



## 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., Thursday, May 10, 2018** 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 No bid may be withdrawn after the scheduled closing time for a period of 90 days.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](http://www.townofsmyrna.org). Quotations should be mailed or hand delivered to:

Rex S. Gaither  
Smyrna Town Hall  
**Sealed Bid Annual Asphalt Paving / May 10, 2018 @ 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.

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  
FINANCE DIRECTOR

TO BE RUN: April 30, 2018

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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 Lee Parnell (615) 459-9730,  
E-mail: [lee.parnell@townofsmyrna.org](mailto:lee.parnell@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 No bid may be withdrawn after the scheduled closing time for a period of 90 days.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 bidders 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, IV, and V will be valued together to award to one contractor with Section III being the most significant portion in awarding of this bid. Section V 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: [https://www.tn.gov/content/dam/tn/generalservices/documents/cpo/cpo-library/public-information-library/List\\_of\\_persons\\_pursuant\\_to\\_Tenn.\\_Code\\_Ann.\\_12-12-106\\_Iran\\_Divestment\\_Act\\_updated\\_7.7.17.pdf](https://www.tn.gov/content/dam/tn/generalservices/documents/cpo/cpo-library/public-information-library/List_of_persons_pursuant_to_Tenn._Code_Ann._12-12-106_Iran_Divestment_Act_updated_7.7.17.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.

The Town will provide a list of proposed streets to be paved (see page 10) 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 Town of Smyrna will furnish all crushed stone for shoulders, adjust all manholes, inlets 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 name and license number must be placed on the envelope containing his 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 <http://www.tn.gov/regboards/contractors/law.shtml> 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 V, 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. Upon mutual agreement of both parties the bid quotes may be renewed by the Town of Smyrna for two additional 12 month periods.

## 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 \$ 479.50 per ton for April 2015.

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 BUSINESS LICENSE - Subject to the exceptions enumerated hereinafter, persons subject to the Smyrna Business Tax operating from an established place of business in one county who extend their operations into other counties and/or municipalities without establishing an office, headquarters or other place of business therein shall not be subject to the Smyrna Business Tax in such other counties and/or municipalities. Tax on total receipts from all taxable sales shall be due to the county and municipality, if any, in which the established place of business is located. A new business license is \$20.00. If applicable, at license expiration, renewal is a percentage of the business total gross.

Excepted from the rule as stated in above paragraph are:

- (a) Persons with no established place of business in this state.
- (b) Contractors with taxable receipts of \$50,000 and out of state contractors.

## **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: Kay Charles  
315 S Lowry St  
Smyrna, TN 37167

It can also be submitted electronically to [kay.charles@townofsmymrna.org](mailto:kay.charles@townofsmymrna.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 RFP shall be governed by and construed under the laws of the State of Tennessee.



<b>Additional Roads Under Consideration:</b>				
Holloway Square				
Revere Court				
Liberty Drive				
Constitution Court				

**SECTION III - ASPHALT PAVING PRICE QUOTATION**

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, March 1, 2006, and as amended.

<u>DESCRIPTION</u>	<u>ANNUAL ESTIMATED QUANTITY</u>	<u>UNIT PRICE</u>
1. 411-E SURFACE MIX (Includes Preparation and 0.25 Gallon/Square Yard Tack Coat)	<u>7,955 Tons</u>	\$_____Ton
2. Crack Sealant (Includes Preparation)	<u>Variable</u>	\$_____Pound

**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, 2015.

**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 Lee Parnell. 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:**

**TEST**

Cone Penetration (ASTM D5329)  
Resilience (ASTM D5329)  
Softening Point (ASTM D36)  
Ductility, 77F (25C) (ASTM D113)  
Flexibility (ASTM D3111 Modified)  
Flow 140°F (60°C) (ASTM D5329)  
Brookfield Viscosity, 400°F(204°C) (ASTM D2669)  
Asphalt Compatibility (ASTM D5329)  
Bitumen Content (ASTM D4)  
Tensile Adhesion (ASTM D5329)  
Safe Heating Temperature  
Recommended Pour Temperature

**Specification**

20-40  
30% min.  
210°F (99°C) min.  
16in (40cm) min.  
Pass at 30°F (-1°C)  
0.2in (0.5cm) max  
100 Poise max.  
Pass  
60% min  
400% min.  
As recommended by the Mfg  
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-appliator 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)**.

**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 - COLD PLANING REQUIREMENTS AND PRICE QUOTATION**

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, March 1, 2006, and as amended.

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT PRICE</u>
1. ASPHALT COLD PLANING PER SQUARE YARD 0-1.5"	92,605 SQ YDS	\$ _____ SQ YD
2. ASPHALT UNDERCUT 4", REMOVE AND DISPOSE	1,000 SQ YDS	\$ _____ SQ YD

**SECTION V - 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.**

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

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.



## 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 **Annual Asphalt Paving**.

**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 Quotation 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 by 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. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

6. Indemnification. The parties hereto agree that Vendor shall indemnify The Town for any and all claims of negligence, tortious conduct or otherwise unlawful acts committed by Vendor in the performance of their obligations under the terms of the original agreement or this addendum to agreement and Vendor 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 the original contract or this addendum to agreement and shall remain in full force and effect until the expiration of any applicable statute of limitation. In addition, The Town is prohibited by Tennessee law, as a political subdivision of the State of Tennessee, to agree to indemnify any private or public Vendor or contracting party and all reference to the local government providing indemnification shall be null and void by attaching signature to this addendum.

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

8. Mediation. The Town may, at its option, require the attempted resolution of any dispute arising under the original contract or this addendum to agreement by mediation prior to the filing of any lawsuit or other claim. Should any dispute arise, Vendor shall provide the Town notice of any intent to file suit by certified mail. The Town shall notify the Vendor 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, Vendor 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.

9. 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.

10. Applicable Law / Choice of Forum and Venue. The parties' choice of forum and venue shall be exclusively in the courts of Rutherford County, Tennessee. 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.

**BIDDER:** \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_



TOWN OF SMYRNA, TENNESSEE

By: \_\_\_\_\_

Name: Mary Esther Reed

Title: Mayor

ATTEST:

\_\_\_\_\_  
Dianne Waldron, 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,

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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,

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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 \_\_\_\_\_

Title \_\_\_\_\_

Printed or typed name and title



## TOWN OF SMYRNA CONSTRUCTION CONTRACT

### CERTIFICATE OF NON-COLLUSION

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

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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

