

## NOTICE TO BIDDERS

NOTICE IS HERE GIVEN that sealed proposals will be received by the Town Clerk, Town of Yorktown, Westchester County, NY until 11:00 A.M. on June 22, 2015 at the Town Hall, 363 Underhill Avenue, Yorktown Heights, N.Y. 10598 for Asphalt Laid-In-Place, Highway Dept. Bid. Specifications may be obtained at the office of the Town Clerk in said Town Hall.

The Bidder assumes the risk of any delay in the mail or in the handling of the mail by the employees of the Town of Yorktown. Whether sent by mail or means of personal delivery, the Bidder assumes the responsibility for having the bids in at the time and the place specified above. All bids are to be returned to the Town Clerk, 363 Underhill Avenue, Yorktown Heights, NY 10598, marked: **"Bid: ASPHALT LAID-IN-PLACE- Highway Dept. Bid.** The Superintendent of Highways reserves the right to reject any and all bids and to accept that bid which is deemed most favorable to the interests of the Town of Yorktown.

Dave Paganelli  
Supt. of Highways  
Town of Yorktown

**TOWN OF YORKTOWN  
REQUEST FOR BIDS:**

**ASPHALT CONCRETE (material)  
And  
ASPHALT CONCRETE LAID IN PLACE (material, delivery & labor)**

The Bid Documents consists of the following:

**Part One: Summary of Bid and Bid Proposal Form**

**Part Two: General Terms and Conditions of Bid**

**Part Three: Specifications**

**A. Technical Specifications**

**B. General Specifications**

**Non-Collusive Bidding Certificate**

A completed bid will consist of

1. one copy of the **Bid Proposal Form**, signed on behalf of Bidder with information for all blanks supplied, and a detailed listing of any exceptions from any of the bid documents taken by Bidder
2. Any additional information required in the specifications;
3. a signed Non-Collusive Bidding Certificate;

No interpretation of the meaning of the bid document will be made to any bidder orally. Any request for such interpretation shall be made not later than five (5) working days prior to the date fixed for the opening of bids and must be made in writing, addressed to:

Alice Roker, Town Clerk  
Town of Yorktown  
363 Underhill Ave.  
Yorktown Heights, NY 10598

Notice of any and all such interpretations and any supplemental instructions will be served upon all bidders of record by the Town Clerk in the form of addenda to the bid specifications. All addenda so issued shall become a part of the bid document.

Interpretation of the bid specification shall be decided by Town Clerk. The Town Clerk's decision shall be final and binding on all parties.

If the bid is awarded by Town, the Town Clerk will notify the successful bidder in writing. The Town Board's resolution awarding the bid and all of the documents herein (which shall be deemed incorporated) shall constitute a contract between the successful bidder and the Town of Yorktown. Within 5 business days of Contractor's receipt of award notification (presumed to be received five days after postmark), Contractor shall submit insurance certificates to the Town's contact person on this bid.

Such insurance certificates must meet the requirements of the bid.\* Contractor shall also submit a completed W-9 form. Upon the Town's receipt and acceptance of the insurance certificates, the Town shall notify the Contractor that work may commence. Such notification shall be made in writing by email. If the Contractor fails to timely submit satisfactory insurance certificates, this failure shall constitute grounds for rescission by the Town of the Contract, and shall authorize the Town to award the bid to the next lowest responsible bidder.

Work shall not commence until the insurance certificates have been accepted by the Town.

**INSURANCE REQUIREMENTS:**

**Certificate of Insurance naming town as added insured – ACORD form or equivalent in amounts specified in the specifications**

New York State Law (Workers Compensation Law § 57 and Workers Compensation Law § 220(8)) prohibits the Town from signing "any contract for or in connection with any work involving the employment of employees in employment" unless the contractor provides proof that it has secured payment of disability claims and workers compensation insurance for its employees covered by the New York Workers Compensation Law.

The winning bidder must submit certain NYS forms, which are obtained the bidder's insurance agent. If the winning bidder is exempt from these laws, the Town will require proof of the exemption.

The forms are as follows:

WORKERS COMP:	Form C-105.2
DISABILITY BENEFITS:	Form DB-120.1
Exemption form:	CE-200. Download form from <a href="http://www.wcb.ny.gov">www.wcb.ny.gov</a>

C-105.2	Certificate of NYS Workers' Compensation Insurance Coverage (All private NYS licensed workers' compensation carriers are required to issue the C-105.2. Please note that the State Insurance Fund issues a different form, the U-26.3 form, as its version of the C-105.2)	Employers insured for workers' compensation through a private insurance carrier	Filed with any entity requesting to be a certificate holder including a government agency issuing a permit, license or contract. The C-105.2 must be completed by the insurance carrier or its licensed insurance agent.	<u>Employers must obtain this form from either their NYS workers' compensation insurance carrier or a licensed NYS insurance agent of that carrier.</u>  Carriers, their licensed agents, and Self-Insured Employers may email the Board at <a href="mailto:Certificates@wcb.ny.gov">Certificates@wcb.ny.gov</a> to obtain controlled forms not available on this website.
DB-120.1	Certificate Of Insurance Coverage Under The NYSDisability Benefits Law	Employers insured for NYS statutory disability benefits insurance through an insurance carrier.	Filed with any entity requesting to be a certificate holder including a government agency issuing a permit, license or contract. The DB-120.1 must be completed by either the NYS statutory disability benefits insurance carrier, or a licensed NYS insurance agent of that carrier.	<u>Employers must obtain this form from either their NYS statutory disability benefits insurance carrier or a licensed NYS insurance agent of that carrier.</u>  Carriers, their licensed agents, and Self-Insured Employers may email the Board at <a href="mailto:Certificates@wcb.ny.gov">Certificates@wcb.ny.gov</a> to obtain controlled forms not available on this website.
BOTH OF THE ABOVE, OR <u>CE-200</u>	Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage	Applicants for permits, licenses or contracts from State, county or municipal agencies in New York State that are not required to carry NYS workers' compensation and/or disability benefits insurance coverage.	Please file with the government agency that is issuing the permit, license or contract. (Examples: The New York City Department of Buildings or the New York State Department of Health)	These exemption forms can <u>ONLY</u> be used to attest to a government entity that an applicant requesting a permit, license or contract from that <u>government</u> entity is not required to carry <u>NYS</u> workers' compensation and/or disability benefits insurance. ( <u>Instructions</u> )

## PART ONE

### SUMMARY OF BID

The Town of Yorktown seeks bids from qualified parties to enter into a contract for **Asphalt Concrete (1) as a material (picked up or delivered) and (2) Asphalt Concrete Laid in Place**. The specifications are more fully set forth in Part Three of this document.

Bidders should, before submitting a bid, carefully examine and understand the contents of each Part of this bid package including the Summary of Bid, Specifications, General Terms and Conditions (and any Appendices), the Non-Collusive Bidding Certificate, the Option to Extend. These documents set forth the character and quality of the work and materials to be provided by the bidder, and the conditions and terms of the contract. The one-year Contract is to **begin on August 1, 2015, and terminate on July 31, 2016. The Town shall have the option to extend this contract at the same price three (3) times, for a total of up to four (4) years, through July 31, 2019.**

The terms of the Notice to Bidders, Summary of Bid, Specifications, General Terms and Conditions and any Appendices, Non-Collusive Bidding Certificate, Option to Extend are specifically incorporated into the Bid and the Contract executed by successful bidder.

Bidders shall have seven (7) business days prior to the bid opening date to bring to the attention of the Town Clerk any errors or defects in these specifications which would prevent Bidder from providing a responsive bid.

Bidder must be fully qualified to perform the work specified in the Specifications. Town reserves the right to request references from other parties for which Bidder has performed similar work.

**Town of Yorktown**

**REQUEST FOR BIDS:  
BID PROPOSAL FORM**

**2015-2016 Asphalt Concrete and Asphalt Concrete Laid in place**

**ASPHALT CONCRETE (Material only)**

Tack Coat (N.Y.S. D.O.T. #407.01) – delivered	\$	/gal.
Tack Coat (N.Y.S. D.O.T. #407.01) –without delivery	\$	/gal.

PLANT LOCATION \_\_\_\_\_

NEW YORK STATE DOT FACILITY NUMBER \_\_\_\_\_

**ASPHALT CONCRETE LAID IN PLACE (Material, delivery, and labor)**

1.	TYPE 3 BINDER COURSE (N.Y.S. D.O.T. #403-138902)	
	(a) in place	\$ /ton
	(b) in place with keys	\$ /ton
	(c) in place with tack coat	\$ /ton
	(d) in place with tack coat and keys	\$ /ton

2.	TYPE 6F3 TOP COURSE (N.Y.S. D.O.T. #403-178302)	
	(a) in place	\$ /ton
	(b) in place with keys	\$ /ton
	(c) in place with tack coat	\$ /ton
	(d) in place with tack coat and keys	\$ /ton

3.	TYPE 7F3 TOP COURSE (N.Y.S. D.O.T. #403-198302)		
	(a) in place	\$	/ton
	(b) in place with keys	\$	/ton
	(c) in place with tack coat	\$	/ton
	(d) in place with tack coat and keys	\$	/ton

4.	TYPE 12.5 MM SUPERPAVE TOP F3 (N.Y.S.D.O.T. #402-128102)		
	(a) in place	\$	/ton
	(b) in place with keys	\$	/ton
	(c) in place with tack coat	\$	/ton
	(d) in place with tack coat and keys	\$	/ton

5.	TYPE 25.0MM SUPERPAVE TOP F3 (N.Y.S.D.O.T. #402-258901)		
	(a) in place	\$	/ton
	(b) in place with keys	\$	/ton
	(c) in place with tack coat	\$	/ton
	(d) in place with tack coat and keys	\$	/ton

6.	TYPE 37.5MM SUPERPAVE TOP (N.Y.S.D.O.T. #402-378901)		
	(a) in place	\$	/ton
	(b) in place with keys	\$	/ton
	(c) in place with tack coat	\$	/ton
	(d) in place with tack coat and keys	\$	/ton

7.	TYPE 6.3 POLYMER MODIFIED SUPERPAVE TOP (N.Y.S.D.O.T. #402-068101)		
	(a) in place	\$	/ton
	(b) in place with keys	\$	/ton
	(c) in place with tack coat	\$	/ton
	(d) in place with tack coat and keys	\$	/ton

8.	TYPE 1 BASE WARM MIX (N.Y.S.D.O.T. #404-118902)		
	(a) in place	\$	/ton
	(b) in place with keys	\$	/ton
	(c) in place with tack coat	\$	/ton
	(d) in place with tack coat and keys	\$	/ton

9.	TYPE 6F3TOP WARM MIX (N.Y.S.D.O.T. #404-178902)		
	(a) in place	\$	/ton
	(b) in place with keys	\$	/ton
	(c) in place with tack coat	\$	/ton
	(d) in place with tack coat and keys	\$	/ton

10.	TYPE 1 BASE (N.Y.S.D.O.T. #403-118902)		
	(a) in place	\$	/ton
	(b) in place with keys	\$	/ton
	(c) in place with tack coat	\$	/ton
	(d) in place with tack coat and keys	\$	/ton

PLANT LOCATION \_\_\_\_\_

NEW YORK STATE DOT FACILITY NUMBER \_\_\_\_\_

**This bid seeks bidders for one or more contracts to supply the Town with asphalt concrete a material (delivered by vendor or picked up by Town) and asphalt concrete laid in place. For the laid in place bid, the Town seeks to have multiple options for each product, so it is requesting prices for ten products with four options each. The Town reserves the right to award contracts to each of the lowest bidders for each item with respect to which bids are requested on the bid proposal form.**

The Town may award a bid based on either Lowest Responsible Bid or Best Value, in accordance with the 2012 amendments to General Municipal Law § 103, as implemented by Yorktown Town Code Chapter 78 (copies available at the Town Clerk's Office).

All of Bidder's costs must be factored into and incorporated in the bid price above. If the bid is based on an hourly rate, the Contractor shall not bill for its travel time from Contractor's location to the Town work location. If the Bidder must rent special equipment to perform the work, the Contractor shall not bill additional fees for such rental costs.



The undersigned, on behalf of the bidder, certifies that:

- (1) the person whose signature appears below is legally empowered to bind the company in whose name the bid is entered;
- (2) Bidder has read the complete Request for Bid and understands all provisions;
- (3) if accepted by the Town, this bid is guaranteed as written and will become part of the contract;
- (4) by submitting its bid, Bidder agrees to all the terms of this Bid document;
- (5) mistakes in writing of the submitted bid will be the Bidder's responsibility;
- (6) by submitting a bid, Bidder/Contractor (or any approved assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to the New York State Iran Disinvestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at <http://ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended; and
- (7) if bidder is a corporation, unincorporated business or partnership, bidder represents and warrants that it is authorized to do business in the State of New York.

BIDDER'S NAME (print): \_\_\_\_\_

**Signed:** \_\_\_\_\_

**Signature of authorized person** \_\_\_\_\_

Print or type clearly:

NAME of authorized person: \_\_\_\_\_

TITLE of authorized person: \_\_\_\_\_

Street Address, State and Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

– END OF BID PROPOSAL FORM –

## PART TWO

### GENERAL TERMS AND CONDITIONS OF BID

<u>Article Numbers</u>	<u>Heading</u>
I.	Quality and Samples
II.	Interpretation and Approval
III.	Non-Collusion
IV.	Bid Quotations
V.	Late Bids
VI.	Bid Opening
VII.	Acceptance or Rejection
VIII.	Award
IX.	Notices
X.	Delivery Point
XI.	Date of Delivery/Time of Performance
XII.	Damage
XIII.	Guarantee of Equipment and Services
XIV.	Cover Clause
XV.	Assignment Prohibited
XVI.	Special Requirements
XVII.	Termination

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I. **Quality and Samples**

All equipment, material and supplies bid upon must conform to the description and specifications stated in the bid document, including Part Three Specifications, or their reasonable equivalent. References to type, style, trade name, and catalog are intended to be descriptive only and not restrictive.

II. **Interpretation and Approval**

No interpretation of the meaning of the bid document will be made to any bidder orally. Any request for such interpretation shall be made not later than five (5) working days prior to the date fixed for the opening of bids and must be made in writing, addressed to:

Alice Roker, Town Clerk  
Town of Yorktown  
363 Underhill Ave.  
Yorktown Heights, NY 10598

Notice of any and all such interpretations and any supplemental instructions will be served upon all bidders of record by the Town Clerk in the form of addenda to the bid specifications. All addenda so issued shall become a part of the bid document. Interpretation of the bid specification shall be made by Town Clerk, based on consultation with appropriate Town personnel. Bidders shall not contact any personnel other than the Town Clerk prior to bid opening. The Town Clerk's interpretation shall be final and binding on all parties.

III. **Non-Collusion**

Bidder shall certify that it has complied with all of the requirements stated in the non-collusive bidding certificate by signing the Non-Collusive Bidding Certificate. Failure by Bidder to complete and sign the non-collusive bidding certificate will constitute grounds for rejection of the bid proposal by Town.

IV. **Bid Quotations**

Bid price for work shall be set forth in ink or typed, in increments as indicated on the bid proposal form (for example, hourly rate).

V. **Late Bids**

Bid proposals that arrive after the time stated for the opening of bids shall not be accepted, and will be returned to Bidder unopened. Whether sent by mail or by means of personal delivery, Bidder assumes responsibility for having its bid delivered on time at the place specified in the legal notice.

VI. **Bid Opening**

Sealed Bids will be publicly opened on the date and time specified in the notice included in the bid documents. Bids may be read aloud to those persons present when practicable. Any Bidder may request to review the bid proposals submitted by arranging a mutually convenient time when bids may be reviewed with the Town Clerk. If Town Hall is closed for business at the time scheduled for bid opening, for whatever reason, sealed bids will be accepted and opened on the next scheduled and open business day, at the originally scheduled time.

VII. **Acceptance or Rejection**

The Town reserves the sole right to waive any informality, to reject any or all bids, and Town's decision shall be final and binding on all parties. Bidder should be aware that any required information which is not supplied or any exception taken to any of the bid documents may, at Town's option, render such bid non-responsive.

VIII. **Award**

Awards will be made to the responsible bidder submitting the lowest bid that fully complies with all the specifications stated in the bid document, or on the basis of Best Value in accordance with Section 103 of the General Municipal Law. The Best Value option has been adopted by the Town of Yorktown, and is codified in Chapter 68 of the Yorktown Town Code. Town reserves the right to make awards within sixty (60) days after the date of the bid opening, during which period bids may not be withdrawn, unless Bidder expressly states in its bid that acceptance thereof must be made within a shorter specified time. Town reserves the right to reject all bids and to purchase any or all items on contracts awarded by agencies or departments of the State of New York or of the County of Westchester, if such items can be obtained on substantially the same terms, conditions, specifications, and at a lower price.

IX. **Notices**

If the bid is awarded by Town, the Town Clerk will notify the successful bidder in writing at the address provided by the successful bidder in the Bid Proposal Form. The Town Board's resolution awarding the bid and all of the documents herein (which shall be deemed incorporated), including a Bid Bond, if required, in form satisfactory to the Town Attorney, shall constitute a contract between the successful bidder and the Town of Yorktown. Within 5 business days of Contractor's receipt of award notification (presumed to be received five days after postmark), Contractor shall submit to the Town Clerk the following:

1. Insurance certificates meeting the requirements of this bid package.
2. If a Bid Bond has been required and a Performance Bond and/or Labor and Materials Bond is also required, the Contractor awarded the bid shall submit such bonds and the Town Clerk will return the Bid Bond.
3. A completed W-9 form must be submitted with first invoice.

Upon the Town's receipt and acceptance of the insurance certificates and bonds, if applicable, the Town shall notify the Contractor of the date and time when work shall commence. If the Contractor fails to timely submit satisfactory insurance certificates and bonds, if required, this shall constitute grounds for rescission by the Town of the Contract, and shall authorize the Town to award the bid to the next lowest responsible bidder or to the next bidder eligible under the Best Value approach. Work shall not commence until the insurance certificates have been accepted by the Town.

X. **Delivery Point**

With respect to the purchase of bid items or equipment to be installed, deliveries shall be made during Town business hours on weekdays, except on national, state or local holidays when Town buildings are closed, or unless otherwise authorized in writing by the Town. Bidder shall be responsible to verify that the appropriate Town building for delivery is open prior to delivering items or furnishing services. All bid items shall be unloaded and placed within the particular Town building, at points of delivery, and in quantities, as directed by the Town. Any costs incurred by the Town or Bidder due to the

failure of Bidder to comply with this requirement will be the responsibility of Bidder. Bidder should be prepared to furnish proof of delivery, if requested by Town.

XI. **Date of Delivery/Time of Performance**

Delivery of all bid items shall be made and performance of all services under this bid shall be commenced, not later than the date specified in the bid document. If Bidder cannot meet the delivery date or start date specified in the bid document, Bidder shall state on the bid form the proposed date of delivery or start date, which information shall be considered relevant in determining best value or responsiveness of bid.

XII. **Damages**

Bidder shall be fully responsible for performance of work in a satisfactory manner with satisfactory results in the discretion of the Town. With respect to bid items Town will not consider the carrier responsible for damaged or delayed deliveries. Any bid item damaged or broken when delivered to Town shall be replaced immediately by Bidder. With respect to performance of work, Contractor shall correct any deficiencies immediately. Town shall notify Bidder of damaged material or defective or unsatisfactory work in writing within ten (10) business days from the date of delivery or date of performance of work.

XIII. **Guarantee of Equipment and Services**

By submitting its bid, Bidder is deemed to warrant and guaranty as follows:

- A. Unless otherwise noted in the Specifications, all equipment furnished and work performed in this bid are guaranteed against defects in workmanship and/or material for a period of one (1) year from the date of delivery to Town, or one (1) year from the date of acceptance of work by Town, whichever date is later.
- B. All services rendered and work performed under this bid shall be rendered and performed in a workmanlike manner in accordance with the general standards of the trade. Contractor shall provide, furnish and perform all of the work specified in the Bid Documents, including all labor, materials, tools and equipment to satisfactorily complete the work in accordance with the bid documents. All work shall be performed by competent and skilled workers and in accordance with good trade practices and all applicable codes. By submitting its bid, the Bidder warrants that it is experienced in, is capable of, and is fully familiar with the work to be performed and the work site.
- C. Except as noted in Specifications, any equipment furnished is standard, new, latest model of the regular stock product, as required by the specifications, with parts regularly used for the type of equipment offered.
- D. No attachment or part will be substituted or applied contrary to manufacturer's recommended and standard practice. All regularly manufactured stock electrical

items must bear the label of the Underwriters Laboratories, Inc. It is the responsibility of Bidder to advise Town in the bid proposal if electrical equipment to be furnished hereunder does not have a U.L. label. Any equipment provided or services rendered under the bid proposal which is or becomes defective during the guarantee period shall be replaced or redone by Bidder, free of charge. All replacements shall carry the same guarantee as the original equipment or service – one (1) year from the date of delivery or acceptance of the replacement. Bidder shall make any such replacement promptly upon receiving written notice from Town.

XIV. **Cover Clause**

If Bidder fails to deliver or perform as ordered, or within the time specified, or within reasonable time as interpreted by Town, or fails to make replacement of rejected or defective articles or services, whether so requested immediately or as directed by Town, Town may purchase goods or services from other sources to take the place of the goods or services rejected found defective or not delivered. Town reserves the right to authorize immediate purchase (within 24 hours) from other sources against rejections on any contract when necessary. On all such purchases Bidder agrees to reimburse Town promptly for excess costs occasioned by such purchases. Should the cost be less, Bidder shall have no claim to the difference. Such purchases may be deducted from the outstanding invoices or claims, or charged back against future invoices.

XV. **Assignment Prohibited**

Bidder shall not assign, transfer, convey, sublet, subcontract or otherwise dispose of the contract or its right, title, or interest therein, or its power to execute such contract, to any other person, or entity without the prior written consent of Town.

XVI. **Special Requirements**

Special requirements for any bid proposal may supersede and/or be added to any provision contained in the instructions noted above. These instructions are to be considered an integral part of all bid proposals.

XVII. **Termination**

If Bidder does not comply with the Specifications stated herein, Town reserves the right to terminate the Contract upon failure to comply with the Contract within ten (10) days of notice provided to Bidder.

## PART THREE

### A. TECHNICAL SPECIFICATIONS

1. Term: This Contract is a one-year contract.
2. Option to Extend:
  - a. Town shall have the unilateral option of extending this contract for three (3) additional years on the same terms and conditions as are contained in this contract at the time said options is exercised.
  - b. Said option shall be exercised by written notification from Town not less than thirty (30) calendar prior to the expiration of the contract.
  - c. Bidders are cautioned that the exercise of the option is a Town prerogative, not a contractual right on the part of Bidder. If the Town exercises the option within the time frame prescribed herein, Bidder shall be contractually bound to perform the services for the option period.
3. Nature of Bid: This bid seeks bidders for one or more contracts to supply the Town with asphalt concrete laid in place. The Town reserves the right to award contracts to each of the lowest bidder for each item with respect to which bids are requested on the bid proposal form.
4. Price shall include the cost of:
  - a. hot mix material,
  - b. delivery to site over properly conditioned roads,
  - c. application of hot mix with approved spreader machine capable of paving a continuous 16' wide traffic lane,
  - d. compaction of material using two approved steel drum rollers one of which must be vibratory (minimum compaction effort 16 tons combined), and
  - e. all supplemental labor, tools, and equipment required to complete such laid in place work.
5. All traffic control and scheduling will be the responsibility of the Superintendent of Highways.
6. Total quantities of laid in place asphalt to be purchased by the Town are indeterminate. For the purpose of this bid the contractor shall assume a minimum daily production rate of 500 tons per day.
7. All asphalt concrete items shall be subject to price adjustment as provided by New York State Office of General Services. Bidders shall use the June 1, 2014 posting as the base price for this bid.
8. In requesting payment the vendor shall invoice the Town for the number of tons at the bid price. An additional statement on the same invoice form will designate the price

adjustment based on the percentage of asphalt cement in the particular mix. This will either be an additional payment to the vendor or a credit to the Town.

9. If the bidder does not own the Asphalt Plant from which the material will be produced, bidder shall submit a letter from the owner of the Asphalt Plant stating that the Asphalt Plant will supply bidder with material for the duration of the contract period. This letter must be submitted with the bid.
10. Asphalt concrete shall be laid in place as directed by the Town Superintendent of Highways. The Town Superintendent of Highways shall have the right to refuse asphalt if it is not laid in place in accordance with New York State Department of Transportation specifications.
11. Town may, at its option, terminate the contract by giving Bidder not less than thirty (30) days written notice.

## **B. GENERAL SPECIFICATIONS**

12. Bidder must be qualified to perform the services contracted for herein and must have a minimum of five (5) years' experience performing such services (under present company name).
13. Bidder shall be currently involved in the performing of the same type of services as are being bid herein.
14. Bidder must demonstrate that it is a responsible organization possessing adequate financial resources to accomplish the various services described herein and that it has a satisfactory record of performance and integrity.
15. Bidder's service personnel shall each have a minimum of five (5) years training and experience in laying asphalt concrete in place and they shall be regularly employed by Bidder.
16. Bidder shall provide the Town with a list of five (5) similar customers currently being serviced by him in the local area.
17. Each employee engaged in work of the project under this contract shall be paid, for the trade or occupation listed, not less than the wage rate set forth opposite the same as currently listed in the State of New York Department of Labor Wage not listed therein, shall be paid not less than the minimum rate per hour designated by the Industrial Commissioner of the State of New York. In accordance with statute, any person or corporation that willfully pays, after entering into this contract, less than this established wage schedule, shall be guilty of a misdemeanor and upon conviction shall be punished for such first offense by a fine of five hundred (\$500) dollars, or by imprisonment; a second offense carries heavier penalties. Article 8, Section 220 of the Labor Law, as amended, provides, among other things, that it shall be the duty of the fiscal officer of the Bidder to make a determination of the schedule of wages paid to all



laborers, workmen and mechanics employed on public work projects. Bidder shall provide statutory benefits for disability workers' compensation and unemployment insurance and social security.

### C. INSURANCE REQUIREMENTS

A. Prior to commencement of any work under this Contract and until completion and final acceptance of the work, the Contractor shall, at its sole expense, maintain the following insurance on its own behalf, and furnish to the Town certificates of insurance evidencing same and reflecting the effective date of such coverage as follows:

- 1) Commercial General Liability Policy, with limits of no less than \$1,000,000 per occurrence and \$2,000,000 in aggregate for Bodily Injury and Property Damage, which shall not exclude coverage for:
  - A. Products/Completed Operations;
  - B. Independent Contractors;
  - C. Cross Liability (Commercial General Liability and Business Automobile Liability policies only).

Self-insured retentions or deductibles in excess of \$25,000 per occurrence or claim shall be stated on the certificate of insurance or policy endorsement provided as proof of insurance. Town reserves the right to require proof of financial security on larger self-insured retentions or deductibles.

- 2) Automobile Liability: hired and non-owned liability coverage along with specific coverage for any owned or leased vehicles used at job site in the amount of \$1,000,000 per occurrence for Bodily Injury and/or Property Damage.
- 3) Umbrella Liability, with limits of no less than \$1,000,000 per occurrence and in aggregate on a follow-form or better basis over underlying General, Automobile, Employer's Liability and, if applicable, Professional Liability.
- 4) Worker's Compensation and Employers Liability Policy, New York statutory coverage. **C-105.2 form or CE-200 exemption form is required. SI-12 form is required if self-insured.**
- 5) Disability Insurance: statutory coverage. **DB-120.1 form, or, if exempt, a CE-200 form. DB-155 is required if self-insured.**

B. The Town of Yorktown and its assigns, officers, employees, representatives and agents shall be named as an "Additional Insured" on the policy and the Certificate of Insurance shall show this applies to the General Liability coverage on the certificate.

C. Cancellation of insurance or failure to renew insurance, if such occurs prior to the commencement of work or during the performance of work under this contract, shall constitute a material breach of this contract if not cured as described in paragraph D below. If Contractor is notified by its insurer that Contractor's general liability

policy has been cancelled or will be cancelled any time within the next thirty (30) days for any reason including but not limited to nonpayment of premiums, Contractor shall immediately all cease work under this Contract, and shall give the Town of Yorktown same day or next business day written notice of such cancellation or threatened cancellation by personal delivery of such notice to the Town Clerk. A copy of such written notice shall also be sent simultaneously to the Town Attorney by personal delivery, email or facsimile transmission. Failure to provide such notice as provided herein shall constitute a material breach of the contract and in such event the Town of Yorktown may in its sole discretion withhold any payment otherwise due under the contract. The Town of Yorktown reserves the right, as a condition of final payment, to require Contractor to provide proof that Contractor maintained the required insurance throughout the performance of the work to be performed under this Contract.

D. Any policy that lapses, expires or is cancelled during the term of work shall be renewed, and proof of such renewal shall be sent by Contractor and received by the Town of Yorktown no less than ten (10) days prior to lapse, expiration or cancellation of the original policy.

E. The Town of Yorktown reserves the right to request copies of actual policies and endorsements to verify coverage.

F. The term "Contractor" as used in this section (pertaining to insurance) shall mean and include Subcontractors of every tier.

G. Each insurance policy shall be written on a primary and non-contributing coverage basis, including any self-insured retentions.

H. Tools and equipment: Contractor is responsible for insuring the value of Contractor's own tools, equipment, and materials brought, stored or operated at the job site. The Town of Yorktown is not responsible if any of these items is lost, stolen or destroyed.

I. To the extent permitted by New York law, the Contractor waives all rights of subrogation or similar rights against Town of Yorktown, assigns, officers, employees, representatives and agents.

J. The cost of furnishing the above insurance shall be borne by the Contractor; there will be no direct payment for this work. Cost will be deemed to have been included in the price bid or proposed for all scheduled items.

K. All carriers listed in the certificates of insurance shall be A.M. Best Rated A VII or better and be licensed in the State of New York.

L. Each policy of insurance shall contain clauses to the effect that such insurance (except professional liability insurance, if any) shall be primary without right of contribution of any other insurance carried by or on behalf of the Town with respect to the Town's interests and that such insurance shall not be cancelled, materially changed, or not renewed for any reason, including non-payment of

premium, without ten (10) days prior written notice to the Town. The Town shall have the option, in its sole discretion, to pay any necessary premiums and charge the cost back to Contractor.

M. Notwithstanding anything to the contrary in this Contract, Contractor irrevocably waives all claims against the Town for all losses, damages, claims, or expenses resulting from risks that are commercially insurable, but Contractor's provision of insurance coverage shall not in any way limit Contractor's liability under this Contract.

N. Failure to provide insurance, lack of insurance or inadequate limits of insurance does not limit in any way Contractor's obligations to reimburse injured parties.

O. Any accident occurring on Town property shall be reported to the office of the Town Supervisor as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Town of Yorktown as soon thereafter as possible and not later than three (3) days after the date of such accident.

1. Contractor shall promptly commence work upon the direction of the Town. All of the work shall be completed as soon as practicable thereafter, but, in no event, later than as required in the Bid Specifications. The time for completion of the work may be extended, in the discretion of the Town, upon the request of the Contractor, for good cause shown, with the grant of any extension by the Town to be in writing.
2. The Contractor will meet with representatives of the Town, as the Town may, from time to time, direct. The Contractor shall promptly inform the Town in writing of any cause for delay in the performance of the Contractor's obligations under this Contract.
3. The Contractor shall prosecute the work without undue interference with the operations of the Town or the comfort, repose, health, safety and welfare of the inhabitants of the Town. Unless otherwise authorized by the Town in writing, the Contractor's use or operation of noisy equipment in performing the work shall be limited to the hours as directed by the Town. All work shall be performed during regular business days and hours of operation of the Town, except for responses to emergency calls, and unless otherwise directed by the Town.
4. The Contractor shall be responsible for the proper care and protection of the work and for all materials and articles delivered to the site where the work will be performed, until completion and final acceptance of the work by the Town. The contractor shall exercise proper precautions and safety measures in performing the work, which precautions and safety measures shall be in accordance with all applicable laws, rules and regulations. The contractor shall be responsible for the protection of persons and/or property, and shall be responsible for all injuries

and/or damages to all persons and/or property, either on or off the site, which may occur in connection with the prosecution of the work hereunder. The Contractor shall exercise such additional safety measures as the Town may determine to be reasonably necessary, in the Town's discretion. The Contractor shall procure and pay for all permits and licenses necessary for the performance of the work hereunder.

5. The Contractor shall keep the site of the work free from unnecessary accumulations of waste materials. Upon the completion of all of the work, the Contractor shall remove all of its tools, scaffolding, equipment and surplus materials, as well as all rubbish and waste resulting from the work. Upon the completion of the work, the site of the work shall be left "broom clean" or its equivalent, to the reasonable satisfaction of the Town. The Town will not be responsible for the Contractor's tools and equipment, including any loss, theft or damage thereto.
6. The Contractor shall protect, defend, indemnify and hold the Town of Yorktown, its boards, officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this Contract and/or the performance hereof; without limiting the generality of the foregoing, any and all such claims, etc., relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, decree of any court, shall be included in the indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at Contractor's sole expense and agreed to bear all other costs and expenses related thereto, even if it (claims, etc.), is groundless, false or fraudulent. In any case in which such indemnification would violate Section 5-322.1 of the New York General Obligations Law, or any other applicable legal prohibition, the foregoing provisions concerning indemnification shall not be construed to indemnify the Town for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the town, or its employees. This paragraph shall survive any termination or completion of performance of this Contract.
7. The Contractor shall, at its own expense, comply with all the provisions of all applicable federal, State, County, and municipal laws, rules, regulations and requirements applicable to the Contractor as an employer of labor, the performance of the work, or otherwise.
8. In the event of a material breach of this Contract by the Contractor, the Town may terminate this Contract for cause upon ten (10) days' notice in writing, which

shall include, but is not limited to, any of the following: (1) failure by the Contractor to provide properly skilled workers or proper materials or to complete the work in accordance with the applicable schedule; (b) failure by the Contractor to pay for materials or labor in accordance with applicable agreements or requirements; (c) non-compliance with laws, rules and regulations or directions of the Town applicable to the performance of the work; (d) failure by the Contractor to maintain any required insurance or bond; (e) failure to defend and indemnify the Town in accordance with this Contract; or (f) failure by the Contractor to cure any breach of this Contract not listed above within the time required. Without limiting any other rights or remedies of the Town, in the event of termination for cause, the Town may take possession of the site and all tools, equipment, materials, and machinery thereon, and complete the work by such means and methods as it may deem appropriate.

9. The Contractor represents and warrants that it has not employed or retained any person, other than a bona fide full time salaried employee working solely for the Contractor to solicit or secure this Contract, and that it has not paid for or agreed to pay any person (other than payments of fixed salary to a bona fide full-time, salaried employee working solely for the Contractor) any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, without limiting any other rights or remedies to which the Town may be entitled, or any civil or criminal penalty to which any violator may be liable, the Town shall have the right, in its discretion, to terminate this Contract without liability, and to deduct from the contract price, or otherwise to recover, the full amount of such fee, commission, percentage, gift or consideration.
10. No waiver of any breach of this contract shall in any way affect any other term or condition of this Contract or constitute a cause or excuse for a repetition of such or any other breach of this Contract.
11. All plans and other like records compiled by the Contractor in completing the work under this Contract shall become the property of the Town. The Contractor may retain copies of each such plan or record for its own use.
12. If the work includes any article or equipment for which there is a manufacturer's warranty, the Contractor shall ensure that the Town will receive the warranty documentation, and will receive the benefit of the warranty by transfer or otherwise.
13. The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the Town, or any of its boards, officers, employees or representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work as provided herein.
14. Nothing in this Contract, express or implied, is intended to confer upon any third

party any right or remedy under or by virtue of this Contract.

15. This Contract shall constitute the entire Contract between the parties regarding the subject matter hereof, shall supersede all prior understandings, whether oral or written, and shall not be amended or modified, except by a written document signed by both parties hereto stating the intent to amend or modify this Contract.
16. This Contract shall be construed and enforced in accordance with the laws of the State of New York. Any action or proceeding commenced by the Contractor in relation to this Contract or the work hereunder, in which the Town is joined as a party, shall be commenced in the courts of the State of New York and venue shall be in Westchester County.

NON-COLLUSIVE BIDDING CERTIFICATION

Made pursuant to Section 103-d of the General Municipal Law of the State of New York.

By submission of this bid, Bidder and each person signing on behalf of 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 his or her knowledge and belief:

- 1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by Bidder and will not knowingly be disclosed by Bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A bid shall not be considered for award nor shall any award be made where (1) (2) and (3) above, have not been complied with; provided, however, that if in any case Bidder cannot make the foregoing certification, Bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

Dated: \_\_\_\_\_

Bidder: \_\_\_\_\_
(Legal name of person, firm or corporation)

By: \_\_\_\_\_
(Signature)

\_\_\_\_\_
(Please Print Name)

\_\_\_\_\_
(Title)

State of New York )
County of \_\_\_\_\_)ss.:

On the \_\_\_ day of \_\_\_\_\_ in the year 200\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_
(Notary Public)