP" is the Equipment manufacturer's suggested list price on or about the date of the Incident relating to the Equipment. "One Shift," means not more than 8 hours per day and 40 hours per week. "Ordinary Wear and Tear" means normal deterioration considered reasonable in the equipment rental industry for One Shift use. "Rental Period" commences when the Equipment is delivered to Customer or the Site Address and continues until the Equipment is returned to the Store or picked up by Sealmaster during normal business hours, provided Customer has otherwise complied with this Contract. "RPP" is the rental protection program described in Section 10. "Site Address" is the location that Customer represents the Equipment will be located for the duration of rental identified earlier. "Store" is the Sealmaster location identified earlier. "Sealmaster" is Bernath LLC dba Sealmaster Indianapolis, Bernath Transportation LLC, and JDB Manufacturing dba SealMaster Louisville. "Sealmaster Entities" is Sealmaster and its affiliated companies, their respective officers, directors, employees and agents.
2. TERMS. Customer's execution of this Contract or taking possession of the Equipment shall be deemed acceptance of the terms herein. All of the terms herein are incorporated into this and all past and future contracts between Sealmaster and Customer upon Customer's receipt of Sealmaster's Equipment under those contracts. Any reference in Customer's purchase order or other Customer document to other terms that shall control this transaction shall be void. Customer rents the Equipment from Sealmaster pursuant to this Contract. This Contract is a true lease. The Equipment (a) is and shall remain the personal property of Sealmaster and (b) shall not be affixed to any other property.
3. PERMITTED USE. Customer agrees that Sealmaster has no control over the manner in which the Equipment is operated for the duration of rental by Customer or any third party that Customer implicitly or explicitly permits. Customer warrants that: (a) prior to each use, Customer shall inspect the Equipment to confirm that it is in good condition, without defects, includes readable decals and operating and safety equipment or instructions and is suitable for Customer's intended use; (b) any apparent agent at the Site Address is authorized to accept delivery of the Equipment (and if Customer requests, Customer authorizes Sealmaster to leave the Equipment at the Site Address without requirement of written receipt); (c) Customer shall immediately notify Sealmaster if the Equipment is missing, damaged, unsafe, disabled, malfunctioning, levied upon, threatened with seizure, or if any Incident occurs; (d) Customer has received from Sealmaster all information needed or requested regarding the operation of the Equipment; (e) Sealmaster is not responsible for providing operator or other training unless Customer specifically requests in writing and Sealmaster agrees to provide such training (Customer being responsible to obtain all training that Customer desires prior to the Equipment's use); (f) only Authorized Individuals shall use and operate the Equipment; (g) the Equipment's use shall be in a careful manner, in compliance with all operating and safety instructions provided on, in or with the Equipment and all applicable federal, state and local laws, permits and licenses, including but not limited to, OSHA, as revised; and (h) the Equipment shall be kept in a secure location.
4. PROHIBITED USE. Customer shall not (a) alter or cover up any decals or insignia on the Equipment or remove any operating or safety equipment or instructions; (b) assign its rights under this Contract; (c) move the Equipment from the Site Address without Sealmaster's written consent; (d) use the Equipment in a negligent, illegal, unauthorized or abusive manner, or in any publication (print, audiovisual or electronic); or (e) allow the use of the Equipment by any unauthorized individual (Customer acknowledging that the Equipment may be dangerous if used improperly or by untrained parties).
5. MAINTENANCE. Customer shall perform routine maintenance on the Equipment, including routine inspections and maintenance of fuel and oil levels, grease, cooling system, water, batteries, cutting edges, and cleaning in accordance with the manufacturer's specifications. All other maintenance or repairs may only be performed by Sealmaster or its agents, but Sealmaster has no responsibility for the duration of rental to inspect or perform any maintenance or repairs unless Customer requests a service call. If Sealmaster determines that repairs to the Equipment are needed, other than Ordinary Wear and Tear, Customer shall pay the full repair charges and rental of the Equipment until the repairs are completed. Sealmaster has the right to inspect the Equipment wherever located. Customer has the authority to and hereby grants Sealmaster and its agents the right to enter the physical location of the Equipment for the purposes set forth herein. Sealmaster shall be responsible for repairs needed because of Ordinary Wear and Tear. Customer agrees that repair or replacement of the Equipment is Customer's exclusive remedy for Sealmaster's breach of this Section. Notwithstanding Sealmaster's service commitment, Sealmaster shall have no obligation if Customer breaches this Contract to stop the Rental Period, commence repairs or rent other equipment to Customer until Customer or its agent agrees to pay for such charges.
6. CUSTOMER LIABILITY. FOR THE DURATION OF RENTAL, CUSTOMER ASSUMES ALL RISK ASSOCIATED WITH THE POSSESSION, CONTROL, OR USE OF THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO, INJURY, DEATH, RENTAL CHARGES, THEFT, LOSSES, DAMAGES AND DESTRUCTION, INCLUDING CUSTOMER TRANSPORTATION, LOADING AND UNLOADING, WHETHER OR NOT THE CUSTOMER IS AT FAULT. After an Incident, Customer shall (a) immediately notify Sealmaster, the police, if necessary and Customer's insurance carriers; (b) secure and maintain the Equipment and the surrounding premises in the condition existing at the time of such Incident, until Sealmaster or its agents investigate; (c) immediately submit copies of all police or other third party reports to Sealmaster; and (d) as applicable, pay Sealmaster, in addition to other sums due herein, the rental rate for Equipment until the repairs are completed or Equipment replaced plus either (i) the MSLP or (ii) the full charges of repairs of damaged Equipment. Accrued rental charges shall not be applied against these amounts. Sealmaster shall have the immediate right, but not obligation, to reclaim any Equipment involved in any Incident.
7. RELEASE AND INDEMNIFICATION. To the fullest extent permitted by law, customer indemnifies, releases, holds Sealmaster entities harmless and at Sealmaster's request, defends Sealmaster entities (with counsel approved by Sealmaster), from and against all liabilities, claims, losses, damages, and expenses (including attorney's and/or legal fees and expenses) however arising or incurred, related to any incident, damage to property, injury or death of, any person, contamination or alleged contamination, or violation of law or regulation caused by or connected with the (a) use, possession or control of the equipment for the duration of rental or (b) breach of this contract, whether or not caused in part by the active or passive negligence or other fault of any party indemnified herein and any of the foregoing arising or imposed in accordance with the doctrine of strict or absolute liability. Customer also agrees to waive its workers' compensation immunity, to the extent applicable. Customer's indemnity obligations shall survive the expiration or termination of this contract. All of customer's indemnification obligations under this paragraph shall be joint and several.
8. INSURANCE. For the duration of rental, Customer shall maintain, at its own expense, the following minimum insurance coverage: (a) general liability insurance of not less than \$1,000,000 per occurrence, including coverage for Customer's contractual liabilities herein such as the release and indemnification clause contained in Section 8; (b) property insurance against loss by all risks to the Equipment, in an amount at least equal to the MSLP thereof, unless RPP is elected and paid for at the time of rental; (c) worker's compensation insurance as required by law; and (d) automobile liability insurance (including comprehensive and collision coverage, and uninsured/underinsured motorist coverage), in the same amounts set forth in subsections (a) and (b), if the Equipment is to be used on any roadway. Such policies shall be primary, non-contributory, on an occurrence basis, contain a waiver of subrogation, name Sealmaster and its agents as an additional insured (including an additional insured endorsement) and loss payee, and provide for Sealmaster to receive at least 30 days prior written notice of any cancellation or material change. Any insurance that excludes boom damage or overturns is a breach. Customer shall provide Sealmaster with certificates of insurance evidencing the coverages required above prior to any rental and any time upon Sealmaster's request. To the extent Sealmaster Entities carry any insurance, Sealmaster Entities' insurance will be considered excess insurance. The insurance required herein does not relieve Customer of its responsibilities, indemnification, or other obligations provided herein, or for which Customer may be liable by law or otherwise.
9. RENTAL PROTECTION P. Customer's repair or replacement responsibility in Sections 5 and 6 is modified by the RPP and Sealmaster shall limit the amount Sealmaster collects from Customer for the Equipment loss, damage or destruction to the following amounts for each piece of Equipment: (a) 10% of the MSLP for Lost Equipment, up to a maximum of \$500 per piece of Equipment; (b) 10% of the repair charges for incidental or accidental damage to Equipment, up to a maximum of \$500 per piece of Equipment; (c) charges in excess of \$50 per tire for tire repairs; and (d) nothing for the rental charges which would otherwise accrue during the period when damaged or destroyed Equipment is being repaired or replaced by Sealmaster or Lost Equipment is being replaced; provided however, the foregoing RPP liability reduction only applies if the Conditions are satisfied and an Exclusion does not apply. THE RPP IS NOT INSURANCE and does NOT protect Customer from liability to Sealmaster or others arising out of possession, control or use of the Equipment, including injury or damage to persons or property. THE RPP IS A CONTRACTUAL MODIFICATION OF CUSTOMER'S LIABILITY. All of the following "Conditions" must be satisfied for the RPP and the corresponding liability reduction to apply: (i) Customer accepts the RPP in advance of the rental; (ii) Customer pays 15% of the gross rental charges as the fee for the RPP (plus applicable taxes); (iii) Customer fully complies with the terms of this Contract; (iv) Customer's account is current at the time of the loss, theft, damage or destruction of the Equipment; and (v) none of the Exclusions apply. Customer assumes the Exclusion risks, meaning that if any Exclusion occurs, the RPP does NOT reduce the liability of Customer to Sealmaster for the loss, theft, damage or destruction resulting from such Exclusion. "Exclusions" shall mean loss, theft, damage or destruction of the Equipment: (A) due to intentional misuse; (B) caused by Lost Equipment not reported by Customer to the police within 48 hours of discovery, and substantiated by a written police report (promptly delivered to Sealmaster); (C) due to floods, wind, storms, earthquakes or other Acts of God; and (D) accessories or Equipment for which Customer is not charged the RPP fee. THE EXCLUSIONS REMAIN THE LIABILITY OF CUSTOMER AND ARE NOT MODIFIED BY THE RPP. RPP IS REFLECTED ON THE CONTRACT AS PART OF CUSTOMER'S PROJECTED CHARGES UNLESS CUSTOMER HAS ELECTED TO DECLINE RPP IN WRITING OR MADE OTHER CONTRACTUAL ARRANGEMENTS. Notwithstanding anything to the contrary in this Contract, if Lost Equipment is later recovered, Sealmaster retains ownership of the Equipment regardless of any payments made by Customer or Customer's insurance company with respect to such Equipment, all of which payments are non-refundable. Customer agrees to promptly return any Equipment that is recovered. Sealmaster shall be subrogated to Customer's rights to recover against any person or entity relating to any loss, theft, damage, or destruction to the Equipment. Customer shall cooperate with, assign Sealmaster all claims and proceeds arising from such loss, theft, damage or destruction, execute and deliver to Sealmaster whatever documents are required and take all other necessary steps to secure in Sealmaster such rights, at Customer's expense.
10. RENTAL RATES. The total charges specified in this Contract are: (a) projected based upon Customer's representation of the projected Rental Period identified herein (rental rates beyond the projected Rental Period may change) and other information conveyed by Customer to Sealmaster; and (b) for the Equipment's use for One Shift, unless otherwise noted. Weekly and 4 week rental rates shall not be prorated. Rental charges accrue during Saturdays, Sundays and holidays. The rental rates do not include and Customer is responsible for, (i) all consumables, fees, licenses, present and future taxes and any other governmental charges based on Customer's possession and/or use of the Equipment, including additional fees for more than One Shift use; (ii) delivery and pickup charges to and from the Store, including but not limited to any freight, transportation, delivery, pickup and surcharge fees listed in this Contract; (iii) maintenance, repairs and replacements to the Equipment as provided herein; (iv) a cleaning fee if required; (v) miscellaneous charges, such as fees for missing keys and RPP; (vi) fuel used for the duration of rental and for refueling Equipment as described below; (vii) fines for use of dyed diesel fuel in on-road Equipment; and (viii) Transportation Surcharge.
11. PAYMENT. Customer shall pay amounts due, without any offsets, in full at the time of rental, unless Sealmaster approves Customer's executed credit application (credit customers must pay upon receipt of Sealmaster's invoice). Customer must notify Sealmaster in writing of any disputed amounts, including credit card charges, within 15 days after the receipt of the invoice/contract or Customer shall be deemed to have irrevocably waived its right to dispute such amounts. At Sealmaster's discretion, any credit account with a delinquent balance may be placed on a cash basis, deposits may be required and the Equipment may be picked up without notice. Due to the difficulty in fixing actual damages caused by late payment, Customer agrees that a service charge equal to the lesser of 1.5% per month or the maximum rate permitted by law shall be assessed on all delinquent accounts, until paid in full. Customer shall pay a fee of \$200 for each check returned for lack of sufficient funds to compensate Sealmaster for its overhead for processing missed payment. Deposits will only be returned after all amounts are paid in full. Customer agrees that if a credit card is presented to pay for charges or to guarantee payment, Customer authorizes Sealmaster to charge the credit card all amounts shown on this Contract and charges subsequently incurred by Customer, including but not limited to, loss of or damage to the Equipment and extension of the Rental Period.
12. RETURN OF EQUIPMENT. Sealmaster may terminate this Contract at any time, for any reason. At the end of the Rental Period, the Equipment shall be returned to Sealmaster in the same condition it was received, less Ordinary Wear and Tear and free of any hazardous materials and contaminants. Customer will continue to be responsible for rental and other charges after the Rental Period if the Equipment is not returned in the condition required herein. If Sealmaster delivered the Equipment to Customer, Customer shall notify Sealmaster that the Equipment is ready to be picked up at the Site Address and schedule a Pick-Up, which Pick-Up Customer should keep proof of the call: provided Customer remains liable for any loss, theft, damage to or destruction of the Equipment until Sealmaster confirms that the Equipment is returned in the condition required herein. Customer will not be charged the rental charges after the date the Pick-Up Number is given, provided Customer has otherwise complied with this Contract. No pickups occur on Sundays or statutory holidays and Saturday pickups are dependent on specific Store hours. If Customer picked up Equipment, Customer shall return Equipment to the same Store during that Store's normal business hours. If the Equipment is not returned by the projected end of the Rental Period specified earlier, Customer agrees to pay the applicable rental rate for the Equipment until the end of the Rental Period.
13. PURCHASES. If this Contract identifies any Used Equipment, materials or other items that is to be purchased by Customer, Sealmaster sells used equipment and delivers such items to Customer on an "AS IS, WHERE IS" basis, with all faults and without any warranties (other than manufacturer warranties, if any) in consideration for Customer's payment to Sealmaster of the full purchase price of the item, Sealmaster retains title to the item until Customer has paid in full.
14. DEFAULT. Customer shall be in default if Sealmaster deems itself insecure or if Customer: (a) fails to pay sums when due; (b) breaches any Section of this Contract; (c) becomes a debtor in a bankruptcy proceeding, goes into receivership, takes protection from its creditors under any insolvency legislation, ceases to carry on business, or has its assets seized by any creditor; (d) fails to insure the Equipment as required, or otherwise places the Equipment at risk; (e) fails to return Equipment immediately upon Sealmaster's demand; or (f) is in default under any other contract with Sealmaster. If a Customer default occurs, Sealmaster shall have, in addition to all rights and remedies at law or in equity, the right to repossess the Equipment without judicial process or prior notice. Customer shall pay all of Sealmaster's costs, including reasonable costs of collection, court costs, attorneys and legal fees, incurred in exercising any of its rights or remedies herein. The use of false identification to obtain Equipment or the failure to return Equipment by the end of the Rental Period may be considered theft, subject to criminal prosecution and civil liability where permitted, pursuant to applicable laws. Sealmaster shall not be liable due to seizure of Equipment by order of governmental authority. CUSTOMER WAIVES ANY RIGHT OF ACTION AGAINST SEALMASTER ENTITIES FOR SUCH REPOSSESSION.
15. LIMITATION OF SEALMASTER'S LIABILITY. In consideration of the rental of equipment, customer agrees that Sealmaster's liability under this contract, including any liability arising from Sealmaster, Sealmaster entities, or any third party's comparative, concurrent, contributory, passive or active negligence or inaction, shall be limited to the amount of the rental charges paid by customer under this contract.
16. JURY TRIAL WAIVER. In any dispute arising out of, in connection with, or in any way pertaining to this contract, customer and Sealmaster hereby knowingly, voluntarily and intentionally waive any right to a trial by jury, this waiver being a material inducement to entering into this contract.
17. ARBITRATION AGREEMENT & CLASS ACTION WAIVER. At the election of customer or Sealmaster, any dispute arising out of, in connection with or in any way pertaining to this contract shall be settled by arbitration brought in the party's individual capacity and not as a plaintiff in a purported class or representative capacity, administered by the American arbitration association under its commercial arbitration rules or by jms pursuant to its streamlined arbitration rules and procedures and judgement on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. There shall be no right or authority for any claims to be arbitrated or tried on a class action basis.
18. COMPLIANCE WITH EXPORT AND IMPORT LAWS. Removal of the Equipment from the United States ("U.S.") is prohibited under this Contract. If Customer desires or causes the transport and/or operation of the Equipment outside of the U.S., Customer must (a) obtain Sealmaster's consent prior to taking such action, and (b) execute an amendment to this Contract, which amendment is incorporated herein. If Customer exports or re-exports without complying with the above sentence, Customer agrees that (i) the Equipment is subject to and must comply with all applicable export laws, including but not limited to the Export Administration Regulations; and (ii) Customer is responsible for: (A) determining whether and obtaining if necessary, export or re-export licenses or other authorizations as required prior to exporting or re-exporting the Equipment, (B) obtaining any required documentation necessary for return of the Equipment, and (C) ensuring no unauthorized transfers or diversions of the Equipment occur. Refer to www.bis.doc.gov for information.
19. GOVERNING LAW. The parties expressly and irrevocably agree: (a) this Contract, including any related tort claims, shall be governed by the laws of Indiana and Kentucky, without regard to any conflicts of law principles and (b) if any Section of this Contract is prohibited by any law, such Section shall be ineffective to the extent of such prohibition without invalidating the remaining Sections.
20. PERMITTED AREA OF USE OF EQUIPMENT. Renter shall not remove the Equipment from the State in which it is rented without Sealmaster's written consent.
21. MISCELLANEOUS. This Contract, together with any Customer executed credit application, constitutes the entire agreement of the parties regarding the Equipment and may not be modified except by written amendment signed by the parties. Customer's obligations hereunder shall survive the termination of this Contract. This Contract and all of Customer's rights in and to the Equipment are subordinate to all rights, title and interest of all persons (including Sealmaster's lenders) who have rights in the Equipment. Headings are for convenience only. To the extent that any terms in this Contract conflict, the parties agree that the more specific terms control. A copy of this Contract shall be valid as the original. Any failure by Sealmaster to insist upon strict performance of any Section of this Contract shall not be construed as a waiver of the right to demand strict performance in the future. Customer and the person signing this Contract represent that: (a) they both have full authority to execute, deliver and perform this Contract and (b) this Contract constitutes a legal, valid and binding obligation of Customer, enforceable in accordance with its terms. When Customer is a buyer of Equipment, they are hereby notified that Sealmaster has assigned its rights (but not its obligations) in the agreement to sell the asset(s) described herein to Bernath LLC dba Sealmaster Indianapolis, Bernath Transportation LLC, and/or JDB Manufacturing dba SealMaster Louisville, a qualified intermediary, as part of Section 1031 exchange, and Customer shall make the payee "Bernath LLC dba Sealmaster Indianapolis" in the state of Indiana or "JDB Manufacturing dba SealMaster Louisville" in the state of Kentucky.