



LEGAL NOTICE

INVITATION TO SUBMIT QUOTATIONS

The Town of Smyrna will accept quotations for the annual asphalt paving for the Street Department. Bidders shall submit sealed quotations in the format specified in the Invitation to Submit Quotations no later than **2:30 p.m., May 8, 2025** at which time bids will be publicly opened and read aloud. No bid may be withdrawn after the scheduled closing time for a period of 90 days. Bidding documents may be obtained at Smyrna Town Hall during regular business hours or www.townofsmyrna.org. Quotations should be mailed or hand delivered to:

Rex S. Gaither
Smyrna Town Hall
Sealed Bid Annual Asphalt Paving / May 8th @ 2:30 p.m.
315 South Lowry Street
Smyrna, TN 37167

The Town of Smyrna will not discriminate in the purchase of all goods and services on the basis of race, color, religion, sex, national origin, age, disability or any other lawfully protected classification.

Bidder's legal name, license number, expiration date and license classification must be placed on the sealed envelope containing the proposal, otherwise the bid will not be opened. All Bidders must be licensed Contractors in the State of Tennessee in strict accordance with State regulations. All bidders shall comply with the Tennessee Contractor' License law Section 62-6-119 (Bid documents - Required disclosure by bidders) when submitting bids. Please refer to the State Licensing Board <https://www.tn.gov/commerce/regboards/contractor> for all applicable licensing laws.

Verbal quotations or quotations received after the closing date will not be accepted. The Town of Smyrna reserves the right to reject any and all bids, to waive technicalities or informalities and to accept any bid deemed to be in the best interest of the Town.

SUBMITTED BY: REX S. GAITHER
ASSISTANT TOWN MANAGER
TO BE RUN: April 8, 2025

COMPANY NAME

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SECTION I - GENERAL INFORMATION

- A. The Town of Smyrna desires to contract for asphalt paving requirements for the Street Department.

Smyrna Town Hall location:
315 South Lowry Street
Smyrna, TN 37167

Questions should be directed to Chaz Dearmon (615) 459-9730,
E-mail: chaz.dearmon@townofsmyrna.org.

- B. The Town of Smyrna reserves the right to reject any and all bids, to waive technicalities or informalities and to accept any bid deemed to be in the best interest of the Town. No bid may be withdrawn after the scheduled closing time for a period of 90 days.
- C. The bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully address the full intent and meaning of each aspect of the specifications.
- D. All forms shall be completed and included as an integral part of each bidder's proposal.
- E. Freight shall be paid by vendor and should be included in unit price bid.
- F. The Town is a tax-exempt organization.
- G. Mail is delivered after 11:00 a.m. Monday through Friday.
- H. The Town reserves the right to bid specific road projects separately at its discretion.
- I. Sections III and IV will be valued together to award to one contractor with Section III being the most significant portion in awarding of this bid. Section IV could be awarded to a separate contractor.
- J. By submission of this bid, each bidder/proposer and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to T.C.A. § 12-12-106 Iran Divestment Act. For reference purposes, the list is currently available online at: [State of TN Debarred Vendors.pdf](#)

SECTION II - ASPHALT PAVING AND COLD PLANING REQUIREMENTS

Scope: The work covered by this item shall consist of the repaving, crack sealing, and cold planing of existing streets. Surface preparation work will be covered in each section. The Town will authorize preparation work in advance by Public Works Director. The listed quantities and roadway list are estimates of work that may be performed. The actual amount of work to be performed will be based on the annual budgetary constraints of the Town.

Special Notes:

- 1) The contractor is required to provide a 1” to 1.25” lip on existing paved driveways. If the lip is not present, the contractor will perform additional milling so that when the roadway is resurfaced, the required lip will be provided.**
- 2) The contractor is required to bring approximately 800 tons / 40 tandem axel dump truck loads of millings to the Streets Shop at 102 G Street, Smyrna, TN and unload it at the designated location.**

The Town will provide a list of proposed streets to be paved and reserves the right to amend the list, as an increase or decrease to the estimated work listed. The Town will be limited to the amount of paving by budgetary restraints. The Town requires the contractor to start and continuously (normal Monday through Friday standard business hours) work the finalized list until completed. The list is subject to change upon written notification from the Town. Any additional significant increase or decrease in work will be rescheduled. After completion of the list the Town requires the contractor to return within 2 weeks after written notice to perform any additional work from the original list. If the contractor is unable to comply with these conditions this would breach the contract.

1. The price quoted for asphalt concrete surface and binder material shall include all materials, equipment, labor, and all other items incidental to the placement and compaction of the said asphalt concrete materials. Placement operations shall be as directed by the designated official of the Town of Smyrna and shall include patching and repair of designated areas. This price shall include all surface preparation by grading to achieve proper drainage, all cleaning placement of shoulder stone where instructed by the Town, furnishing and placing tack coat and disposal of excess materials.

The contractor shall adjust all manholes, inlets, valve boxes, and other castings necessary for asphalt concrete placement.

2. No bidder may withdraw a bid for a period of ninety (90) days after bids have been opened.
3. The right is reserved to reject any and all bids and to waive all technicalities in doing so.
4. Bidder's legal name, license number, expiration date and license classification must be placed on the sealed envelope containing the proposal, otherwise the bid will not be opened. All Bidders must be licensed Contractors in the State of Tennessee in strict accordance with State regulations. All bidders shall comply with the Tennessee Contractor' License law Section 62-6-119 (Bid documents - Required disclosure by bidders) when submitting bids. Please refer to the State Licensing Board <https://www.tn.gov/commerce/regboards/contractor> for all applicable licensing laws.
5. **ERROR IN BID** - in case of error in the extension of prices in the bid, the unit price will govern. No bid shall be altered, amended, or withdrawn after specified time for opening bids.

Negligence on the part of the bidder in preparing the bid confers no right for the withdrawal of the bid after it has been opened.

6. INSPECTION - Final inspection and acceptance or rejection will be made at a delivery destination, but all materials and all workmanship shall be subject to inspection and test at all times and places, and when practicable, during construction. The right is reserved to reject articles which contain defective material and workmanship. Rejected materials shall be removed by and at the expense of the contractor promptly after notification or rejection. Final inspection and acceptance or rejection of the materials shall be made as promptly as practicable, but impose no liability on the Town of Smyrna or any subdivision thereof for such materials as are not in accordance with the specifications. Final inspection or acceptance does not relieve the contractor from liability for use of materials or construction standards as are not in accordance with the specifications or industry practices. In the event necessity requires the use of materials or supplies not conforming to the specifications, payment therefore may be made at a proper reduction price.

All mixes will require job mix formula per TDOT specifications. Trucks may be pulled and weighed at random.

7. SPECIFICATIONS - it is understood that reference to available specifications shall be sufficient to make the terms of such specifications binding on the contractor.
8. Rental on equipment, Section IV, will be paid for only when the equipment is running and is in use.
9. Quantities of pavement and time on equipment may vary and may be determined by the Town.
10. PERFORMANCE AND OTHER BONDS - CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR'S obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of the preceding paragraph. CONTRACTOR shall within five days thereafter substitute another Bond and Surety, both of which must be acceptable to the TOWN.

11. TERM - The term shall be for 12 months from the date of contract execution.

12. ADJUSTMENTS TO CONTRACT UNIT PRICES

This Special Provision Covers The Method Of Price Adjustment For Bituminous Materials.

The normal bid items in the contract covering the bituminous material shall remain the same, but the contract unit bid prices for these items will be adjusted to compensate for increases and decreases in the contractor's bituminous material cost in the following manner:

A "Basic Bituminous Material Index" will be established by the Tennessee Department of Transportation prior to the time the bids are opened. This "Basic Bituminous Material Index" is the average of the current quotations on P.G. 64-22 from suppliers furnishing asphalt cement to

contractors in the State of Tennessee. These quotations are the cost per ton f.o.b. supplier's terminal.

The "Basic Bituminous Material Index" for this project is **\$ 600.00** per ton for March 2025.

The "Monthly Bituminous Material Index" is also established on the first day of each month by the same method. The "Monthly Bituminous Adjustment Factor" is the difference (+/-) between the "Basic Bituminous Material Index" and the "Monthly Bituminous Material Index".

The "Monthly Bituminous Adjustment Factor" shall be applied to the contract unit price bid provided the increase or decrease differs 5% or more from the "Basic Bituminous Material Index". The Public Works Director reserves the right to alter the quantities of material or modify the design if the change in prices warrants material or design substitution.

The adjustment will be calculated in accordance with the following formula only when the percent change of price indexes is five or greater:

$$PA = [Ic - Ib] \times T$$

Where,

PA = Price Adjustment for Adjustment Month

Ib = Basic Bituminous Material Index

Ic = Monthly Bituminous Material Index

T = Tons bituminous material for Adjustment Month

Price adjustment will be applied to all asphalt cement, asphalt emulsion, or bituminous material used for paving on this project.

The quantity of virgin asphalt cement in tons subject to price adjustment in recycled mixes shall be the product of the total tons of each mix multiplied by the difference between (1) the percent of asphalt cement specified for bidding purposes and (2) the percent of asphalt cement obtained from the recycled asphaltic material used in each mix. No price adjustment under this special provision for increases and decreases in the contractor's cost for virgin asphalt cement in recycled mixes will be allowed for asphalt cement content in excess of the percent specified for bidding purposes, as all payment adjustments for asphalt cement in the mix design of recycled mixes in excess of the percent of asphalt cement specified for bidding purposes will be made in accordance with the specifications.

The price adjustment for increases and decreases in the contractor's cost for virgin asphalt cement in recycled mixes will be calculated as follows when the percent change in price indexes is five or greater:

$$PA = [Ic - Ib] \times [BA - RA] \times Tm \\ 100$$

Where,

PA = Price Adjustment for Adjustment Month

Ib = Basic Bituminous Material Index

Ic = Monthly Bituminous Material Index

BA = Percent asphalt specified for bidding purposes

RA = Percent asphalt obtained from recycled asphaltic material used in each mix

Tm = Tons asphalt mix for adjustment month

The above procedure for calculating price adjustments for recycled mixes is also applicable to mixes consisting of one hundred percent virgin material when the asphalt cement is not a separate bid item and the asphalt content in each mix is established for bidding purposes. A totally virgin

mix is a special case in which the percent of asphalt obtained from recycled asphaltic material is zero (i.e., RA = 0).

The maximum allowable of recycled materials is 20%.

13. SMYRNA/LOCAL BUSINESS LICENSE

Compensation of more than \$100,000 from contracts performed in one county by a contractor described in Tenn. Code Ann. § 67- 4-708(4)(A) will be sourced to that county and the tax from such contracts will be distributed to that county. Compensation of \$100,000 or less from contracts performed in one county by such person will be sourced to the county of the person’s domicile or location. If the person does not have a domicile or location in Tennessee, such compensation will be earmarked and allocated to the state’s general fund.

For purposes of distribution of the municipal business tax provided for in Tenn. Code Ann. § 67-4-705, receipts will be sourced to the municipality in which the person’s established physical location, outlet, or other place of business is located. Receipts from sales made by persons operating from an established physical location, outlet, or other place of business in one municipality who extend their operations outside the boundaries of the municipality without establishing a physical location, outlet, or place of business outside the boundaries of the municipality will be sourced to the municipality in which the person’s established physical location, outlet, or other place of business is located.

If the person has no established physical location, outlet, or other place of business in the state, then such receipts will not be subject to the municipal business tax. Receipts from all taxable sales of any services or tangible personal property by a provider of video programming services will be sourced to the municipality where the property or service is received by the customer regardless of whether or not the provider has a physical location, outlet, or other place of business in that municipality.

Compensation of more than \$100,000 from contracts performed in one municipality by a contractor described in Tenn. Code Ann. § 67- 4-708(4)(A) will be sourced to that municipality and the tax from such contracts will be distributed to that municipality. Compensation of \$100,000 or less from contracts performed in one municipality by such person will be sourced to the municipality of the person’s domicile or location. If the person does not have a domicile or location in Tennessee, such compensation will not be subject to the municipal business tax. *(From Tennessee Business Tax Guide/ Tenn. Dept. of Revenue 2019; See also, Tennessee Works Tax Act (2023), Public Chapter 377, 2023 Session of the 113th General Assembly)*

INSURANCE REQUIREMENTS

The Contractor shall purchase and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE

1. Workers Compensation

Workers Compensation insurance shall be in compliance with the State of Tennessee and shall be statutory. Employers Liability shall be included with a minimum limit of \$500,000 per accident/per disease/per employee.

2. **Commercial General Liability**

Commercial General Liability insurance shall have a minimum limit per occurrence of \$1,000,000 and a minimum general aggregate of \$2,000,000. It shall include completed operations, product liability and personal injury liability insurance.

3. **Automobile Liability**

Automobile Liability Insurance shall have a minimum combined single limit per occurrence of \$1,000,000. This insurance shall include third-party bodily injury and property damage liability for owned, hired, borrowed and non-owned automobiles.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to the Town of Smyrna. The Contractor shall be responsible for all deductibles and self-insured retentions.

C. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. **General Liability and Automobile Liability Coverages**

- a. The Town, its elected and appointed officials, agents, employees and volunteers shall be named as an additional insured as regards negligence by the contractor.
- b. The Contractor's insurance shall be primary as respects the Town, its elected and appointed officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the Town of Smyrna shall be excess and non-contributory of the Contractor's insurance.

2. **Workers Compensation and Employers Liability Coverage**

The insurer shall agree to waive all rights of subrogation against the Town, its elected and appointed officials, agents, employees and volunteers for losses arising from work performed by the Contractor for the Town of Smyrna.

3. **All Coverages**

- a. Coverage shall not be canceled, suspended, or voided by either party (the Contractor or the insurer) or reduced in coverage or in limits except after 30 days written notice has been given to the Town of Smyrna. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy.
- b. Neither the acceptance of the completed work nor the payment thereof shall release the Contractor from the obligations of the insurance requirements or indemnification agreement.
- c. The insurance companies issuing the policies shall have no recourse against the Town of Smyrna for payment of premiums or for assessments under any form of the policies.
- d. Replacement certificates, policies or endorsements shall be provided to the Town for any such insurance expiring prior to the completion of services.

- e. Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its elected and appointed officials, agents, employees and volunteers.

D. ACCEPTABILITY OF INSURERS

All required insurance shall be provided by a company or companies licensed to conduct business in the State of Tennessee. Insurance shall be underwritten by insurers with an A.M. Best Company ratings no less than an A.

E. VERIFICATION OF COVERAGE

The Contractor shall furnish the Town with Certificates of Insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. **The Certificates are to be received and approved by the Town before work commences and upon any contract renewal thereafter.**

Upon failure of the Contractor to furnish, deliver and maintain such insurance as requested, this contract, at the election of the Town, may be suspended, discontinued or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

The Certificate of Insurance naming the "Town of Smyrna" as **Additional Insured** shall be addressed to the attention of:

Town of Smyrna
Department of Safety & Risk Management
ATTN: Henry Urbina
315 S Lowry St
Smyrna, TN 37167

It can also be submitted electronically henry.urbina@townofsmyrna.org.

The Town reserves the right to request complete certified copies of all required insurance policies at any time.

F. SUBCONTRACTORS

Contractor shall include all subcontractors as insureds under its policies **OR** shall be responsible for verifying and maintaining the Certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Town of Smyrna reserves the right to request copies of subcontractor's Certificates at any time.

G. WORKERS' COMPENSATION INDEMNITY

In the event Contractor is not required to provide or is exempt from providing workers' compensation coverage, the parties hereby agree that Contractor, its owners, agents and employees will have no cause of action against, and will not assert a claim against the Town of Smyrna, its elected and appointed officials, agents, employees and volunteers, under any circumstances. The parties also hereby agree that the Town of Smyrna, its elected and appointed officials, agents, employees and volunteers shall in no circumstance be, or considered as, the employer or statutory employer of Contractor, its owners, agents and employees. The parties further agree that Contractor is a wholly independent contractor and is exclusively responsible for its employees, owners, and agents. Contractor hereby agrees to protect, defend, indemnify and hold the Town of Smyrna, its elected and appointed officials,

agents, employees and volunteers harmless from any such assertion or claim that may arise from the performance of this contract.

HOLD HARMLESS AND INDEMNITY REQUIREMENT:

Contractor shall indemnify and hold harmless, to the maximum extent permitted by law, the Town of Smyrna and its officers, agents, employees, volunteers, from and against any and all liability, damages, losses, (whether in contract or in tort, including personal injury, accidental death or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), and costs (including reasonable attorney's fees, litigation, arbitration, mediation, appeal expenses) which in whole or in part are caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor and persons employed by or utilized by the Contractor in Contractor's performance of this Agreement.

The contractor further agrees to protect, defend, and save the Town, its elected and appointed officials, agents, employees and volunteers while working in the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind of character, including the cost of their defense, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death or damage to property arising out of services performed or omissions of services or in any way resulting from the acts of omissions of the contractor and/or its agents, employees, subcontractors, representative of the Town under this agreement.

Pursuant to Tennessee Attorney General Opinion 93-01, the Town will not indemnify, defend or hold harmless in any fashion the Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that the Contractor may provide.

APPLICABLE LAW:

Any contract resulting from this ISQ shall be governed by and construed under the laws of the State of Tennessee.

SECTION III - ASPHALT PAVING PRICE QUOTATION

SIGNATURE TO ACKNOWLEDGE RECEIPT OF ADDENDUM 1

Bid shall be for furnishing and installing asphalt concrete surface and binder (hot mix) in accordance with the attached conditions:

BID ITEM:

Asphalt concrete surface (hot mix) materials and placement shall be in accordance with Tennessee Department of Transportation standard specifications for road and bridge construction, January 1, 2021, and as amended.

	Description	Units	Quantity	Price per Unit	Total Price per Item
307-01.08	Asphalt Concrete Mix (PG64-22) (BPMB) Grading B-M2	Ton	500		
307-01.09	Asphalt Concrete Mix (PG64-22) Grading C	Ton	50		
307-01.15	ACS (PG64-22) (BPMLC-HM) Grading CS	Ton	500		
307-02.08	Asphalt Concrete Mix (PG70-22) (BPMB) Grading B-M2	Ton	100		
403-05.01	Bituminous Material (Fog Seal) (Roadway / Shoulder)	Ton	3		
411-01.10	ACS Mix (PG-64-22) Grading D	Ton	500		
411-01.11	ACS Mix (PG-64-22) Grading E Roadway	Ton	500		
411-01.13	ACS Mix (PG-64-22) Grading D Limestone Aggregate	Ton	50		
411-02.10	ACS Mix (PG-70-22) Grading D	Ton	500		
411-04	Crack Sealant	LB	1,000		
411-33.34	Stamped Asphalt Pattern	SF	10,000		
415-01.01	Cold Planing Bituminous Pavement (1.5" Depth)	Ton	500		
415-01.01	Cold Planing Bituminous Pavement (4" Depth)	Ton	100		
411-12.04	4" +/- 1/4" Rumble Stripe per TDOT Standard Drawing T-M-16	LM	5		

FILLING CRACKS IN FLEXIBLE PAVEMENT

Description. This work shall consist of cleaning and filling existing longitudinal and transverse cracks having a width of 3/16 inch or greater in flexible pavements and shoulders. Work shall be in accordance with TDOT standard specifications dated January 1, 2021.

Method of Application. All cracks shall be thoroughly cleaned with high pressure, dry compressed air removing all vegetation, debris, moisture and foreign materials, as directed by Public Works Director or Chaz Dearmon. The sealant shall be applied to the crack with a pressure feed wand system immediately after cleaning at a temperature within the range recommended by the Manufacturer of the sealant. The sealant shall be applied using the flush fill method. The crack shall be filled level with the asphalt surface. Immediately after

placement of the sealant, a v-shaped rubber squeegee shall be use to level all excess material above the asphalt surface. Any sealant above the asphalt surface must be feathered out as directed by the Engineer. The crack filling will only be allowed when both the air and pavement temperatures are within the tolerances recommended by the Manufacturer of the material.

Materials. The sealant shall be a **Hot-Poured Elastic Type Joint Sealer, Type II** conforming to the requirements of ASTM D6690 with the following exceptions. The sealant shall be listed on the TDOT’s Qualified Products List 5. Section C. Hot Pour Joint Sealers.

The specification limits for sealant shall be as follows:

<u>TEST</u>	<u>Specification</u>
Cone Penetration (ASTM D5329)	20-40
Resilience (ASTM D5329)	30% min.
Softening Point (ASTM D36)	210°F (99°C) min.
Ductility, 77F (25C) (ASTM D113)	16in (40cm) min.
Flexibility (ASTM D3111 Modified)	Pass at 30°F (-1°C)
Flow 140°F (60°C) (ASTM D5329)	0.2in (0.5cm) max
Brookfield Viscosity, 400°F(204°C) (ASTM D2669)	100 Poise max.
Asphalt Compatibility (ASTM D5329)	Pass
Bitumen Content (ASTM D4)	60% min
Tensile Adhesion (ASTM D5329)	400% min.
Safe Heating Temperature	As recommended by the Mfg
Recommended Pour Temperature	As recommended by the Mfg

Storage, heating, application instructions and cautions shall be supplied with each shipment. The sealant shall be able to be reheated to application temperature at least once after the initial heat up without degradation of sealant specifications. The joint sealer shall be a mixture of virgin synthetic rubber or reclaimed rubber or a combination of the 2 with asphalt and plasticizers and tacifiers. Ground cured rubber scrap shall not be used. The sealer shall be free of foreign materials, and when melted shall be free of lumps. The material will be kept within the temperature range recommended by the Manufacturer. The Contractor shall furnish the Engineer with a certified statement from the Manufacturer of the sealant showing compliance with this specification together with a certified copy of the test report.

Equipment. The melter-applicator shall be an oil jacketed double boiler type, equipped with an agitator and separate thermometers for both the oil bath and the melting vat. All equipment necessary for the satisfactory performance of this operation shall be on the job and approved by the Engineer before work will be permitted to begin.

Traffic Control. All traffic control shall be in accordance with the **Manual on Uniform Traffic Control Devices (MUTCD)**.

Contractor to include cost of Traffic Control in cost of milling and asphaltic concrete installation.

Performance. The Contractor shall repair/replace any crack sealant that fails to bond to the existing pavement within one year of initial placement. All costs to repair/replace the sealant shall be borne by the contractor.

Method of Measurement. Sealant for random cracks will be measured by the pound. At the beginning of each work day, the Public Works Director, or his appointed representative, shall document the amount of material in the heater-melter unit and log all additional material added during the day and measure the amount of material remaining in the heater melter at the end of each day to determine the total poundage used.

Basis of Payment. Payment for Crack Sealant, by the pound, shall be full compensation for the sealant in place, including cleaning of cracks and all incidentals of the work.

SECTION IV - EQUIPMENT RENTAL/OPERATOR SPECIFICATIONS AND PRICE QUOTATION

Heavy equipment rental on an hourly basis shall include equipment, qualified operator, fuel, insurance, supervision and all other items incidental to the provision of all equipment. Heavy equipment rental will be reviewed by the Town of Smyrna who reserves the right to value this section in combination with **SECTION III & IV.**

	RATE PER HOUR
1. D-5 (HYDRAULIC); or an approved equal	_____
2. D-6 (HYDRAULIC); or an approved equal	_____
3. D-8 (HYDRAULIC); or an approved equal	_____
4. 955 LOADER; or an approved equal	_____
5. 977 LOADER; or an approved equal	_____
6. #12 MOTOR GRADER	_____
7. EARTH MOVING SCRAPER	_____
8. BACKHOE	_____
9. TANDEM DUMP TRUCK	_____
10. 750 CFM COMPRESSOR	_____
11. SHEEP'S FOOT ROLLER	_____
12. LARGE TRACK HOE	_____
TOTAL	\$ _____

In compliance with the conditions stated above and attached specifications and conditions, the undersigned offers, and agrees, if this bid is accepted within 90 days from opening date, to furnish and install all items at the prices set above. This agreement will be effective for 12 months from the date of the contract execution.

SPECIAL CONDITIONS

Item No. 1 Non-Collusion Affidavit

All bidders must submit with bid a non-collusion affidavit as contained in these documents.

Item No. 2 Discrepancies

Where there appears to be a discrepancy between the Special Conditions and any other part of the contract documents and specifications, these Special Conditions shall govern.

Item No.3 Tennessee Department of Transportation Specification

The most current edition of the Tennessee Department of Transportation, Standard Specifications for Roadway and Bridge Construction, and any revisions and amendments since then, are hereby designated a part of these specifications. All materials, equipment, workmanship, traffic control methods, and any other applicable parts of this publication shall be in accordance with this publication. In the Standard Specifications and Special Provisions, change the words as listed below and substitute the words:

State to Owner
Department to Owner
Commissioner to Owner
Engineer to Owner

Item No. 4. Term

The term shall be for 12 months from the date of contract execution.

Item No. 5 Construction Time

A list of all roadways to be milled and resurfaced will be given to the contractor no later than September 1. The time to complete milling and resurfacing of all listed roadways is no later than May 1. The Town requires the contractor to start and continuously (normal Monday through Friday standard business hours) work the finalized list until completed. The Town requires at least 50% of the work to be completed by December 1 but prefers all work to be complete by December 1.

Any additional significant increase or decrease in work will be rescheduled. After completion of the list the Town requires the contractor to return within 2 weeks after written notice to perform any additional work from the original list. If the contractor is unable to comply with these conditions this would breach the contract.

Item No. 6 Construction Schedule

The time allocated for this work is more than adequate to assure its completion, therefore the contractor must notify the Owner at least 14 days in advance as to the date he will begin paving. The contractor will be expected to complete all work within the allotted time, and failure to do so will result in liquidated damages being assessed against the contractor at the rate of \$250.00 per calendar day until all the work for that period is completed. Consideration will be given for each day the contractor is unable to work due to weather.

Item No. 7 Notification

The contractor will notify the residents of all streets to be affected by construction prior to commencing work by the following means:

Newspaper (black-bordered ad bold heading near front of the paper, 7 days

Public television or radio and the web site for the Town of Smyrna, 7 days

Item No. 8 Utilities

All utility adjustments are to be performed by the contractor, except as he may negotiate with the owners to have the adjustments at the rate provided in his bid proposal and made a part of the contract.

The contractor shall schedule a meeting with all utilities at least 48 hours prior to the scheduled paving to verify that all castings have been properly adjusted and there are no conflicts with proposed utility construction. It will be necessary for all utilities to perform an on-site inspection with the contractor to verify all castings are properly adjusted. Any castings that are not properly adjusted must be readjusted prior to paving.

Item No. 9 Pavement Preparation

The contractor shall specifically be aware of the requirements for pavement preparation. Cleaning cracks and joints of excess and/or crack sealer, notching for transverse joints of excess joints and cracks of dirt and vegetative growth are included in the contract bid price for items. No additional compensation will be provided for pavement preparation.

Item No. 10 Asphalt Delivery Temperature

In order to ensure proper compaction of the asphalt mixes specified within this contract, the delivery temperature shall be within the ranges specified in Sections 307, 407 and 411 of the most current edition of the Tennessee Department of Transportation, Standard Specifications for Road and Bridge Construction. Failure to meet these temperature requirements shall subject the mix to being rejected by the Owner or his designee.

Item No. 11 Traffic Control

Traffic control provisions are detailed in Section 13 of the Contract Technical Specifications. Cost to maintain traffic control measures shall be paid for per the items provided within this contract. The contractor will furnish examples of traffic control plans at the pre-construction meeting for review by the Traffic Department. In certain situations, specific traffic control plans may be required based on the scheduled work and location.

Item No. 12 Certification of Scale Operators

The Contractor's attention is specifically directed to Tennessee Code Annotated 47-26-101, et seq., governing certification and bond of scale operators. The provisions of this code as well as all other federal, state, and Town of Smyrna laws, ordinances, rules and regulations applicable to the construction of this project shall apply to the Contract throughout. The Town of Smyrna reserves the right to direct the Contractor to a state or commercially owned scale to verify scale weights provided by the Contractor.

Item No. 13 Quantities

The quantities shown under for the items listed for bidding purposes are estimated amounts only. The quantities used will fluctuate based on the need for the items during the contract period.

Item No. 14 Construction Dates and Temperature

Do not place bituminous plant mix, with a compacted thickness of 1.5 inches or less, between November 30 and April 1. Do not place bituminous plant mix, with a compacted thickness greater than 1.5 inches, between December 15 and March 16.

Table 407.09-1: Temperature Limitations Compacted Thickness

Compacted Thickness	Minimum Air or Surface Temperature (°F)	
	Unmodified mixes (PG 64, 67)	Modified mixes (PG 70, 76, 82)
< 1.5 inches	45	55
> 1.5 inches to < 3.0 inches	40	50
≥ 3.0 inches	35	45

The Contractor may request a variance from the above required temperature and seasonal limitations to pave at lower temperatures if there is a benefit to the public. Submit such requests in writing at least one week before the anticipated need, and include a Paving and Compaction Plan for Cold Weather. The plan shall identify what practices and precautions the Contractor intends to use to ensure the mixture is placed and compacted to meet the specifications. The plan shall include compaction cooling curves estimating the time available for compaction, the intended production, haul, and compaction rates, with paver and roller speeds estimated. The Contractor may consider using such practices as the addition of rollers, reduced production and paving rates, insulated truck beds, and heating the existing surface. If the specified densities are not obtained, stop all paving operations and develop a new plan. All mixture failing to meet specifications will be subject to price adjustments or removal and replacement at no cost to the Owner.

Item No. 15 Cold Planing

The Contractor shall notify the office of the Owner at least 14 days prior to commencing any cold planing under this contract. The Contractor will coordinate any necessary casting adjustments with the proper utility while this work is in progress. All grindings must be picked up by the end of each work day. No piles of grindings or loose asphalt are to be left on the street overnight. In the even dust from the grindings becomes a nuisance, the Owner shall require the Contractor to provide a water truck to remedy the situation. No payment will be made for this activity. All grindings will be the property of the Contractor and will be disposed of or stored at a site that meets town, state and federal regulations.

This item will be paid on a square yard basis.

Item No. 16 Contract Extension

The Town of Smyrna reserves the right to award all or any part of this Contract to one or more bidders. There are no contract extensions with this agreement.

Item No. 17 Recycled Asphalt Material

Unless otherwise noted, the use of recycled asphalt will not be permitted in the design of 411-E, 411-D, and 307-B mixes.

Item No. 18 Quality Control and Acceptance Requirements

Contractor's Quality Control:

General. Assume responsibility for the quality of construction and materials incorporated in the Work. Provide and maintain a quality control system that will provide reasonable assurance that all materials conform to specification requirements. Conduct all quality control sampling and testing according to the approved Quality Control Plan and the Owner's Policies on Sampling and Testing Procedures and Sampling of Asphalt Mixes for Verification of Laboratory Design. The requirements for the Contractor's quality control sampling and testing will remain in effect until final Project acceptance.

Contractor Quality Control System. Develop, implement, and maintain a quality control system that will provide reasonable assurance that all materials and products submitted to the Owner for acceptance conform to the specified requirements.

Quality Control Technician. Ensure that a Quality Control Technician, who is currently certified by the Department as a Certified Asphalt Plant Technician, is present at the asphalt plant during mix production. If the Owner finds that the Quality Control Technician cannot perform as required by the position, the Owner will revoke the certification and require replacement with a certified technician.

Documentation. Document all quality control procedures, inspections, and tests and make this information available for review by the Owner throughout the life of the Contract. Maintain adequate records of all inspections and tests. The records shall indicate the nature and number of tests performed, the number and type of deficiencies found, and the nature of corrective action taken as appropriate. The Contractor's documentation procedures will be subject to the review and approval of the Owner before the start of the work and to compliance checks during progress of the work. Provide copies of all charts and records documenting quality control tests and inspections to the Engineer on a daily basis.

Quality Control Plan. At the beginning of each paving season, submit in writing the proposed Quality Control Plan for the Owner's approval. Include in this plan the sampling, testing, and inspection activities, and the anticipated frequencies of each, which the Contractor will follow to maintain process control. This Quality Control Plan shall apply to all Owner contracts for the calendar year. If a change is made to the Quality Control Plan during the year, communicate such changes to the Owner. The Contractor is responsible for formulating all design mixes with the exception of plant mix seal coat mixes. No lab design is required for 307 Grading A, AS, and ACRL mixes. However, establish the anti-strip additive dosage rate and verify compatibility of mixture materials by the ten minute boil test as specified in 407.03.E.2. Submit all Contractor-furnished design mixes to the Owner for approval prior to their use. Provide process control of all materials during handling, blending, mixing, and placing operations.

Acceptance

The Owner will base acceptance of the mixture on test results of consecutive random samples taken from each lot. The Engineer will accept bituminous mixture at the plant with respect to gradation and asphalt content, on a lot basis. A standard size lot at the asphalt plant will consist of a day's production. The number of sublots in a lot will vary from n=1 to n=4 according to the Table (Sublot Requirements). One random sample will be taken from each subplot. The bituminous mixture will be sampled at the plant according to AASHTO T 168. The percent bitumen content of the mixture will be determined according to AASHTO T 164 or by AASHTO T 308 except as herein revised. The Contractor may use an approved ignition furnace instead of a vacuum extractor for the use in determining asphalt content and gradation. The method of calibration and test procedures shall comply with AASHTO T 308 Method A and the following. At least once per week, per mixture, during production, check the AASHTO T 308 correction factors with a sample of the aggregate mixture proportions, blended at the optimum asphalt content. Adjust the correction factor accordingly. Keep records of all correction factors for all mixtures. Adjusted payment for asphalt content and gradation will be based on the ignition furnace results as specified in Table (Acceptable Schedule of Payment). Use of this alternative equipment shall be at no additional cost to the Department. The percents passing the sieves will be determined in accordance with AASHTO T 30.

Table: Sublot Requirements

Quantity (tons)	Number of Sublots
3001- 4000	4 tests
2001 - 3000	3 tests
1001 - 2000	2 tests
Less than 1000	1 test

**Table: Acceptance Schedule of Payment
(Asphalt Plant Mix Characteristics)**

Characteristics	Pay Factor	Average Arithmetic Deviation of the Lot Acceptance Test from the JMF	
		1 Test	2 Test
Asphalt Cement	1.00	0.00 - 0.30	0.00 - 0.25
	0.95	0.31 - 0.35	0.26 - 0.30
Content (1) (Extraction of Ignition Oven)	0.90	0.36 - 0.40	0.31 - 0.35
	0.80 (2)	over 40	over 0.35
Gradation 3/8 inch sieve and larger	1.00	0.00 - 6.50	0.00 - 5.70
	0.95	6.51 - 7.08	5.71 - 6.20
	0.90	7.09 - 7.66	6.21 - 6.69
	0.80 (2)	over 7.66	over 6.69
Gradation No. 4 sieve 131	1.00	0.00 - 4.62	0.00 - 4.00
	0.95	4.63 - 5.20	4.01 - 4.50
	0.90	5.21 - 5.77	4.51 - 5.00
	0.80 (2)	over 5.77	over 5.00
Gradation No. 8, 16, 30 & 50 sieves (3)	1.00	0.00 - 3.80	0.00 - 3.30
	0.95	3.81 - 4.46	3.31 - 3.91
	0.90	4.47 - 5.12	3.92 - 4.52
	0.80 (2)	over 5.12	over 4.52
Gradation No. 100 & 200 sieves 131	1.00	0.00 - 1.80	0.00 - 1.60
	0.95	1.81 - 2.00	1.61 - 1.75
	0.90	2.01 - 2.20	1.76 - 1.90
	0.80 (2)	over 2.20	over 1.90

(1) Does not apply to 307 Grading A, AS, or ACRL mixes.

(2) If approved by the Engineer, the Contractor may accept the indicated partial pay. The Department may require removal and replacement at no cost. The Contractor may remove and replace at no cost to the Department at any time.

When there is more than one reduced payment relating to gradation in 1 lot of material, only the greatest reduction in payment will be applied. Reductions applicable for any other reason will be cumulative.

Deduction for both asphalt content and gradation deficiencies will be cumulative. The Department will apply deductions to the total price of the mix (asphalt cement and aggregate combined) under the item for Asphalt Cement Content and Gradation Deduction.

Test Strip and Density Requirements.

Test Strip Construction - Construct each test strip with approved bituminous mixture. The test strip shall remain in place as a section of the completed work. Construct each test strip to be 1 paver width wide, with an area of at least 400 square yards and of the depth specified for the pavement course concerned. Immediately after placing the bituminous mixture, begin compacting the test strip. Perform compaction in a continuous and uniform manner over the entire test strip. Continue compacting the test strip until additional roller coverage will produce no appreciable increase in density (1 pound per cubic foot), as measured using a nuclear gauge. Use the roller coverage necessary to obtain this maximum density as the rolling pattern for the remainder of the project. Take cores on the test strip at ten randomly selected locations as designated by the Owner. Do not take cores within 2 feet of the longitudinal edges for calibration. Provide these cores to the Owner for use in calibrating the nuclear gauge and to verify that the average density of the test strip meets the density requirements of the specifications. The Owner will report all densities using the corrected nuclear gauge readings. Correction factors are specific to the nuclear gauges used during the test strip construction. If a different nuclear gauge needs to be used for acceptance, it will be necessary to cut new cores from the ongoing pavement construction to calibrate the new gauge. When testing test strip cores, the Owner will determine density (bulk specific gravity) in accordance with AASHTO T 166, Method A only. All core samples shall be completely dry before testing. Air drying is permitted provided core samples are weighed at 2-hour intervals until dry in accordance with AASHTO T166, Section 6.1. Cores may also be dried in accordance with ASTM D7227. If the density of the asphaltic concrete in the test strip does not meet specification requirements, make whatever changes are necessary to obtain the specified density. Use other sources and combinations of aggregates as necessary, subject to the Owner's approval, to produce a mix meeting the required density.

Density - All asphalt concrete mixes including 307 B-M2, 411D, and 411E shall have an average density of 92 percent of the theoretical density with no individual test falling below 90 percent for roadways with an average ADT of 3,000 or greater, an average density of 91 percent of the theoretical density with no individual test falling below 89 percent for roadways with an average ADT of 1,000 to 3,000 and an average density of 90 percent of the theoretical density with no individual test falling below 87 percent for roadways with an average ADT of less than 1,000. Asphalt concrete mixes used for shoulder construction shall have an average density of 88 percent of the theoretical density with no individual falling below 85 percent.

Item No. 19 Anti-Stripping Additive

Use hydrated lime conforming to ASTM C977 or other heat-stable asphalt anti-stripping additive containing no ingredient harmful to the bituminous material or the workmen and

that does not appreciably alter the specified characteristics of the bituminous material when added in the recommended proportions.

When hydrated lime is the anti-stripping additive, use an amount equal to 1% by weight of the aggregate. Uniformly coat the aggregate with the lime, to the Engineer's satisfaction, before adding the bituminous material to the mixture. When using an anti-stripping additive other than hydrated lime, the percentage of anti-stripping additive used shall range between 0.3% to 0.5% by weight of the asphalt cement. The Department's QPL identifies qualified antistripping products. Do not use any product unless it appears on this list.

Mix silicone additives at the rate of 1 pint of silicone per 4 gallons of diesel fuel. The Contractor may use a 1/2 pint of this mixture per 1,000 gallons of asphalt.

The Contractor may add organic wax or foaming additives to bituminous plant mix to reduce placement temperatures as specified in 407.11. Introduce the WMA additives into the mixture at a constant rate, sufficient to produce the mix temperatures specified in 407.11, and in a manner approved by the Department. Record all changes to the proportions of the additive used during the course of mix production. The Department's QPL identifies qualified WMA additives. Only use additives appearing on this list.

Anti-Stripping Additive will not be paid for directly but to be included in the cost of other items.

Item No. 20 Miscellaneous

All incidental equipment used in cold planning and paving of Town streets shall be furnished by the Contractor and be included in the unit prices. No separate payment will be made for incidental equipment charges.

Item No. 21 Quarterly Bituminous Asphalt Adjustment Factor

The "monthly bituminous adjustment factor", according to Special Provision 109B, shall be averaged on a monthly basis and applied to the contract unit price bid provided the increase or decrease differs 5 percent or more from the "basic bituminous material index". The Owner reserves the right to alter the quantities of material, or modify the design if the change in prices warrants material of design substitution. If adjustments are made in quantities or design, the Contractor shall accept the unit price bid or the applicable monthly adjusted unit prices as full compensation for all work performed according to the provisions of TDOT subsection 104.02 of the standard specification.

Item No. 22 Pre-Construction Meeting

A pre-construction meeting will be scheduled prior to the issuance of a notice to proceed on this project. The striping contractor will be required to be in attendance.

Item No. 23 Protection of Curbs and Gutters, Sidewalks, and Brick Pavers

The contractor will take appropriate measures to protect the curbs and gutters, sidewalks and brick pavers during the paving of all streets. The tracking or spraying of tack or other asphalt products on these structures will not be permitted. The contractor must submit a plan to protect these areas during the paving operation to be approved by the owner. These same structures must also be protected during the milling operation. Damage to any of

these structures will result in repairs or replacements as determined by the owner. The cost of these repairs or replacements will be the sole responsibility of the contractor. The contractor is responsible for protecting all public and private amenities located within the limits of the right of way. Any damages caused by the contractor to these areas during this project will be repaired or replaced by the contractor at his expense.

Item No. 24 Milling and Paving Intersections with Traffic Signals

In the event there are intersections in this contract with traffic signals that will have sensors damaged during the milling operation, it is critical to coordinate the milling and paving of these locations with the Traffic Department. A subcontractor will need to reinstall the sensors prior to the paving operation. This will require advance scheduling and close coordination with this subcontractor to minimize downtime for these sensors. These locations will be identified at the pre-construction meeting by the Traffic Department.

Item No. 25 Hot In-Place Recycled Asphalt - Remix Process

This work shall consist of Hot In Place Recycling of the existing bituminous pavement in a continuous multi-step process of heating, scarifying or milling, remixing, blending of the dislodged material with an asphalt rejuvenating agent, spreading, reshaping, leveling, and compacting the asphalt pavement. All work shall be performed in accordance with the Standard and Supplemental Specifications 407 and Special Provision SP407HRA except as modified herein and in reasonably close conformity to the lines and grades shown on the plans or as directed by the Owner.

Asphalt Rejuvenating Agents will not be paid for directly but included in the price of other items.

Item No. 26 Fog Sealing Roadway and Shoulders

Provide a power broom, equipment for heating bituminous material, a pressure distributor meeting the requirements of TDOT Specification Section 402.03, and such other equipment and small tools as may be required to perform the work in a satisfactory manner.

Apply diluted emulsified asphalt at a rate of 0.10 to 0.15 gallons per square yard based on a dilution rate of one part emulsified asphalt to one part water. This application may require two equal increments if run-off occurs.

Item No. 27 Stamped Asphalt Crosswalks

Item shall be TrafficPatterns XD by TrafficScapes or approved equal. Contractor shall provide submittals including materials, color options, pattern options and application method prior to work commencing.



AGREEMENT

This Agreement is made and entered into as of this _____ day of _____, 20____, by _____ and _____ between _____, a _____ (the "Bidder") and the Town of Smyrna, Tennessee, a Tennessee municipal corporation (the "Town") for the purpose of _____.

WHEREAS, the Bidder has submitted a quotation for the provision of certain products and/or services to the Town, all in accordance with the terms of the Invitation to Submit Quotations attached hereto and incorporated herein by reference as if set forth at length verbatim as Exhibit A (the "ISQ"), and which Proposal from the Bidder is attached hereto and incorporated herein by reference as if set forth at length verbatim as Exhibit B (the "Quotation"); the ISQ and the Quotation, together with any and all ancillary documents thereto, shall be collectively referred to herein as the "Bid Documents"; and

WHEREAS, the Town now desires to accept the Bidder's quotation, in accordance with the terms set forth in such Bid Documents.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned do hereby agree as follows:

1. Acceptance of Bid Documents. The terms of the Bid Documents, as incorporated herein by reference, are hereby accepted by the parties hereto. The Bidder hereby agrees to provide the goods and/or services contemplated by such Bid Documents in accordance with the terms set forth therein. The Town hereby accepts the Bidder's quotation to provide the goods and/or services contemplated by such Bid Documents in accordance with the terms set forth therein.

2. Entire Agreement. This Agreement, including the exhibits and any other documents referred to herein or therein, which form a part hereof, contains the entire understanding of the parties with respect to its subject matter. There are no restrictions, agreements, promises, warranties, covenants or undertakings other than those expressly set forth herein or therein. This Agreement supersedes all prior written or oral agreements and understandings between the parties with respect to its subject matter and may not be altered, modified or amended, in whole or in part, except by the express written authorization and consent of the parties hereto.

3. Severability. This agreement constitutes the product of negotiations of the parties hereto and any enforcement of hereof will be interpreted in a neutral manner and not more strongly against any party based upon the source of the draftsmanship of this Agreement. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall continue to be fully effective.

4. Limitation of Liability. The Town of Smyrna shall not be liable for any loss, claim, expense or damage caused by, contributed to or arising out of the acts or omission of Bidder or third parties, whether negligent or otherwise.

5. Warranties. The Bidder warrants to the Town that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects, suitable for the purpose for which the materials and equipment are furnished, and in conformance with the Agreement. If it does not perform as warranted, Bidder shall use all commercially reasonable efforts to correct the product(s) so that it operates in all material respects in conformity with the written representations of Bidder. If Bidder cannot correct the product(s) within a reasonable period of time, Bidder shall refund the purchase price of the product(s). All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

6. Software Deadline, Testing and Acceptance: If applicable to the Agreement, software provided by Bidder shall be installed for the purposes of testing, as stated herein below, no later than one hundred twenty (120) days from the effective date of this Agreement unless the parties, in writing, set a different specific date. In Addition, software provided by Bidder to The Town is subject to inspection and testing to verify that the software conforms to its written specifications and to ensure it meets The Town's needs. The Town shall have seven (7) business days after the software is installed to perform testing of the software using The Town's data. The Town shall provide Bidder with written notice of acceptance or rejection of the software five (5) business days or less after the end of the testing period. If the Town does not provide timely written notice of acceptance or rejection to Bidder, the software shall be deemed to be accepted by The Town. If the software is rejected, The Town may, at its sole discretion, either (1) return the software and receive a refund of all fees paid with respect thereto, or (2) allow Bidder to repair or replace the software, without charge, in a timely manner. In the event The Town elects to allow the Bidder to repair or replace the software, The Town shall have an additional (7) business days in which to accept or reject the software as laid out hereinabove.

7. Use of The Town's Logo or Name: Bidder shall not use The Town's name or any logo in marketing or publicity materials or for marketing or publicity purposes without the prior written authorization from The Town. Bidder shall not issue, publish, or divulge any materials developed or used in the performance of this Agreement or make any statement to the media relating to this Agreement without the prior written consent of The Town.

8. Indemnification. The parties hereto agree that Bidder shall indemnify The Town for any and all claims of negligence, tortious conduct or otherwise unlawful acts committed by Bidder in the performance of their obligations under the terms of this agreement, including any and all attachments or exhibits thereto and Bidder agrees to pay any and all costs associated with the enforcement of the terms of this indemnity agreement by The Town, including but not limited to, court costs, civil judgments, assessments or any other reasonable fees associated therewith. This clause shall survive the expiration or termination of this Agreement and shall remain in full force and effect until the expiration of any applicable statute of limitation. In addition, Article II, Section 29 of the Tennessee Constitution prohibits municipalities from lending their credit to private or public entities and, therefore, prohibits an agreement by The Town to indemnify a third party or agree to a limitation of liability provision.

9. Non-Appropriation: Bidder acknowledges that The Town is a governmental entity, and the validity of this Agreement is based upon the availability of public funding under its authority. In the event The Town fails to appropriate funds or make monies available for any fiscal year covered by the term of this Agreement for services to be provided, this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to The Town, and such termination shall not be a breach of the Agreement, and any unused payment made to Bidder shall be returned to The Town.

10. Tax Exemption: As a tax-exempt entity, The Town shall not be responsible for sales or use taxes incurred for products or services. The Town shall supply Bidder with its Sales and Use Tax Exemption Certificate upon Bidder's request. Bidder shall bear the burden of providing its suppliers with a copy of The Town's tax exemption certificate and Bidder shall assume all liability for such taxes, if any, that should be incurred.

11. Attorney Fees. The parties hereto agree that The Town shall be in no event liable for any attorney's fees which Bidder may incur due to breach of this Agreement by either party; and further, The Town shall not acquiesce to any term in any document that indicates or infers The Town may or shall be responsible for the Attorney's fees of another party or the Bidder's attorney fees.

12. Boycott of Israel. The Bidder certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.

13. Failure to perform. The parties agree, in the event Bidder fails to perform any obligation, other than with regards to the date of delivery, set out in this Agreement, the Town shall be reimbursed by Bidder for any and all expenses associated with having to obtain a new provider to finish out the contracted term, including, but in no way limited to, any charges/fees, which are above and beyond the amount the Town would have paid to Bidder to complete the same task; provided, however, that if the failure, by its nature, is one that can be cured, the Bidder shall have fifteen (15) business days after receipt of written notice from the Town to cure said failure to perform. The parties hereby agree, unless a specific date of delivery is provided in this Agreement or other bid documents, all deliveries shall be made to the Town no later than ninety (90) days from the date of order. The parties further agree that if Bidder, in good faith, is not able to meet this ninety (90) day deadline of delivery due to forces beyond his, her or its control, that were unforeseeable at the time of signing this contract, then this entire Agreement shall be voidable at the sole discretion of the Town. Should the Town elect to void this Agreement due to Bidder's good faith inability, due to forces beyond his, her or its control, and which were unforeseeable at the time of signing this Agreement to meet the delivery deadline, then neither party shall be deemed to have breached this Agreement, and Bidder shall return all monies, within seven (7) business days, paid by the Town for the products/items that could not be delivered in the allotted time.

14. Unilateral Modification of Agreement Not Permitted: Bidder may make unilateral changes to its Privacy Policy, provided any such changes are subject to the provisions of this Agreement but shall not materially alter the use of the service or reduce the level of protection provided to the Town at the time of the execution of this Agreement. Except as provided in the preceding sentence, notwithstanding anything in this Agreement to the contrary, any change to this Agreement made by Bidder that is not in writing and that is not properly executed by the signatures of authorized representatives of the parties hereto, including attestation by The Town's Clerk and approved as to form by the Town Attorney are subject to the terms and conditions of this Agreement.

15. Changes to Terms: Except as provided in Paragraph No. 13 above pertaining to Bidder's Privacy Policy, Bidder shall provide The Town written notice, sent in care of Town Attorney's Office, Smyrna, Tennessee, 315 South Lowry Street, Tennessee 37167, of any proposed change to this Agreement at least ninety (90) days prior to being effective to The Town. The Town shall have thirty (30) days after receiving the written notice to terminate this Agreement, and such cancellation shall not be a breach of this Agreement. Bidder will refund to The Town any payment made by The Town to Bidder equal to the difference between the number of months the payment was intended for and the number of months remaining on this Agreement that the fee was intended to cover.

16. Price Assurance: Unless specifically stated in this Agreement or other bid documents, the bid price shall be valid for the full term of this Agreement. If the Bidder, specifically states that he, she or it cannot honor the bid price for the full term of this Agreement; then this Agreement is voidable at the sole discretion of the Town, if at any time during the full term of this Agreement, Bidder requests

to raise the bid price. If the Town elects to void this Agreement, at its sole discretion, it shall not be deemed to be a breach of the contract by either party.

17. Confidentiality. The Town, as a Tennessee Municipal Corporation is subject to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq; therefore, this Agreement and all documents or materials, in any format, including, but not limited to paper, electronic or virtual, that are public records pursuant to law, are not confidential and are subject to disclosure. The Town will respond to all proper Open Records Requests in the time allowed by law, without any requirement to disclose such request to Bidder or provide Bidder with notice or the time to obtain a protective order. The Town does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section 16 serves to meet such burden and authorization of disclosure.

18. Mediation. The Town may, at its option, require the attempted resolution of any dispute arising under this Agreement by mediation prior to the filing of any lawsuit or other claim. Should any dispute arise, Bidder shall provide the Town notice of any intent to file suit by certified mail. The Town shall notify the Bidder of its intent to exercise its right to mediation within thirty (30) days of receiving such notice. If the Town does not exercise its right to mediation, Bidder may file suit. Any mediator selected under this clause shall be agreed upon by the parties and the costs of such mediation shall be divided and paid equally between the parties.

19. No Presumption Against Drafter: The parties are both business entities having substantial experience with the subject matter of this Agreement, and each has fully participated in the negotiation and drafting of this Agreement. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous draft hereof.

20. Governing Law. This Agreement shall be deemed to have been executed and delivered within the State of Tennessee, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Tennessee. The parties agree that all obligations of the parties are performable in Smyrna, Tennessee.

21. Choice of Forum and Venue. The parties' choice of forum and venue shall be exclusively in the courts of Rutherford County, Tennessee or the United States District Court, for the Middle District of Tennessee. The parties hereby waive their right to a jury trial. Any provision of the Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth above.

TOWN OF SMYRNA, TENNESSEE

BIDDER:

By: _____
Name: Mary Esther Reed
Title: Mayor

By: _____
Title: _____

ATTEST:

ATTEST:

Amber Hobbs, Town Clerk



AFFIDAVIT

STATE OF TENNESSEE DRUG-FREE WORKPLACE AFFIDAVIT

COUNTY OF _____ OF PRIME BIDDER

NOW COMES AFFIANT, who being duly sworn, deposes and says:

1. He/She is the principal officer for _____;
2. That the bidding entity has submitted a bid to the Town of Smyrna for the construction of _____;
3. That the bidding entity employs no less than five (5) employees;
4. That Affiant certifies that the bidding entity has in effect, at the time of submission of its bid to perform the construction referred to above, a drug-free workplace program that complies with §50-9-113, *Tennessee Code Annotated*.
5. That this affidavit is made on personal knowledge.

Further Affiant saith not.

AFFIANT

SUBSCRIBED AND SWORN TO before me this _____ day of _____,
20____.

NOTARY PUBLIC

My Commission expires: _____

50-9-113. State and local government construction contracts.

- (a) Each employer with no less than five (5) employees receiving pay who contracts with the state or any local government to provide construction services or who is awarded a contract to provide construction services or who provides construction services to the state or local government shall submit an affidavit stating that such employer has a drug-free workplace program that complies with this chapter, in effect at the time of such submission of a bid at least to the extent required of governmental entities. Any private employer that certifies compliance with the drug-free workplace program, only to the extent required by this section, shall not receive any reduction in workers' compensation premiums and shall not be entitled to any other benefit provided by compliance with the drug-free workplace program set forth in this chapter. Nothing in this section shall be construed to reduce or diminish the rights or privileges of any private employer who has a drug-free workplace program that fully complies with this chapter. For purposes of compliance with this section, any private employer shall obtain a certificate of compliance with the applicable portions of the Drug-free Workplace Act from the department of labor and workforce development. No local government or state governmental entity shall enter into any contract or award a contract for construction services with an employer who does not comply with the provisions of this section.
- b) For the purposes of this section, "employer" does not include any utility or unit of local government. "Employer" includes any private company and/or corporation.
- (c) If it is determined that an employer subject to the provisions of this section has entered into a contract with a local government or state agency and such employer does not have a drug-free workplace pursuant to this section, such employer shall be prohibited from entering into another contract with any local government or state agency until such employer can prove compliance with the drug-free workplace program pursuant to this section. If the same employer again contracts with any local government or state agency and does not have a drug-free workplace program pursuant to this section, then such employer shall be prohibited from entering into another contract with any local government or state agency for not less than three (3) months from the date such violation was discovered and verified and shall be prohibited from entering into another contract until such employer complies with the drug-free workplace program pursuant to this section. If the same employer for a third time contracts with any local government or state agency and does not have a drug-free workplace program pursuant to this section, then such employer shall be prohibited from entering into another contract with any local government or state agency for not less than one (1) year from the date such violation was discovered and verified and shall be prohibited from entering into another contract until such employer complies with the drug-free workplace program pursuant to this section.
- (d) A written affidavit by the principal officer of a covered employer provided to a local government at the time such bid or contract is submitted stating that the employer is in compliance with this section shall absolve the local government of all further responsibility under this section and any liability arising from the employer's compliance or failure of compliance with the provisions of this section.

[Acts 2000, ch.918, §§ 1,2.]



TOWN OF SMYRNA CONSTRUCTION CONTRACT

CERTIFICATE OF NONDISCRIMINATION

As Bidder, Contractor, or Subcontractor on Town of Smyrna Construction Project,

1. the undersigned states that he does not discriminate against any subcontractor, employee or applicant for employment on the grounds of race, color, national origin or sex and, if awarded a contract for this project, agrees in performance of work:
2. not to discriminate against any subcontractor, employee, or applicant for employment on the grounds of race, color, national origin or sex;
3. to maintain payrolls of laborers and mechanics employed on this contract until 90 days after final release and final payment by the Town;
4. require a similar certificate to be executed by each subcontractor at the time a subcontractor is executed under the contract with the requirement that such subcontractor agrees to require a similar certificate of requirement on any lower tier of subcontractors.

Contractor's Name _____

Date _____

Signature _____

Title _____

Printed or typed name and title



TOWN OF SMYRNA

TITLE VI COMPLIANCE SURVEY

The Town of Smyrna intends to fully comply with the Tennessee Department of Transportation's policy regarding TITLE VI of the CIVIL RIGHTS ACT of 1964; 49 CFT, PART 21; related statutes and regulations to the end that no person shall be excluded from participation in or be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance from the U.S. Department of Transportation on the grounds of race, color, gender, age, disability or national origin.

Please complete the following information:

NAME OF COMPANY _____

NAME OF OWNER/CONTRACTOR: _____

ADDRESS OF OWNER/CONTRACTOR: _____

COUNTY: _____

TYPE OF SERVICES PROVIDED: _____

CONTRACT: _____

OWNER/CONTRACTOR
(Race/Gender)

EMPLOYEES
(Number in each category)

White Male _____
 White Female _____
 African-American Male _____
 African-American Female _____
 Hispanic Male _____
 Hispanic Female _____
 Native American Male _____
 Native American Female _____
 Asian-American Male _____
 Asian-American Female _____
 Other _____ Male _____
 Other _____ Females _____

White Males _____
 White Females _____
 African-American Males _____
 African-American Females _____
 Hispanic Males _____
 Hispanic Females _____
 Native American Males _____
 Native American Females _____
 Asian-American Males _____
 Asian-American Females _____
 Other _____ Males _____
 Other _____ Females _____



TOWN OF SMYRNA CONSTRUCTION CONTRACT
CERTIFICATE OF NON-ILLEGAL IMMIGRANT USE

As Bidder, Contractor, or Subcontractor on Town of Smyrna Construction Project,

1. the undersigned states that he does not knowingly utilize the services of **illegal immigrants** in the performance of a contract for goods or services entered into with the Town of Smyrna:
2. and will not knowingly utilize the services of any subcontractor who will utilize the services of **illegal immigrants** in the performance of the contract;
3. If any person who contracts to supply goods or services to the Town of Smyrna or who submits a bid to contract to supply goods or services to the state or other state entities, is discovered to have knowingly utilized the services of **illegal immigrants** in the performance of the contract to supply goods or services to the Town of Smyrna, the Town of Smyrna shall declare that person to be prohibited from contracting for or submitting a bid for any contract to supply goods or services to the Town of Smyrna for a period of one (1) year from the date of discovery of the usage of **illegal** immigrant services in the performance of a contract to supply goods or services to the Town of Smyrna

Contractor's Name _____

Date _____

Signature _____
Printed or typed name and title

Title _____



TOWN OF SMYRNA CONSTRUCTION CONTRACT

CERTIFICATE OF NON-COLLUSION

As Bidder, Contractor, or Subcontractor on Town of Smyrna Construction Project:

the undersigned hereby declares that no person or party other than the undersigned has any interest whatever in the submitted bid proposal, that it is without any connection or collusion with any person or persons making or having made any proposal for the same work and without any previous understanding with such person or persons as to relative prices, obviating competition, and that it is made in good faith.

Contractor's Name _____

Date _____

Signature _____

Title _____

Printed or typed name and title