

**SPECIFICATIONS AND DOCUMENTS
FOR
ROADWAY REPAIRS AND IMPROVEMENTS
WITHIN THE
CITY OF GOODLETTSVILLE
2015-2016**

**GOODLETTSVILLE PUBLIC WORKS DEPARTMENT
GOODLETTSVILLE, TENNESSEE**

STREET REPAVING BID FORM

Sealed proposals will be received until 2:00 p.m. CST, Tuesday, May 19, 2015, for roadway repairs and improvements within the City of Goodlettsville.

Bidders shall place their bid in a sealed envelope along with a bid bond and proofs of insurance. The outside of the envelope must indicate the bidder's name, license number, expiration date, and that part of classification applying to the bid in accordance with TCA 62-6-119. Bids not conforming to these provisions shall not be opened. Bids are sent to Charlie Ballard, Purchasing, 105 S. Main Street, Goodlettsville, TN 37072.

The annual paving contract is to be in effect for one (1) year from the date of acceptance with the option of one-year renewals, up to five (5) consecutive years total. In compliance with the above invitation for bids and subject to all the conditions thereof, the undersigned offers, and agrees, if this is accepted by the City and approved by the Goodlettsville Board of Commission within thirty (30) days from the date of opening, to furnish and install all items at the prices provided at a schedule determined by the City.

The City of Goodlettsville does not discriminate on the basis of age, race, sex, color, national origin, religion or disability in admission to, access to, or operation of its programs, services or activities, nor does it discriminate in its hiring or employment practices. Contact the city manager at (615) 851-2200 with questions, concerns, and complaints with requests for ADA accommodations.

Company Name: _____

Company Address: _____

Phone Number: _____

License # and Expiration Date: _____

Printed Name and Title of Person Signing: _____

Signature and Date: _____

Received by the City of Goodlettsville

By (Printed Name and Title): _____

Signature, Date, and Time: _____

ITEM NUMBER	DESCRIPTION	UNIT	BID PRICE
303-01	MINERAL AGGREGATE, TYPE A BASE, GRADING D	TONS	
E-411-02	ASPHALTIC CONCRETE SURFACE WITH TACK COAT. NO RECYCLED CONTENT	TONS	
CW-307-03	BITUMINOUS PLANT MIX BASE WITH TACK COAT. RECYCLED CONTENT NOT TO EXCEED TEN PERCENT (10%)	TONS	
307-03.15	BITUMINOUS PLANT MIX BASE (HOT MIX) GRADING B MODIFIED	TONS	
	DOUBLE BITUMINOUS SURFACE TREATMENT (SHOULDERS)	SY	
	COAL TAR EMULSION SEAL COAT, THREE TO FIVE (3-5) POUNDS SAND/GALLON, SQUEEGEE APPLICATION RATE: 1 GALLON/5 SQUARE YARDS	SY	
	MANHOLE ADJUSTMENTS	EACH	
716-05.01	PAINTED PAVEMENT MARKING FOUR INCH (4") LINE	LM	
716-02.01	PLASTIC PAVEMENT MARKING FOUR INCH (4") LINE	LM	
716-02.14	PLASTIC PAVEMENT MARKING EIGHT INCH (8") LINE	LM	
716-05.05	PAINTED PAVEMENT MARKING STOP BAR LINE	LF	
716-04.01	PLASTIC PAVEMENT MARKING STRAIGHT-TURN ARROW	EACH	
716-04.05	PLASTIC PAVEMENT MARKING STRAIGHT ARROW	EACH	
716-05.03	PAINTED PAVEMENT MARKING LONGITUDINAL CROSS WALK	LF	
716-02.11	PLASTIC PAVEMENT MARKING SIX INCH (6") DOTTED LINE	LF	
716-02.10	PLASTIC PAVEMENT MARKING SIX INCH (6") LINE	LF	
712-01	TRAFFIC CONTROL	EACH	
716-02.06	PLASTIC PAVEMENT MARKING (TURN LANE ARROW)	LF	
	CATCH BASIN ADJUSTMENT	EACH	
	STORM SEWER CURB INLET ADJUSTMENT	EACH	
	SITE PREPARATION	SY	

CITY OF GOODLETTSVILLE STREET PAVING CONTRACT TERMS AND CONDITIONS

The parties hereby agree to the following terms and conditions:

This contract is initiated by and between the City of Goodlettsville (“City”) and _____ (“Contractor”) located at _____.

1. Duties and Responsibilities

1.1 Duties and Responsibilities

CONTRACTOR agrees to provide the goods and services defined in the solicitation per the terms and conditions identified in the solicitation.

- This is an indefinite delivery/indefinite quantity contract for the resurfacing of various City of Goodlettsville-owned roadway surfaces using the line item pricing shown in the bid documents.

1.2 Representations of the Contractor

In order to induce the City to execute this Contract and recognizing that the City is relying thereon, the Contractor, by executing this Contract, makes the following express representations to the City:

- The Contractor is fully qualified to act as the contractor for this project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the designer and builder for the project;
- The Contractor has become familiar with the project sites and the local conditions under which the project is to be constructed and operated;
- The Contractor has received, reviewed, and carefully examined all of the documents which make up this Contract and has found them to be generally sufficient to indicate and convey understanding of the terms and conditions for constructing and completing the project; and the Contractor further agrees to notify the City of all conflicts, errors, ambiguities, or discrepancies that are discovered in the Contract including, but not limited to any plans and specifications.
- The Contractor had access to the sites for examination, exploration, prior to submitting their proposal and relied exclusively upon the Contractor’s own estimates and investigations and other data which was necessary for full and complete information upon which the Contractor’s bid was based; in addition to the representations contained within the Contractor’s bid documents.

1.3 Stormwater Management

All activities performed in under this contract, shall be conducted in full compliance with the City of Goodlettsville’s stormwater ordinance. This requirement pertains to the unlawful/prohibited discharges to the City’s storm sewer system. It prohibits the discharge of non-stormwater discharges into the municipal storm sewer system. Contractor shall bear responsibility for all of Contractor’s (and sub-contractor’s) actions that cause the City to violate regulatory permits, Federal, state or local environmental regulations. Contractor’s responsibility shall include, but not be limited to, immediate clean-up and proper disposal, payment of all fines, assessments and/or civil penalties incurred due to Contractor’s or sub-contractor’s work, actions, design or installation as well as payment for any mitigation measures required due to the violation and clean-up associated with any violation.

2. Terms

2.1 Contract Term

The term of this contract will begin on the date this contract is approved by the City of Goodlettsville’s Board of Commissioners. The initial contract term will end twelve (12) months from the beginning date.

This contract may be extended by a contract amendment. The option to extend shall be exercised by and in the discretion of the City Manager. In no event shall the term of this contract, including extensions, exceed sixty (60) months from the date of the executed contract.

3. Compensation

3.1 Compensation

The City shall pay and the Contractor shall accept as full and complete payment for the Contractor's timely performance of all its obligations hereunder. The price set forth herein shall constitute the contract price, based on submitted and approved bid documents, which shall not be modified. The Contractor agrees the contract price is subject to upward or downward revision to reflect variation in the expected quantities or unit priced work, use of allowances, increases and decreases in the scope of work and other changes contemplated by and made in accordance with the terms of this Contract. Notwithstanding any other provision of the Contract, Contractor is not guaranteed to earn any minimum amount of compensation. Rather, the total amount of compensation Contractor may earn under this Contract shall be based on the total number of authorized and approved units of work performed.

The City shall pay the Contractor in accordance with the procedures set forth in this paragraph. Following completion of approved work, Contractor shall submit an invoice to the City outlining the completed work. The City will process the invoice for payment within thirty (30) days of submission. Each payment request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of work has reached the level of which payment is requested, that the work has been properly installed and performed. The Contractor also constitutes an affirmative representation and warranty that all work for which the City has paid is free and clear of any lien, claim or other encumbrance of any person whatsoever.

When payment is received by the Contractor, the Contractor agrees to pay any subcontractors, employees, laborers, etc. amounts they are due for the work completed on behalf of the City within fifteen (15) days of receipt. Neither payment to the Contractor, utilization of the project for any purpose by the City, nor any other act or omission by the City shall be interpreted to construe as an acceptance of any work of the Contractor not strictly in compliance with this contract.

The City may refuse to make payment and, if necessary, may demand the return of a portion or the entire amount previously paid to the Contractor due to:

- The quality of a portion, or all, of the Contractor's work not being in accordance with the requirements of this Contract;
- The quantity of the Contractor's work not being as represented in the Contractor's payment request, or otherwise;
- The Contractor's rate of progress being such that, in the City's opinion, substantial or final completion, or both, may be inexcusably delayed;
- The Contractor's failure to use Contract funds previously paid by the City to pay the Contractor's project-related obligations including, but not limited to, subcontractors, laborers, material, equipment suppliers, etc.;
- Claims made, pending or known against the City or its property in relation to this contract or the acts or omissions of the Contractor or any subcontractors;
- Loss caused by the Contractor or subcontractors; and,
- The Contractor's failure or refusal to perform any of its obligations to the City.

In the event the City makes demand upon the Contractor for previous amount(s) paid, the Contractor shall promptly comply with such demand within ten (10) days of receipt of notice.

Should the City believe there are substantial delays or final completion is inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due to the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

Prior to final payment, the Contractor shall furnish the City the following:

- An affidavit that all of the Contractor's obligations to subcontractor, laborers, equipment and material suppliers and other third parties in connection with the project have been paid or otherwise satisfied;
- Separate releases of claims or claim waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has or might have a claim against the City or the payment bond; and,
- Consent(s) of surety to final payment.

3.2 Other Fees

There will be no other charges or fees for the performance of this contract. The City will make reasonable efforts to make payment within thirty (30) days of receipt of invoice.

3.3 Escalation/De-escalation

The Contractor is eligible for annual escalation/de-escalation adjustment for non-bituminous items. The request for adjustment must be submitted to the Public Services Director (or designee) no less than sixty (60) days prior to the annual anniversary contract execution date. Any such adjustment shall become effective on the anniversary of the filing of the contract with the City.

This provision provides the method of 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:

Escalation/de-escalation adjustment for bituminous items shall be in accordance with Tennessee Department of Transportation (TDOT) Special Provision 109B (See attached). A basic bituminous material index will be established by TDOT prior to the time the bids are opened. This *Basic Bituminous Material Index* is the average of the current quotations from suppliers furnishing asphalt cement to contractor in the State of Tennessee.

4. Termination

4.1 Breach

Should Contractor fail to fulfill in a timely and proper manner its obligations under this contract or if it should violate any of the terms of this contract, the City shall have the right to immediately terminate the contractor. Such termination shall not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by the Contractor or its subcontractors, laborers, etc.

4.2 Funding

Should funding for this contact be discontinued, the City shall have the right to immediately terminate this contact upon written notice to the Contractor.

4.3 Notice

The City may terminate this contact at any time upon thirty (30) days written notice to the Contractor. Should the City terminate this contract, the Contractor shall cease work immediately and the City shall pay the Contractor the amount due for satisfactory work.

5. Nondiscrimination

5.1 Policy

It is the City's policy not to discriminate on the basis of age, race, sex, color, national origin, sexual orientation, gender identity, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities.

5.2 Nondiscrimination Requirement

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contract with the City or in the employment practices of the City's contractor's. The Contractor certifies and warrants that it will comply with this nondiscrimination requirement. Contractor, upon request, may be required to show proof of such

Nondiscrimination policy.

5.3 Letter of Intent to Perform as a Subcontractor/Joint Venture

In the event the Contractor proposes to use subcontractors, sub-consultants, suppliers and/or joint ventures, a letter of intent signed by the Contractor, subcontractor, sub-consultant, supplier, and/or joint venture must be submitted with the City within seven (7) days of contract award. Each company must be licensed to work within the City of Goodlettsville.

5.4 Americans with Disabilities Act (ADA)

Contractor assures the City that all services provided through this contractor shall be completed in full compliance with the Americans with Disabilities Act most current standards for accessible design. Contractor ensures participants with disabilities will be access that is equally effective as that provided to people without disabilities. Information shall be made available upon reasonable request of a qualified person with a disability.

6. Insurance

6.1 Proof of Insurance

During the term of this contract, Contractor shall, at its sole expense, obtain and maintain in full force and effect for the duration of this contract, including any extension, the types and amounts of insurance identified as follows. Proof of insurance shall be required naming the City of Goodlettsville as an additional insured.

- General Liability Insurance in the amount of one million dollars (\$1,000,000.00).
- Automobile Liability Insurance in the amount of one million dollars (\$1,000,000.00).
- Workers' Compensation Insurance with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand dollars (\$100,000.00), as required by the laws of Tennessee.

Prior to commencement, Contractor will provide City with original or certified copies of certificates and endorsements required by this section and provide that such insurance shall not be canceled, allowed to expire, or be reduced in coverage.

Such insurances shall contain or be endorsed to contain a provision that includes the City of Goodlettsville, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

Any claims related to this agreement, Contractor's insurance coverage shall be primary insurance as respects to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers shall be excess of the Contractor's insurance and shall not contribute to it.

Automotive Liability Insurance including vehicles owned, hired, and non-owned, said insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of vehicles owned, leased, hired, or borrowed by or on behalf of the Contractor.

Workers' Compensation, Contractor shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance. Contractor shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by Contractor's Workers' compensation insurance coverage.

7. Intent and Interpretation

7.1 Intent and Interpretation

With respect to the intent and interpretation of this contract, the City and Contractor agree as follows:

- Unless specifically stated to be the responsibility the City, anything that may be required, implied or inferred by the documents which make up this contract, or any one or more of them, shall be provided by the Contractor for the contract price based on the bid documents;
- Nothing contained in this contract shall create, or be interpreted to create, privity or any other relationship whatsoever between the City and any entity except the Contractor;
- Whenever a word, term, or phrase is used in this contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;
- The words “include”, “includes”, or “including”, as used within this contract, shall be deemed to be followed by the phrase, “without limitation”;
- The specification herein of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this contract;
- The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this contract, shop drawings and other submittals and shall give written notice to the City of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected work. The express or implied approval of the City of any submittals shall not relieve the Contractor of continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor’s compliance with this Contract; and,
- In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract the following shall control:
 - As between figures given on plans and scaled measurements, the figures shall govern;
 - As between large scale plans and small scale plans, the large scale plans shall govern;
 - As between plans and specifications, the requirements of the specifications shall govern;
 - As between this document and the plans or specifications, this document shall govern.
 - Discrepancies between the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Where there are discrepancies between the indicated sum of any column of figures and the correct sum thereof, the City has the right, at its option, to reject the Bid or to accept the correct sum.

7.2 Contractor’s Performance

The Contractor shall perform all of the work required, implied or reasonably inferable from this contract including, but not limited to, the following:

- Construction of the project;
- Construction services consisting of the provision and the prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling or other utilities required for construction and all necessary permits that may be required;
- The furnishing and maintenance of any required surety bonds and insurance; and,
- The creation and submission to the City, two (2) sets of all manuals, operating instructions, bonds, warranties, guarantees, maintenance instructions, etc.

7.3 Time for Contractor’s Performance and Liquidated Damages

The Contractor shall commence the performance of this contract (“Commencement of Work Date”) within seven (7) calendar days after the date of issuance to the Contractor of a Notice to Proceed by the City, however, in no event shall the Notice to Proceed be issued or performance commence prior to the effective date of this contract as hereafter set out. Once timely commenced, Contractor shall diligently continue its performance to and until final completion of the project. Guarantees and equipment warranties required by this contract shall commence on the date of final inspection. All limitations of time set forth herein are material and are of the essence of this contract.

7.4 Change Orders

Changes to the work within the general scope of this contract may be ordered by a change order and must be approved by the City. The City may order minor changes (those that do not involve a change in the contract price and do not involve a change in the time for the Contractor's performance) that the City deems necessary for performance of and are consistent with the intent of this contract. The Contractor shall proceed with any such change(s).

7.5 Cease and Desist Order

In the event the Contractor fails or refuses to perform the work as required herein, the City may instruct the Contractor to cease and desist from performing further work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instruction has been corrected, or no longer exists, or the City instructs the work may resume. In the event the City issues such instruction and in the event the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurances to the City that the cause for such instruction will be eliminated or corrected, then the City shall have the right, but not the obligation, to carry out the work with its own force or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such work. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the City may have against the Contractor.

7.6 Subcontractors

Upon execution of this contract, the Contractor shall identify to the City, in writing, any subcontractor not previously identified on the project. The City shall, in writing, state any objection the City may have with to any subcontractor. The Contractor shall not enter into a subcontract with an intended subcontractor that was listed to whom the City objects. Should a proposed subcontractor that was listed when Contractor's proposal was submitted (this does not apply to subcontractors listed after that time) be disapproved, and the Contractor provides proof that the replacement subcontractor will charge Contractor a higher price than the disapproved subcontractor, then the contract price may be adjusted at a rate equal to the difference between the price charged Contractor by the new subcontractor and the price charged by the disapproved subcontractor.

Failure of the City to object to the subcontractor shall not impose on the City any liability or responsibility for the performance or character of said subcontractor.

All subcontracts shall afford the Contractor rights against the subcontractor that correspond to those rights afforded to the City against the Contractor herein, including those rights of contract termination as set forth in this contract.

7.7 Discovering and Correcting Defective or Incomplete Work

In the event Contractor's work is in violation of this contract or in violation of a directive issued by the City, the Contractor shall rework and make right the work at no cost in time or money to the City.

The Contractor shall, at no cost in time or money to the City, correct work rejected by the City as defective or failing to conform to this contract. The Contractor shall reimburse the City for all testing, inspections and other expenses incurred as a result thereof.

The Contractor shall be specifically obligated to correct any and all defective or nonconforming work without additional compensation for a period of twelve (12) months following final completion upon written notice from the City.

The City may choose to accept defective or nonconforming work. In such event, the contract price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming work, and (2) the difference between the fair market value of the project as constructed and the fair market value of the project had it not been constructed in such a manner as to include defective or nonconforming work. If the remaining portion of the unpaid contract price, if any, is insufficient to compensate the City for the acceptance of the defective or nonconforming work, the Contractor shall, upon written demand from the City, pay the City such remaining compensation for accepting defective or nonconforming work.

7.8 The City's Right to Suspend Contractor's Performance

The City shall have the right at any time to direct the Contractor to suspend the performance, or any part thereof, for any reason, or without reason. If such suspension is directed by the City, the Contractor shall immediately comply with the

same and shall demobilize as directed.

7.9 Surety Bonds

The Contractor shall furnish separate performance and payment bonds to the City. Each bond shall set forth a penal sum in an amount not less than the contract price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the contract price is adjusted by change orders executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed adjusted by like amount. The performance and payment bonds furnished by the Contractor shall be in a form suitable to the City and shall be executed by a surety, or sureties, licensed to do business in Tennessee. Bonds shall be accompanied by a Power of Attorney indicating that the person executing the bond is doing so on behalf of the surety. The Power of Attorney shall have been conferred upon the attorney-in-fact prior to the date of the bond. The Power of Attorney shall show the date of appointment of the attorney-in-fact and that the appointment and power have not been revoked and remain in effect.

8. General Terms and Conditions

8.1 Taxes

The City shall not be responsible for any taxes incurred by the Contractor. Contractor cannot claim tax-exemption from taxes by virtue of any exemption that is provided to the City.

8.2 Warranty

Contractor warrants that for a period of one year from date of delivery and/or installation, the goods provided shall be free of any defects that interfere with or prohibit the use of the goods for the purposes for which they were obtained. During the warranty period, the City may request the Contractor repair or replace any defective goods. In that event, Contractor shall repair or replace the defective goods at Contractor's expense within thirty (30) days of the notice.

8.3 Maintenance of Records

Contractor shall maintain documentation for all charges against the City. The books, records, and/or documents of Contractor, as they relate to the work performed under this contract, shall be maintained for a period of five (5) years from the date of final payment received and are subject to audit at any time. Records shall be maintained in accordance with generally accepted accounting principles.

All documents and materials related to this contractor which are in the possession of the Contractor or any subcontractor shall be made available to the City for inspection and copying upon request.

8.4 Monitoring

The Contractor's activities conducted and records maintained pursuant to this contract shall be subject to monitoring and evaluation by the City.

8.5 Contract Modification

This contract may be modified only by written amendment executed by all parties and their signatories.

8.6 Partnership or Joint Venture

This contract shall not in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act, or omission of any other party contrary to the terms of this contract.

8.7 Waiver

No waiver of any provision of this contract shall affect the right of any party to enforce such provision or to exercise any right or remedy available to it.

8.8 Compliance with Laws

Contractor agrees to comply with all applicable Federal, State, and local laws.

8.9 Taxes and Licensure

Contractor shall have all applicable licenses and be current on its payment of all applicable taxes.

8.10 Ethical Standards

Contractor hereby represents that Contractor has not been retained or retained any persons to solicit or secure a City contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purchase of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards, which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under City contracts.

8.11 Indemnification and Hold Harmless

Contractor shall indemnify and hold harmless the City, its officers, agents, and employees from:

- Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Contractor, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the contract, and,
- Any claims, damages, penalties, costs and attorney fees arising from any failure of Contractor, its officers, employees, and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- In any and all claims against the City, its officers, agents, or employees, by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' compensation acts, disability acts or other employee benefit acts.
- The City 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.
- Contractor shall pay the City any expenses incurred as a result of Contractor's failure to fulfill any obligation in a professional and timely manner under this Contract.

8.12 Attorney Fees

Contractor agrees that in the event either party takes legal action to enforce any provision of the contract or to obtain a remedy for any breach of this contract, and in the event the City prevails in such action, Contractor shall pay all expenses for such action incurred at any and all stages of the litigation including costs and reasonable attorney fees for the City.

8.13 Assignment

The provisions of this contract may not be reassigned or transferred in whole or in part without the prior written consent by the City. Any such reassignment or transfer shall not release Contractor from its obligations hereunder.

8.14 Entire Contract

This contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

8.15 Force Majeure

No party shall have any liability to the other hereunder by reason of delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

8.16 Governing Law

The validity, construction and effect of this contract any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the Contractor may provide.

8.17 Venue

Any action between the parties arising from this agreement shall be maintained in the courts of Davidson County, Tennessee.

8.18 Severability

Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.

Signed to its legality this _____ day of _____, 2015.

CONTRACTOR

Company Name and Address: _____

Printed Name and Title: _____

Authorized Signature: _____

CITY

City of Goodlettsville
105 S. Main Street
Goodlettsville, TN 37072

Printed Name and Title: _____

Authorized Signature: _____

City Attorney

Printed Name: _____

Signature: _____

ADDENDUM A: PAVING CONTRACT ATTACHMENT
SPECIAL PROVISION
REGARDING
PAYMENT ADJUSTMENT FOR BITUMINOUS MATERIAL

This Special Provision covers the method of payment adjustment for bituminous materials.

100% Virgin Bituminous Material

A payment adjustment will be made to compensate for increases and decreases of five percent (5 %) or more in a contractor's bituminous material cost. The normal bid items in the contract covering the bituminous material shall not be changed. Payment adjustments (+/-) shall be paid under "Payment Adjustment for Bituminous Material" and calculated as a described herein:

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 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 \$ _____ per ton. (SEE BID SHEET)

The "Monthly Bituminous Material Index" is also established on the first day of each month by the same method. A payment adjustment shall be made provided the "Monthly Bituminous Material Index" varies five percent (5%) or more (+/-) from the "Basic Bituminous Material Index".

Where the price index varies 5% or more, the payment adjustment will be made as follows:

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

Where:

PA =	Price Adjustment for Adjustment Month
Ib =	Basic Bituminous Material Index
Ic =	Monthly Bituminous Material Index
T =	Tons bituminous material for Adjustment Month

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

Upon the expiration of the allocated working time, as set for the in the original contract or as extended by Change Order, payment adjustments for bituminous material will continue to be made only when the "Monthly Bituminous Material Index" is **less** than the "Basic Bituminous Material Index" and varies five percent (5%) or more.

Payment adjustment, for bituminous material used after the expiration of the allocated working time and where the "Monthly Bituminous Material Index" **exceeds** the "Basic Bituminous Material Index", will **not** be made until after the contract records have been approved by Final Records (FR)/Materials & Tests (MT) and a Final Estimate is ready to be processed. Upon contract record approval by FT/MT, payment adjustments for bituminous material shall be calculated for each month where the allocated working time has expired, the "Monthly Bituminous Material Index" **exceeds** the "Basic Bituminous Material Index", and the indices vary five percent (5%) or more. The calculation of the bituminous payment adjustment shall be made using the "Monthly Bituminous Material Index" or the "Bituminous Material Index for Contract Completion Date" in accordance with the following formulas:

The "Bituminous Material Index for Contract Completion Date" is the Monthly Bituminous Material Index in effect on the allocated Contract Completion Date or on the completion date as extended by Change Order.

The “Monthly Bituminous Material Index” is **less** than the “Bituminous Material Index for Contract Completion Date”.

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

The “Monthly Bituminous Material Index” is **greater** than the “Bituminous Material Index for Contract Completion Date”.

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

Where:

- PA = Price Adjustment for Adjustment Month
- Ib = Basic Bituminous Material Index
- Ic = Monthly Bituminous Material Index
- Icd = Bituminous Material Index for Contract Completion Date (or as extended by Change Order)
- T = Tons

Mixes Containing Recycled Bituminous Material

The quantity of virgin asphalt cement in tons subject to payment 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 (RAP) used in each mix. No payment 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 of recycled mixes in excess of the percent of asphalt cement specified for bidding purposes will be made in accordance with the Standard Specifications.

No payment adjustment for bituminous material containing RAP shall be made unless the “Monthly Bituminous Material Index” varies five percent (5%) or more from the “Basic Bituminous Material Index” varies five percent (5%) or more from the “Basic Bituminous Material Index” indicated in this Special Provision.

Where the price index varies five percent (5%) or more, the payment adjustment will be made as follows:

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

- 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

Upon the expiration of the allocated working time, as set for the in the original contract or as extended by Change Order, payment adjustments for bituminous material containing RAP will continue to be made only when the “Monthly Bituminous Material Index” is **less** than the “Basic Bituminous Material Index” and varies five percent (5%) or more.

Payment adjustment, for bituminous material containing RAP provided after the expiration of the allocated working time and where the “Monthly Bituminous Material Index” **exceeds** the “Basic Bituminous Material Index”, shall **not** be made until after the contract records have been approved by Final Records (FR)/Materials & Tests (MT) and a Final Estimate is ready to be processed. Upon contract record approval by FR/MT, payment adjustments for bituminous containing RAP shall be calculated for each month where the allocated working time has expired, the “Monthly Bituminous Material Index” **exceeds** the “Basic Bituminous Material Index”, and the indices vary five percent (5%) or more. The calculation of the bituminous payment adjustment shall be made using the “Monthly Bituminous Material Index” or the “Bituminous

Material Index for Contract Completion Date” in accordance with the following formulas:

The “Bituminous Material Index for Contract Completion Date” is the Monthly Bituminous Material Index in effect on the allocated Contract Completion Date or on the completion date as extended by Change Order.

The “Monthly Bituminous Material Index” is **less** than the “Bituminous Material Index for Contract Completion Date”.

$$PA = ([Icd - Ib] \times [BA - RA] \times Tm) / 100$$

The “Monthly Bituminous Material Index” is **greater** than the “Bituminous Material Index for Contract Completion Date”.

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

Where:

- PA = Price Adjustment for Adjustment Month
- Ib = Basic Bituminous Material Index
- Ic = Monthly bituminous Material Index
- Icd = Bituminous Material Index for Contract Completion Date (or as extended by Change Order)
- 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