



Hastings City Council

Communication

Date: April 24, 2020

To: Honorable Mayor Dave Tossava, Members of the Hastings City Council, City Attorney and Administrative Staff

From: Jerry Czarnecki, City Manager

Subject: Information – Monday April 27, 2020 Regular Meeting of the Hastings City Council

We continue to work under the Governor's Stay-At-Home Executive Order to navigate through this COVID-19 Pandemic. The meeting for Monday night will again be virtual, please let me know if you have issues accessing the meeting. Two suggestions: (1) try to access the meeting prior to Monday night, this will make sure you have downloaded any programs that are needed; and (2) Council members should choose to access audio by telephone and call it to the number provided. This will eliminate any lag time for comments from Council members due to internet speed.

Items on the agenda for Monday night's regular meeting of the Hastings City Council have been abbreviated and now include:

Ordinances

Council will have the second reading and action on ordinances No. 587 and No. 588 that would eliminate the expiration of the prohibition enacted in Chapter 22 and Chapter 53 of the Hastings City Code of Ordinances.

Council will hold the first reading of amendment to the Zoning Ordinance of the Hastings-Rutland Joint Planning Commission on the Keeping of Animals that has been recommended by the Hastings-Rutland Joint Planning Commission.

Appointments

The Council will be asked to give their consent for the appointment of Debra Rashid as the City's Assessor. In January, Dan Kirwin was appointed as the City's Assessor and he has submitted a letter letting the City know that April 30, 2020 will be the last day of his service. This relationship has been very positive and Dan has done a wonderful job as the City's Assessor. I would like to thank Dan for his efforts. Debra comes to us with over 20 years of experience and glowing recommendations from units she has worked with. Debra will be in the office one (1) day per week and working with Krista Tietz (Deputy Assessor) to provide the same accessibility that residents have had in the recent past. Debra will be a great asset to the City and Krista. Debra will begin in May.

Bids, Contract, Agreements, and Sales

Council will be asked to approve an extension of the State St. project. In the bid for this project the City received a favorable quote and the contractor has agreed to use the same unit pricing to complete the section of South Jefferson between Grand St. and Shriner St.

Council will be asked to set a Workshop to discuss the Municipal Budget for Monday, May 11, 2020 at 6:00PM. This workshop will be held in compliance with any Executive Orders in place at the time. Hopefully, we will be able to determine that at the meeting on Monday.

Please let me know if you have any questions prior to the meeting on Monday.

See you Monday night!

City of Hastings
COUNTY OF BARRY, STATE OF MICHIGAN

City Council Agenda
April 27, 2020

1. Regular meeting called to order at 7:00 PM.
2. Roll call.
3. Pledge to the flag.
- * 4. Approval of the agenda.
- * 5. Approval of the minutes of the April 13, 2020 Electronic Meeting.
6. Open public discussion regarding matters not on the agenda.
7. Proclamations: (None).
- √ 8. Public Hearings: (None).
- √ 9. Formal presentations and requests: (None).
- √ 10. Recommendations from other Boards: (None).
- √ 11. Ordinances:
 - * A. Second reading and consider adoption of **Ordinance No. 587** to eliminate the expiration of the prohibitions enacted in Chapter 22 Article IV
 - * B. Second reading and consider adoption of **Ordinance No. 588** to eliminate the expiration of the prohibitions enacted in Chapter 53 Article I.
 - * C. First reading of **Ordinance No. 589** amendment to Section 4.13 of the Zoning Ordinance of the Hastings-Rutland Joint Planning Commission Pertaining to the Keeping of Animals.
- √ 12. Resolutions: (None).
- √ 13. Appointments:
 - A. City Manager's Appointment with City Council advice and consent of Debra Rashid as City Assessor
- √ 14. Bids, Contracts, Agreements, and Sales:
 - * A. Consider and approve the extension of State St. (Downtown) project to include S. Jefferson from Grand to Shriner for \$68,219.

15. City Manager's report:
 - A. Consider setting a special workshop for Monday, May 11, 2020 at 6:00 PM to consider the draft 2020/2021 municipal budget.
16. Consent items without individual discussion. (None).
17. City Attorney's Report:
18. Legislative Director's Report:
19. Open Public Discussion from the Floor:
20. Mayor and Council comment:
21. Adjourn.

- * Items with enclosures.
- √ Motion under agenda heading requires roll call vote.

Guidelines for Public Comment

Public Comments is welcomed and appreciated. Please follow these simple guidelines to ensure all have an opportunity to be heard.

All comments and questions will be made through the chair. All comments will be made in a courteous and civil manner; profanity and personal attacks will not be tolerated. Please limit the length of your comments to 3 minutes. If you are a member of a group, please appoint a spokesperson to speak on behalf of the group (those speaking on behalf of a group may be provided additional time). Please state your name before offering comment.

City of Hastings
COUNTY OF BARRY, STATE OF MICHIGAN

City Council Minutes
April 13, 2020

1. Regular meeting called to order at 7:00 PM by Mayor Tossava in Council Chambers at City Hall.
2. Present by electronic meeting at roll call were Councilmembers: Cary, Jarvis, Maupin-Moore, McNabb-Stange, Redman, Resseguie and Tossava.

Absent: Smith

City Staff and Appointees Present: Czarnecki and Fekkes.

3. Pledge to the flag.
4. Approval of the agenda.

Motion by McNabb-Stange, with support by Resseguie, to approve the agenda as presented.

Ayes: Bowers, Cary, Jarvis, Maupin-Moore, McNabb-Stange, Redman, Resseguie, and Tossava.

Nays: None.

Absent: Smith.

Motion carried.

5. Approval of the minutes of the regular session meetings of March 9, 2020 and March 23, 2020.

Motion by Redman, with support by Jarvis, to approve minutes as presented.

Ayes: Bowers, Cary, Jarvis, Maupin-Moore, McNabb-Stange, Redman, Resseguie, and Tossava.

Nays: None.

Absent: Smith.

Motion carried.

6. Public Hearings:

- A. To hear comments and make determination regarding amendments to Chapter 82 for the regulation of wells in the City of Hastings.

Consider amending **Ordinance 586** to require connections to the public water supply system and to regulate the use of private wells.

Motion by Redman, with support by Resseguie, to approve amendments to **Ordinance 586**.

Ayes: Bowers, Cary, Jarvis, Maupin-Moore, McNabb-Stange, Redman, Resseguie, and Tossava.

Nays: None.

Absent: Smith.

Motion carried.

- B. Public Hearing to hear comments and make determination regarding text amendments to Chapter 22 and Chapter 53 to extend expiration date of prohibition on marijuana establishments.

Motion by McNabb-Stange, with support by Redman to remove the expiration date and bring **Ordinances 587 and 588** back for a second reading.

Ayes: Bowers, Cary, Jarvis, Maupin-Moore, McNabb-Stange, Redman, and Tossava.

Nays: Resseguie.

Absent: Smith.

7. Open Public Discussion from the Floor:

8. Mayor and Council comments:

Council Members Redman, Resseguie, Jarvis, Bowers, McNabb-Stange, Maupin-Moore, and Mayor Tossava offered closing remarks.

9. Adjourn.

Motion by Redman, with support by Bowers, to adjourn at 7:21 PM.

Ayes: Bowers, Cary, Jarvis, Maupin-Moore, McNabb-Stange, Redman, Resseguie, and Tossava.

Nays: None.

Absent: Smith.

Motion carried.

Read and Approved:

David J. Tossava, Mayor

Jane M. Saurman, City Clerk

CITY OF HASTINGS
COUNTY OF BARRY, STATE OF MICHIGAN

ORDINANCE NO. 587
AN ORDINANCE TO AMEND SECTION 22.82 OF ARTICLE IV OF CHAPTER 22
OF THE HASTINGS CODE OF 1970

THE CITY OF HASTINGS ORDAINS:

SECTION I.

Section 22.82 of Article IV of Chapter 22, of the Code of Ordinances, City of Hastings, Michigan, is added to read as follows:

CHAPTER 22 - BUSINESSES

ARTICLE IV. – RECREATIONAL MARIHUANA

Section 22.82 Expiration.

Unless the City of Hastings acts to reverse the prohibitions enacted herein, this Ordinance and the prohibitions contained herein shall remain in full force and effect.

SECTION II.

If any article, section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION III.

All ordinances or part of ordinances in conflict herewith are hereby repealed.

SECTION IV.

This ordinance shall become effective upon its adoption and publication as provided by City Charter.

Moved by Member _____, with support by Member _____, that
Ordinance No. 587 be adopted as read.

YEAS:
NAYS:
ABSENT:

CITY OF HASTINGS

Adoption Date:
Effective Date:
First Reading:
Second Reading:

By: Jane Saurman
Hastings City Clerk

CERTIFICATE

The undersigned, being the duly qualified and acting Clerk of the City of Hastings, Michigan, does hereby certify that the foregoing is a true and complete copy of an Ordinance adopted by the Hastings City Council, of the City of Hastings, at a regular meeting of the _____ on the _____, at which meeting a quorum was present and remained throughout, and that the original of said Ordinance is on file in the records of the City of Hastings. I further certify that the meeting was conducted and public notice was given pursuant to and in compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

Jane Saurman,
Hastings City Clerk

CITY OF HASTINGS
COUNTY OF BARRY, STATE OF MICHIGAN

ORDINANCE NO. 588
AN ORDINANCE TO AMEND SECTION 53.4 OF ARTICLE I OF CHAPTER 53
OF THE HASTINGS CODE OF 1970

THE CITY OF HASTINGS ORDAINS:

SECTION I.

Section 53.4 of Article I of Chapter 53, of the Code of Ordinances, City of Hastings, Michigan, is amended to read as follows:

CHAPTER 53 - RECREATIONAL MARIHUANA

ARTICLE I. – IN GENERAL

Section 53.4 Expiration.

Unless the City of Hastings acts to reverse the prohibitions enacted herein, this Ordinance and the prohibitions contained herein shall remain in full force and effect.

SECTION II.

If any article, section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION III.

All ordinances or part of ordinances in conflict herewith are hereby repealed.

SECTION IV.

This ordinance shall become effective upon its adoption and publication as provided by City Charter.

Moved by Member _____, with support by Member _____, that
Ordinance No. 588 be adopted as read.

YEAS:
NAYS:
ABSENT:

CITY OF HASTINGS

Adoption Date:
Effective Date:
First Reading:
Second Reading:

By: Jane Saurman
Hastings City Clerk

CERTIFICATE

The undersigned, being the duly qualified and acting Clerk of the City of Hastings, Michigan, does hereby certify that the foregoing is a true and complete copy of an Ordinance adopted by the Hastings City Council, of the City of Hastings, at a regular meeting of the _____ on the _____, at which meeting a quorum was present and remained throughout, and that the original of said Ordinance is on file in the records of the City of Hastings. I further certify that the meeting was conducted and public notice was given pursuant to and in compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

Jane Saurman, City Clerk

Editorial note: this document is prepared in "legislative format": existing text deleted is shown lined-through, new text is shown in bold type.

CITY OF HASTINGS &. CHARTER TOWNSHIP OF
RUTLAND BARRY COUNTY, STATE OF MICHIGAN

RUTLAND CHARTER TOWNSHIP ORDINANCE NO. 2020-___(proposed)

ADOPTED BY TOWNSHIP BOARD: _____

EFFECTIVE DATE: _____ (or as otherwise provided by law)

CITY OF HASTINGS ORDINANCE NO. 589- (proposed)

ADOPTED BY CITY COUNCIL: _____

EFFECTIVE DATE: _____ (or as otherwise provided by law)

JOINT ORDINANCE TO AMEND HASTINGS-RUTLAND JOINT
PLANNING COMMISSION ZONING ORDINANCE

An Ordinance to amend Section 4.13 of the Zoning Ordinance of the Hastings- Rutland Joint Planning Commission (Rutland Charter Township Ordinance No. 2016- 156, as amended/City of Hastings Ordinance No. 532, as amended) pertaining to the keeping of animals.

THE CITY OF HASTINGS & THE CHARTER TOWNSHIP OF RUTLAND

BARRY COUNTY, MICHIGAN

ORDAIN:

SECTION 1

AMENDMENT OF SECTION 4.13 PERTAINING TO THE KEEPING OF ANIMALS

Section 4.13 of the Zoning Ordinance of the Hastings-Rutland Joint Planning Commission, presently pertaining to exotic animals, is hereby amended to also address the keeping or raising of livestock with new content recognizing the siting of a new or expanding commercial livestock production facility in any zoning district is controlled by the State of Michigan pursuant to the Generally Accepted Agricultural and Management Practices for Site Selection and Odor Control for New and Expanding Livestock Facilities issued by the Michigan Commission of Agriculture & Rural Development under authority of the Michigan Right To Farm Act; and further clarifying the keeping or raising of livestock for any non-commercial purpose is not allowed in any zoning district, thus causing Section 4.13 to read as follows:

"Section 4.13 Exotic Animals, and livestock

A. Exotic animals are not permitted on any premises which are under the jurisdiction of the Joint Planning Commission without a determination by the Zoning Administrator that the subject animal(s) will pose no threat to the health, safety and welfare of persons or property, after submission of a site plan pursuant to Chapter 9 and pursuant to the standards for site plan approval in Section 9.04; provided that the Zoning Administrator may instead refer the site plan submission to the Planning Commission for review pursuant to the applicable provisions of Chapter 9 if the Zoning Administrator determines such review by the Planning Commission instead of the Zoning Administrator is in the public interest.

B. Livestock. The keeping or raising of livestock is subject to the following:

- 1. Commercial Production Purposes. This Zoning Ordinance does not provide for commercial production livestock land uses in any zoning district, but certain premises may potentially be determined by the State of Michigan to be permissible for the siting of a new or expanding commercial livestock production facility pursuant to the Generally Accepted Agricultural and Management Practices for Site Selection and Odor Control for New and Expanding Livestock Facilities issued by the Michigan Commission of Agriculture & Rural Development under authority of the Michigan Right To Farm Act.**
- 2. Non-Commercial Production Purposes. The keeping or raising of livestock for any non-commercial purpose is not allowed in any zoning district.**
- 3. For purposes of the provisions of this Zoning Ordinance pertaining to the keeping or raising of livestock for "commercial" purposes, or referring to a livestock "production" facility or similar term, these terms shall mean the act of producing an item intended to be sold at a profit."**

SECTION 2

EFFECTIVE DATE/REPEAL

This Ordinance shall take effect on the latter of: (1) 15 days after enactment by both the City and Township, or (2) the eighth day after publication of a notice of adoption of this Ordinance as required by law; provided, however, if a notice of intent to file a petition under *MCL 125.3402* is timely filed with respect to this Ordinance and/or if the right of referendum under applicable provisions of the charter of the City of Hastings is timely initiated, this Ordinance shall then only take effect as provided by applicable provisions of *MCL 125.3402* and/or the City charter, or as otherwise provided by law.

Robin Hawthorne, Clerk
Charter Township of
Rutland

Jane Saurman,
Clerk City of
Hastings



City of *Hastings* Michigan

(269) 945-2468
FAX (269) 948-9544

201 E. State Street 49058

April 24, 2020

To: The Honorable Mayor and City Council Members

Subject: Extension of Street Resurfacing

On March 9, 2020, the Council approved the project to have three blocks between Broadway and Michigan of State St. milled, resurfaced, and placement of pavement markings. The unit rate pricing for this project was received through the competitive bid process and reasonably low compared to industry standards. Staff has identified that there is an opportunity to take advantage of this bid rate pricing by expanding the scope of this project. A-1 Asphalt has agreed to keeping the same unit pricing for the milling, resurfacing, and placement of pavement markings for South Jefferson St. between Grand St. and Shriner St. and quoted this extension at \$68,219.00 (quote attached).

Funding for this project will come out of the funding available for 19/20 streets projects. The remainder of the year's funding is expected to go toward chip seal projects. Bids for these projects are currently being evaluated. If we were to postpone the South Jefferson St. project, it is believed that we would receive higher pricing for the project.

I would recommend that Council approve the extension of the planned Street Resurfacing project to include South Jefferson St. between Grand St. and Shriner St.

I will gladly answer any questions that Council members have at the meeting.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Czarnecki", is written in a cursive style.

Jerry Czarnecki

A-1 ASPHALT INC.

4364 Division Ave.
Wayland, MI 49348

Proposal No: DS20-846
Date: April 23, 2020

City of Hastings
201 East State Street
Hastings, MI 49058

CONTACT: Matt Gergen
PHONE: 269-953-6116
CELL: 616-340-9523
FAX:
E-MAIL: mgergen@hastingsmi.org

Job Site: Jefferson St, Hastings

		QUANTITY	UNIT	UNIT PRICE	COST
Millings	Rotomill and remove to a depth of 1.5" average of asphalt in	57,291	sqft		\$68,219.00
	Cleaning and preparation of roads Apply a bond coat for proper adhesion of new asphalt to old Wedge low areas as needed with hot mix asphalt Install and compact 1.5" average of 5E1 (or equivalent) Top Asphalt over approximately	57,291	sqft		
Stripe	Striping to be done in latex traffic paint. Yellow/white: 2 stop bars, 2 cross walk, double line 104 lft, dotted line 400 lft				
<small>A-1 ASPHALT INC. IS NOT A SIGNATORY TO ANY UNION CONTRACT AND THEREFORE IN THE PERFORMANCE OF ITS WORK DOES NOT AGREE TO COMPLY WITH THE RATE, TERMS AND CONDITIONS AND FRINGE BENEFIT CONTRIBUTIONS OF ANY UNION AGREEMENT. QUANTITIES ABOVE ARE APPROXIMATELY ONLY JOB SITE TO BE LEFT NEAT AND CLEAN</small>					
					\$68,219.00

This bid is good for 20 days due to the unstable liquid asphalt market.

PAYMENT WILL BE AS FOLLOWS:

Orders under \$1,500.00 must be fully prepaid.

Orders over \$1,500.00 require a 10% down payment. Balance due upon completion.

A 3% service charge will be assessed on credit card payments for orders of \$1,500.00 or more (including deposits). Deposits are non-refundable.

We accept Visa, MasterCard, Discover and American Express.

Note: There will be a relocation fee of \$150.00 for a 2nd move.

Damages due to heavy equipment crossing concrete work are not covered.

A-1 Asphalt, Inc. is not responsible for landscape, restoration, sprinkler heads, etc. Any weed control, if required, must be applied by owner.

We cannot warranty against reflective cracking on overlay projects. Due to Michigan weather, we cannot warranty against concrete cracking.

Additional charges apply if sub-base is found to be unsuitable and needs replacement. Any charges will be agreed upon in writing by the customer and A-1 Asphalt Inc.

Additional charges will apply for any special insurance requirements such as Waiver of Subrogation or anything above our normal coverage.

Respectfully Submitted by:

Darryl Saindon

Acceptance of Proposal

Thank you for allowing A-1 Asphalt to submit this Proposal. The Customer hereby agrees and acknowledges that they have carefully reviewed this Proposal, fully understand all of its terms and conditions, including all those terms and conditions on the reverse side of this contract, and voluntarily and knowingly accept the proposal as specified herein. A-1 Asphalt is hereby authorized to perform the work as specified.

I have read, understand and agree to be bound by the terms of this contract, including the Standard Conditions appearing on page 2 (or the reverse side) of this contract, and incorporated by reference. Please sign/initial and date both pages.

By: _____
Individually/Personally Guaranteed

Title: _____

Date: _____

PH: 616-877-4400 • 800-871-4401 • Fax: 616-877-4630

WWW.A1ASPHALTINC.COM

COMMERCIAL • INDUSTRIAL • RESIDENTIAL • MUNICIPAL

Serving West Michigan since 1988



STANDARD CONDITIONS

All terms and provisions as set forth below are accepted as part of this Contract.

1. Orders under \$1,500.00 must be fully prepaid (by check or credit card). Orders over \$1,500.00 require a 10% deposit with balance due upon completion. All deposits are non-refundable. Any invoice(s) not paid within 30 days or within the month received are subject to a time price differential of 1 1/2% per month, which the customer hereby agrees to pay. A-1 Asphalt Inc. accepts payment by credit card (Visa, MasterCard and Discover), so long as Customer agrees to pay a 3% handling charge for orders over \$1,500.00. No charge shall apply for orders under \$1,500.00
2. Customer is responsible for all permits. A-1 Asphalt Inc. shall carry all necessary insurances, including workers' compensation insurance.
3. There are no warranties of merchantability, and there are no warranties which extend beyond the description contained on any invoice or sales agreement, other than as follows: All material is guaranteed for one (1) year as specified. All claims must be brought to the attention of A-1 Asphalt within 12 months of date of invoice.
4. Any alteration or deviation from the above specifications/proposal which result in additional cost will be performed only upon a written change order signed by both A-1 Asphalt and Customer
5. A-1 Asphalt Inc. will not be liable for delays caused by labor disturbances, weather conditions, acts of God, and acts of environmental agencies, accidents, shortages of necessary materials and supplies or any other cause beyond our control.
6. Nothing contained in this agreement shall be construed as a waiver or modification of A-1 Asphalt Inc's statutory rights, which lien rights A-1 Asphalt Inc. will exercise if payment by the customer is not made promptly. If A-1 Asphalt Inc. finds it necessary to commence any type of collection proceedings to collect any balance due from the customer, the customer agrees to pay all cost of collection and all attorney fees incurred by A-1 Asphalt Inc., its successors and assigns.
7. A-1 Asphalt retains a security interest in all materials provided by A-1 Asphalt Inc. until payment in full and reserves the right to repossess any and all materials of any kind if all account balances are not paid in full within 30 days of the invoice date. Customer will be responsible for any costs of repossession.
8. Customer will bear responsibility for all work areas when A-1 Asphalt is not actively working.

CHOICE OF LAW

The customer agrees and acknowledges that this agreement is fully executed and performed within the State of Michigan and is to be governed and construed as to the laws of the State of Michigan. Customer hereby agrees to waive any objection to the venue of any action brought to collect amounts due and owing by the customer and also irrevocably waives their rights to a trial by jury in any lawsuit proceeding or counter-claim involving this Proposal/Contract.

ENTIRETY CLAUSE

This Agreement and the Attachments hereto constitute the entire agreement between the contracting parties concerning the subject matter hereof. All prior agreements, discussions, representations, warranties and covenants are merged herein. There are no warranties, representations, covenants or agreements, expressed or implied, between the parties except those expressly set forth in this agreement. Any amendments or modifications of this agreement shall be in writing and executed by the contracting parties.

CUSTOMER'S STATEMENT

Customer hereby asserts that all questions in this application have been fully and truthful answered. Customer agrees and understands that the above trade accounts may be contacted for credit information as well as an investigation conducted through credit bureaus. The customer hereby gives all of its creditors and bankers permission to give A-1 Asphalt Inc. information concerning the customer. The customer also gives A-1 Asphalt Inc. permission to give credit reporting agencies or other creditors information relating to any credit given to customer. The customer understands that the terms of the credit are payable upon receipt of invoice. The customer agrees to pay the time price differential in the amount of 1 1/2 % per month on any unpaid balances.

STATUTE OF LIMITATIONS

The parties agree that any action in relation to an alleged breach of this Agreement shall be commenced within one year of the date of the breach, without regard to the date the breach is discovered. Any action not brought within that one year time period shall be barred, without regard to any other limitations period set forth by law or statute.

FORCE MAJEURE

Any delay or failure in the performance by either party hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage, terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes, other than those of Seller or its suppliers, that prevent seller from furnishing the materials or equipment and other like events that are beyond the reasonable anticipation and control of the Party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a party's failure to perform its obligations under this agreement.

OVERRIDING AGREEMENT

These terms supersede and override any and all contractual terms and conditions of the other contracting party howsoever and whenever communicated.

LIMITATION OF LIABILITY

In no event will A-1 Asphalt Inc. be liable to the customer for any lost profits, lost savings or incidental, indirect, special or consequential damages, arising out of your use or inability to use the product or the breach of this agreement.

INDEMNIFICATIONS

Customer agrees to defend, indemnify and hold A-1 Asphalt Inc. harmless from any claim, liability, or defense cost for injury or loss sustained by any party from exposures allegedly caused by A-1 Asphalt Inc's performance of services hereunder, except for injury or loss caused by the negligence or willful misconduct of A-1 Asphalt Inc. These indemnities are subject to specific limitations provided for in this agreement.

INITIAL: _____

DATE: _____