

Invitation to Bid

City of Hillsboro, Texas

Bid Item: HMAc Asphalt Overlay

RFB No. 2019-PW-001

Notice is hereby given that the City of Hillsboro will receive sealed written bids at the City Administration Building, P.O. Box 568, 214 East Elm Street, Hillsboro, Texas 76645 until 2:00 p.m. on Thursday, September 5, 2019 for HMAc Asphalt Overlay at various locations on selected streets as per specifications.

Bids will be opened and read aloud immediately after the closing deadline in the conference room at the City Administration Building at 214 East Elm Street.

All bids must be substantially complete with specifications. Bid specifications can be found at www.hillsborotx.org and click on Requests for Bids on the homepage, or by contacting Karen Warren at 254-582-3271 extension 2410, or email kwarren@hillsborotx.org , or by picking the specifications up at the office of the City Secretary at 214 East Elm Street, Hillsboro, Texas.

All bids must be submitted in sealed envelopes, bearing on the outside the name of the bidder, the bidder's address, and the name of the bid item as specified in the bidding instructions. Any bids received after the scheduled closing time for receipt of bids will be marked "Received Late" and will be returned unopened to the sender.

The City of Hillsboro will award the bid to the lowest responsible bidder that meets specifications. The City of Hillsboro reserves the right to reject any or all bids.

The bid will be valid for 75 days.

Publish Dates:

Monday, August 19, 2019

Monday, August 26, 2019

Request for Bids

August 19, 2019

RFB No. 2019-PW-001

Dear Prospective Contractor:

Bids will be received in the office of City Secretary, City of Hillsboro, P.O. Box 568, 214 East Elm Street, Hillsboro, Texas 76645 until **2:00 PM., Thursday, September 5, 2019** for **HMAC Asphalt Overlay**.

Bids must be submitted and received no later than the Bid opening date and time specified above. Bids will be opened publicly and read aloud. Any Bids received later than the specified time, whether delivered in person or mailed, shall not be considered.

Mail Bids to: City Secretary
City of Hillsboro
P.O. Box 568
Hillsboro, Texas 76645

or Deliver to: City Secretary
City of Hillsboro
214 East Elm Street
Hillsboro, Texas 76645

Bid envelopes must be plainly marked on the outside as follow:

SEALED BID - DO NOT OPEN	
RFB:	<u>HMAC Asphalt Overlay</u>
RFB NO:	<u>2019-PW-001</u>
RFB DUE DATE:	<u>2:00 P.M., Thursday</u>
	<u>September 5, 2019</u>

The City of Hillsboro, hereafter referred to as the "City," shall have the right to accept or reject any or all Bids, or any part thereof; to waive any technicalities in the interest of the City.

Sincerely,


Frank Johnson
City Manager

SUPPLIER DIVERSITY PURCHASING POLICY

The City of Hillsboro will ensure that purchases of equipment, materials, supplies, and/or services conform with Texas Procurement law as applicable to the CITY, are cost effective, and contributable to the competitiveness of the CITY and its customers.

Procurement activities will be conducted in an open and fair manner with equal opportunity provided to all qualified parties. The CITY will provide equal contracting opportunities as provided by state and federal law to small business enterprises, Historically Underutilized Businesses and Disadvantaged Business enterprises.

GENERAL INSTRUCTIONS TO BIDDERS

The term "Bid" and the term "Proposal" apply to all solicited documents, whether Request for Bids (RFB), Request for Proposals (RFP), or Request for Qualifications (RFQ).

1. BID SUBMISSION: Bid must be received no later than the Bid opening date and time specified above. All Bids received after closing time will not be considered.

1.1 To be considered as eligible to submit a Bid, a Bidder shall have complied with all legal requirements to permit him to operate under applicable laws of the State in which the work is to be executed.

1.2 If responding by regular mail services, mail is picked up at our local post office once a day at 9:00 AM

1.3 If responding by express mail, allow sufficient time for delivery to the City Secretary's office in the City Administration Building.

1.4 **FAXED BIDS WILL NOT BE ACCEPTED.**

2. WITHDRAWAL OF BIDS: No Bid may be withdrawn for a period of 60 days after Bid opening, except by mutual consent of the City and Bidder, and except that Bids may be withdrawn upon written request received from Bidder prior to time established for receipt of Bids.

3. SIGNATURE ON BIDS: Bid, to be valid, must be manually signed in ink by authorized person. By such signature, Bidder agrees to strictly abide by the terms, conditions, and scope of work embodied in this Request for Bid.

4. EXAMINATION OF BID DOCUMENTS: Before submitting a Bid, all Bidders shall examine the complete Bid documents, including Bid Notice, Instruction to Bidders, and General Scope of Services, all of which are part of the Bid documents.

5. ADDENDA: Answers to all questions, inquiries, and request for additional information will be issued in the form of Addenda. Also, prospective Bidder may, during the Bid period, be advised by addenda of additions, deletions from, or changes in the requirements of the Bid documents. The City will not be responsible for the authenticity or correctness of oral interpretations of the Bid documents or for information obtained in any other manner than through the media of addenda. Receipt of each addendum shall be considered a part of the contract documents. Failure to acknowledge receipt of addenda issued may invalidate a Bid as incomplete.

Any questions concerning this Bid should be emailed to Karen Warren, City Secretary, no later than 4 days prior to the opening of the Bid. **Ms. Warren's email address is kwarren@hillsborotx.org.** This is to allow the City sufficient time to respond to inquiries and provide information to all interested Bidders by Addenda. Addendums will be posted on the City of Hillsboro web site at www.hillsborotx.org, Request for Bids.

5.1. Bidders are responsible for checking the City of Hillsboro web site (www.hillsborotx.org) for updates and addenda until the time at which the submission is due. Failure to respond to all

requirements, including those addenda, may be grounds for rejection of your Bid.

6. TAXATION: The City is exempt under the Sales Tax and Use Tax Laws, and the Bidder shall not include such taxes in the Bid.

7. QUALIFICATION OF BIDDERS: The City reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the City that such Bidder is properly qualified to carry out the obligations of the contract and to complete the Work contemplated herein. Conditional Bids will not be accepted.

8. CONSIDERATION OF BIDS: Unless stated otherwise in the Advertisement or Invitation to Bid, the properly identified Bids received on time will be opened publicly and read aloud. Bidders are invited to be present.

9. COMPLIANCE WITH SCOPE OF SERVICES AND RIGHT OF SELECTION: The Bidder shall abide by and comply with the true intent of the scope of services and not take advantage of any unintentional error or omission.

10. DEVIATION FROM SCOPE OF SERVICES: All deviations from the scope of services must be noted in detail by the Bidder, in writing, at the time of submittal of the formal Bid. The absence of a written list of deviations at the time of submittal of the Bid will hold the Bidder strictly accountable to the City to the scope of services as written. Any deviations from the scope of services as written not previously submitted, as required by the above, will be grounds for rejection of the material and/or item when delivered.

11. BRAND NAMES: If and wherever in the specifications a brand name, make, name of any manufacturer, trade name, or vendor catalog number is mentioned, it is for the purpose of establishing a grade of quality only. To not rule out other competition and equal brands or makes, the phrase "or approved equal" is added. If a product other than that specified is bid, it is the vendor's responsibility to name such product within his bid to prove that said product is equal to that specified and must submit brochures, samples and/or specifications in detail with the bid.

12. By submitting a Bid, each Bidder agrees to waive any claim it has or may have against the City, and their respective employees arising out of or in connection with the administration, evaluation, recommendation or any Bid; waiver or any requirements under the Bid Documents, or the Contract Documents, acceptance or rejection of any Bids; and award of Contract.

13. REPRESENTATIONS: By execution and submission of this Bid, the Bidder hereby represents and warrants to City as follows: The Bidder has read and understands the Bid Documents and this Bid is made in accordance with the Bid Documents.

14. INDEMNIFICATION: The Bidder does hereby agree that, if awarded a Contract, he shall indemnify and hold harmless the City and the City Council, its members, and employees and agents of the City from all suits and actions of every nature and description brought against them or any of them growing out of any contract, or contracts, written or oral, entered into between the City and the successful Bidder, whether covered by insurance or not, and further, that upon the awarding of the Contract to the successful Bidder in accordance with

this scope of work and agreement of indemnification shall automatically become effective.

15. EVALUATION FACTORS: Bidders may furnish pricing for all or any portion of the Solicitation (unless otherwise specified). The City may evaluate and award the Contract for any item or group of items shown on the Solicitation, or any combination deemed most advantageous to the City. Bids that specify an "All or None" award may be considered if a single award is advantageous.

16. CRITERIA FOR AWARD: The City will award contracts to the Bidder that represents the "Best Value" to the municipality, price and other factors considered. In determining the "Best Value", the following criteria will be considered as amended in section 252.043 of the Texas Local Government Code:

- Purchase Price;
- Reputation of the Bidder and the Bid's goods/service;
- Quality of the Bidder's goods or services;
- Extent to which the goods or services meet the municipality's needs;
- Impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and non-profit organizations employing persons with disabilities;
- The total long term cost to the municipality to acquire the Bidder's goods or services; and
- Any relevant criteria specifically listed in the request for Bids or Bid

17. AWARD OF CONTRACT: Upon completion of evaluation of

Bids, the name of the successful contractor will be posted on the City website at www.hillsborotx.org, Request for Bids.

18. CANCELLATION/OPEN MARKET PURCHASE: The City reserves the right to cancel the entire contract immediately and/or purchase in the open market at the current price and charge the contractor the difference between the price so paid and the Bid price in the event contract is not delivered according to specification and/or awarded Bid price.

19. PAYMENT: Unless otherwise specified, payment for services and/or product will be processed within 30 days from invoice date and acceptance of work and/or product.

20. NEW VENDOR REQUIREMENTS: By definition a new vendor is a vendor who has not supplied these products to the City within the last three (3) years.

- A. Requested to submit references from at least three municipalities
- B. References shall include:
 - Contact Person
 - Telephone number
 - Letter of performance which certifies the quality of the vendor's product and promptness of delivery

IF NO REFERENCES ARE AVAILABLE THEN REASON FOR NON-COMPLIANCE TO THIS REQUIREMENT SHALL BE SUBMITTED.

FAILURE TO SUBMIT THE ABOVE INFORMATION MAY BE SUFFICIENT GROUNDS FOR REJECTION OF BID OR DELAY ISSUANCE OF CONTRACT

Request for Bids
HMAC Asphalt Overlay
RFB No. 2019-PW-001

SCOPE OF WORK: The City of Hillsboro (City) will be accepting sealed Bids from qualified contractors to provide construction services related to installation of Asphalt Overlay, including providing the material, providing the necessary personnel and equipment, and installing the asphalt overlay.

TERMS & CONDITIONS

1.0 WARRANTY

- 1.1 The Bidder will be required to offer a warranty for the material and the installation of the material.
- 1.2 The warranty period shall be not less than twelve (12) months
- 1.3 If the material supplier's standard warranty exceeds the twelve (12) months, then the standard warranty shall apply.
- 1.4 Warranty repairs shall include all parts, materials, and labor and transportation expense
- 1.5 Warranty repairs shall be done at the site where the material is installed.

2.0 DELIVERY:

- 2.1 The successful contractor shall coordinate with the City of Hillsboro Public Works Department for the dates and locations for placement of the HMAC Overlay.
- 2.2 Type D HMAC to be installed and compacted so as to be 2 inches thick after compaction on selected locations on various streets.

3.0 PAYMENT TERMS AND INVOICING

- 3.1 The City will pay properly submitted invoices within thirty (30) days of receipt providing goods and/or services have been delivered, and accepted as specified.
- 3.2 Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.

4.0 SUBMITTALS

- 4.1 Brochures and/or specifications of proposed material if different than specified
- 4.2 Deviations from specifications if applicable

5.0 PRODUCT SPECIFICATIONS for HMAC ASPHALT OVERLAY

Specifications

- 1. Install HMAC overlay using Type D asphalt in various locations on selected streets.**
- 2. Contractor will install and compact the asphalt overlay. Overlay shall be installed at a thickness that when compacted will be 2" thick after compaction.**
- 3. Contractor will not be responsible for preparation of base, stabilization of the base, or final grading prior to placement of asphalt overlay. City will be responsible for these tasks.**
- 4. The City is requesting a bid on a per square foot cost for installation of the asphalt overlay. The City may have multiple locations on selected streets where an asphalt overlay is needed during the time for which the unit cost is valid. The per square foot unit cost that is bid by the contractor will be the per square foot unit cost that is applied to each job during the period in which the bid is valid.**

RESPONSE FORM

The Undersigned, as Bidder, declares that the only person or parties interested in this Bid as principals are those named herein and that this Bid is made without collusion with any other person, firm or corporation. The undersigned also declares that he or she has not given, offered to give, nor intends to give at any time thereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Bid. Failure to sign this Bid, or signing it with a false statement, shall void the Bid or any resulting contracts, and the firm submitting the Bid shall not be considered for future Bids.

The undersigned has carefully read and understands the Bid Documents and this Bid is made in accordance with the Bid Documents.

ADDENDA: The undersigned acknowledges receipt of Addenda No. ___ thru ___ issued during the time of Bid and the Bid prices include the changes.

The undersigned having carefully examined the specifications, instructions to Bidders, the special conditions/instructions to Bidders, affirms that they are authorized to execute this Bid and deliver the specified item(s) at the prices listed below for the period of time from the date of this bid noted below until November 15, 2019.

<u>ITEM DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT COST PER SQUARE FOOT</u>
HMAC Asphalt Overlay Type D asphalt Various locations on selected streets	minimum of 30,000 sq. ft. up to maximum of 100,000 sq. ft.	_____

Bidder: _____ Submitted by: _____

Address: _____ Signature: _____

_____ Title: _____

Tele. No. _____ Fax No. _____ Date: _____ Email _____

STATE OF TEXAS }
 }
COUNTY OF HILL }

**CONTRACT FOR HMAC ASPHALT OVERLAY
HILLSBORO, TEXAS**

In consideration of the mutual promises set forth below, the **City of Hillsboro** ("CITY"), a home rule municipality whose address is 214 E. Elm Street, Hillsboro, Texas 76631 and the independent contractor, _____, **CONTRACTOR** ("CONTRACTOR"), whose address is _____, enter into this Contract ("Contract") as of the _____ day of _____, 2019, and agree as follows:

Section I. Performance of Work

- 1.1. The CONTRACTOR hereby agrees, at its sole cost and expense, to provide, perform, and complete to the satisfaction of the CITY all of the "Work" specified in "Exhibit A", attached hereto and incorporated by reference herein. The term "Work" as used herein shall mean the detailed description of tasks to be performed by the CONTRACTOR, as established in "Exhibit A". In performing the Work, the CONTRACTOR shall provide all necessary labor, services, transportation, information, data, and other means and items necessary to perform the Work.
- 1.2. The CONTRACTOR hereby covenants and agrees, as an independent contractor, to provide, perform, and complete all of the Work required in strict accordance with the terms and provisions of this Contract and in a manner consistent with the professional and construction practices of a reasonably prudent contractor and in full compliance with, and as required by or pursuant to, this Contract, and all attached exhibits, and with the greatest economy, and efficiency consistent therewith.
- 1.3. The CONTRACTOR shall procure and furnish all bonds and all certificates and policies of insurance specified in this Contract.

Section II. Contract Time

- 2.1. The services of the CONTRACTOR shall commence on the effective date of this Contract and shall continue on until the Work is completed. Once commenced, CONTRACTOR shall diligently pursue the Work to completion.
- 2.2. The CONTRACTOR represents and warrants that it has had sufficient opportunity to inspect the worksite and surrounding area, and has completed such inspection to its satisfaction. Based on the same, the CONTRACTOR warrants it is ready, willing, able and prepared to begin the Work and that the Contract time is

sufficient time to permit completion of the Work in full compliance with, and as required by or pursuant to, this Contract for the Contract price, all with due regard to all natural and man-made conditions that may affect the Work or the worksite and all difficulties, hindrances, and delays that may be incident to the Work.

2.3. If CONTRACTOR is delayed at any time in the progress of the Work by any act or negligence of the CITY, any employee of the CITY, any other contractor employed by the CITY, by any changes ordered in the Work, by strikes, walk-outs, fire, unusual delay in transportation, unavoidable casualties, any other causes beyond CONTRACTOR's control, by delay authorized by CITY pending arbitration, or any other delay authorized by CITY, then the time of completion shall be extended for such reasonable time equivalent to the circumstances which caused the delay.

2.4. Should the CONTRACTOR be delayed in the prosecution or completion of the Work under this Contract by adverse weather conditions, then the time herein fixed for the completion of said Work will be extended for a period equivalent to the time lost by reason of such adverse weather conditions. It is understood and agreed that no extension of time will be granted to CONTRACTOR unless he notifies the CITY Representative (_____) as to the approximate number of days he expects to be delayed by adverse weather conditions.

2.5. It is further expressly understood and agreed that the CONTRACTOR shall not be entitled to any damages or compensation from CITY, or be reimbursed for any loss or expense on account of any delay, resulting from such adverse weather conditions.

2.6. It is understood and agreed that time is of the essence, and CONTRACTOR agrees to begin actual Work covered by this Contract in conformity with the provisions set forth herein and to prosecute the same with all due diligence, so as to complete the entire Work under this Contract within the calendar days specified herein.

Section III. Contract Price

3.1. The CITY shall pay to CONTRACTOR, in full satisfaction for providing, performing, and completing the Work, the Contract sum not to exceed _____ (\$_____) as set forth in Exhibit "B", attached hereto and incorporated by reference herein for all purposes. The CONTRACTOR shall be paid on the basis of a properly executed monthly invoice and Payment Request in a form acceptable to the CITY. The invoice for services will contain description of services performed. CONTRACTOR shall allow sufficient time for any such invoice to be received by the CITY, approved and processed.

3.2. The CITY reserves and shall have the right before paying full payment to the CONTRACTOR to pay any and all claims against the CONTRACTOR or against any subcontractor for labor and any claim for materials and deduct the amount from the amount due CONTRACTOR, provided that this provision shall not apply to any claim of a subcontractor against CONTRACTOR (and shall not be construed to require the CITY

to do so.)

3.3. Nothing contained in this Contract shall require the CITY to pay for any Work that is unsatisfactory as determined by the CITY or which is not submitted in compliance with the terms of this Contract. The CITY will not be required to make any payments to the CONTRACTOR, when the CONTRACTOR is in default under this Contract, nor shall this paragraph constitute a waiver of any right, at law or in equity, which the CITY may have if the CONTRACTOR is in default, including the right to bring legal action for damages or for specific performance of this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

3.4. Nothing contained herein shall be construed as authorizing additional fees for services to complete actions not specifically listed for successful completion of the Work.

Section IV. Final Payment

4.1. Final Payment of this Contract shall be conditioned upon the satisfactory completion of the Work as determined after final inspection and approval by the CITY. Additionally, final payment shall be subject to receipt of CONTRACTOR's written affidavit that all of CONTRACTOR's bills pertaining to this job have been paid and are free from any liens, and CONTRACTOR's execution and delivery to the CITY of a release of all claims against the CITY arising under, or by virtue of, this Contract, except claims which are specifically exempted by the CONTRACTOR to be set forth therein.

4.2. Unless otherwise provided in this Contract, by State law or otherwise expressly agreed to by the parties to this Contract, final payment under this Contract or settlement upon termination of this Contract shall not constitute a waiver of the CITY's claims against the CONTRACTOR or his sureties under this Contract or applicable performance and payment bonds.

Section V. Acceptance as Full Payment and Satisfaction

5.1. CONTRACTOR shall accept the Contract price in full satisfaction and payment for well and faithfully providing, performing, and completing within the Contract time all the Work in compliance with and as required by or pursuant to this Contract.

5.2. The acceptance by CONTRACTOR of final payment shall operate as a full and complete release of the CITY of and from any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses of, by, or to CONTRACTOR for anything done, furnished for, arising out of, relating to, or in connection with the Work or for or on account of any act or neglect of the CITY arising out of, relating to, or in connection with the Work.

Section VI. Insurance

6.1. The CONTRACTOR shall, at CONTRACTOR's sole expense, maintain insurance coverage as set forth below:

- i.** General Liability Insurance:
 - Bodily Injury \$500,000 per person
 - Bodily Injury \$1,000,000 per occurrence
 - Bodily Injury \$2,000,000 aggregate
 - Property damage \$1,000,000 per occurrence
 - Property damage \$2,000,000 aggregate
- ii.** Workers Compensation: Statutory
- iii.** Comprehensive Automobile Liability Insurance: \$1,000,000 per claim/aggregate
- iv.** Employer's Liability: \$1,000,000 policy limit

6.2. Comprehensive Automobile Liability Insurance shall include bodily injury and property damage arising out of operation, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use, and to cover the Work under the Contract and all operations in connection herewith.

6.3. The CONTRACTOR shall not commence Work under the Contract until the CONTRACTOR has obtained all the insurance required under this Contract and such insurance has been approved by the CITY, nor shall the CONTRACTOR allow any subcontractor to commence Work on the CONTRACTOR's subcontract until all similar insurance of the subcontractor has been obtained and approved by the CITY. All required policies shall name the CITY as an additional insured, except Workers' Compensation. The CONTRACTOR's Commercial General Liability Insurance policy shall contain no condition or endorsement that prohibits the CITY as an additional insured from making a claim under said policy against the CONTRACTOR as a named insured. As proof of the CONTRACTOR's insurance coverage, the CONTRACTOR shall furnish to CITY valid certificates of insurance of the types and limits required herein, listing CITY as the certificate holder and additional insured, prior to commencing Work on the project. In the event CONTRACTOR's insurance coverage does not provide for automatic additional insured coverage, CONTRACTOR shall provide CITY an additional insured endorsement along with its certificate. As proof of insurance coverage by the CONTRACTOR's subcontractors, the CONTRACTOR shall furnish to CITY such subcontractors' valid certificates of insurance of the types and limits required herein, including additional insured endorsements listing CITY as an additional insured under such policies.

6.4. Concerning insurance to be furnished by the CONTRACTOR, it is a condition precedent to acceptability thereof that:

i. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the requirements to be fulfilled by the CONTRACTOR; and

ii. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas.

6.5. The CONTRACTOR agrees to the following:

i. The CONTRACTOR hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall not have the right to recovery or subrogation against the CITY, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies;

ii. Companies issuing the insurance policies and the CONTRACTOR shall have no recourse against the CITY for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of the CONTRACTOR.

iii. Approval, disapproval or failure to act by the CITY regarding any insurance supplied by the CONTRACTOR (or any subcontractors) shall not relieve CONTRACTOR of full responsibility or liability, if any, for damages and accidents as set forth in the Contract. Neither shall the insolvency or denial of liability by the insurance company exonerate the CONTRACTOR from liability.

iv. No special payments shall be made for any insurance that the CONTRACTOR and subcontractors, if any, are required to carry; all are included in the Contract price and the Contract unit prices; and

v. Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

Section VII. Bonds

7.1. CONTRACTOR shall furnish a payment/performance bond before beginning Work. The payment/performance bond shall be in an amount equal to one hundred percent (100%) of the Contract price.

Section VIII. Warranty

8.1. CONTRACTOR shall provide a written warranty against defects of materials for a period of _____ years, beginning with the date of completion of the Work, as further provided in Exhibit "A".

Section IX. Termination

9.1. This Contract may be terminated at any time by CITY for any cause without penalty or liability. Upon receipt of such notice by CITY, the CONTRACTOR shall immediately discontinue all services and actions on behalf of CITY.

9.2. As soon as practicable after receipt of notice of termination, the CONTRACTOR shall submit a statement showing in detail the costs of services performed but not paid for under this Contract through the date of termination. The CONTRACTOR will forward to CITY all portions of the Work performed through the date of termination. CITY shall then pay the CONTRACTOR promptly the accrued and unpaid amounts due for services to the date of termination, to the extent the services are approved by CITY.

Section X. Default

10.1. The CITY may terminate this Contract without prejudice to any other remedy it may have, when the CONTRACTOR defaults in performance of any provision herein, or fails to carry out the Work in accordance with the provisions of this Contract. On such termination, the CITY may take possession of the worksite and all materials, equipment, tools and machinery thereon, and finish the Work in whatever way the CITY deems expedient. In addition, if the expense of finishing the Work exceeds the unpaid balance at the time of termination, CONTRACTOR agrees to pay the difference to the CITY.

10.2. On such default by CONTRACTOR, the CITY may elect not to terminate the Contract, and in such event the CITY may make good the deficiency in which the default consists, and deduct the costs from the Contract sum to become due to CONTRACTOR, or the CITY may choose to order a partial or complete reconstruction of the Work if improperly done.

Section XI. Liability

11.1. CONTRACTOR shall be solely and completely responsible for providing and maintaining safe conditions at the worksite, including the safety of all persons and property during performance of the Work. This requirement shall apply continuously and shall not be limited to normal working hours. CONTRACTOR shall take all safety precautions as shall be necessary to comply with all applicable laws and to prevent injury to persons and damage to property. This liability includes any injury or damage occurring on account of the performance of Work under this Contract, whether due to the negligence, fault, or default of the CONTRACTOR or not.

Section XII. Indemnification and Contribution

12.1. THE CONTRACTOR SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES AND REGULATIONS AND SHALL EXONERATE, INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY AND ALL LIABILITY OR DAMAGES RESULTING FROM FAILURE TO DO SO.

12.2. IN ADDITION, THE CONTRACTOR AGREES TO KEEP, SAVE AND HOLD CITY HARMLESS FROM ANY AND ALL ACTIONS, LIABILITIES, DAMAGES, JUDGMENTS, COSTS AND EXPENSES INCLUDING REASONABLE ATTORNEY'S FEES, IN CASE AN ACTION IS FILED OR DOES IN ANY WAY ACCRUE AGAINST CITY, ITS OFFICIALS, OFFICERS, AND EMPLOYEES IN CONSEQUENCE OF THIS CONTRACT FOR ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR IN THE PERFORMANCE OF THE WORK UNDER THIS CONTRACT, OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE CONTRACTOR OR THE CONTRACTOR'S AGENTS, SUBCONTRACTOR, ASSIGNS OR EMPLOYEES. IN THE EVENT A JUDGMENT IS RECOVERED AGAINST CITY FOR ANY SUCH LIABILITY, COSTS OR EXPENSES, SUCH JUDGMENT SHALL BE CONCLUSIVE AGAINST THE CONTRACTOR. THE CONTRACTOR IS SIMILARLY RESPONSIBLE FOR REIMBURSEMENT TO THE CITY WHENEVER SUCH CLAIMS AND ACTIONS REACH VOLUNTARY SETTLEMENTS RATHER THAN JUDGMENTS. THE CONTRACTOR WILL PAY SUBSEQUENT FULL CONTRIBUTION TO THE CITY.

12.3. IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY THE CONTRACTOR THAT SUCH INDEMNITY IS INDEMNITY BY THE CONTRACTOR TO INDEMNIFY AND PROTECT CITY FROM LIABILITY, CLAIMS, SUITS, LOSSES, DAMAGES OR CAUSES OF ACTION CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE CONTRACTOR, THE CONTRACTOR'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL. CITY AGREES TO GIVE CONTRACTOR PROMPT NOTICE OF ANY CLAIM, CONTROL OF THE DEFENSE OR SETTLEMENT OF THAT CLAIM AND REASONABLE ASSISTANCE AND INFORMATION RELATED TO THE CLAIM.

Section XIII. Review of Contract

13.1. CONTRACTOR has carefully examined, reviewed, and accepted this Contract agreement and there are no discrepancies, errors, omissions, ambiguities or conflicts in this Contract that are material to CONTRACTOR's provision, performance or completion of the Work, the Contract price or Contract time that have not been clarified in writing by the CITY to the satisfaction of the CONTRACTOR. CONTRACTOR shall hereafter have no claim for payment or compensation in excess of the Contract price of _____ (\$_____).

Section XIV. Independent Contractor

14.1. The CONTRACTOR covenants and agrees that CONTRACTOR is an independent contractor and not an officer, agent, servant or employee of CITY. The CONTRACTOR hereby acknowledges that it shall have exclusive control of and exclusive right to control the details of the Work, performed hereunder, and all persons performing same, and shall be liable for the acts and omissions of its officers, agents,

employees, and subcontractors.

14.2. In addition, the CONTRACTOR agrees that the doctrine of respondeat superior shall not apply as between the CITY and the CONTRACTOR and nothing herein shall be construed as creating a partnership or joint enterprise between the CITY and the CONTRACTOR.

Section XV. Disclosure

15.1. By signature of this Contract, the CONTRACTOR acknowledges to CITY that the CONTRACTOR has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect, in property abutting the proposed Work and business relationships with abutting property owners.

15.2. The CONTRACTOR further agrees that CONTRACTOR will make disclosure in writing of any conflicts of interest, which develop subsequent to the signing of this Contract and prior to final payment under the Contract.

Section XVI. Compliance with Laws

16.1. CONTRACTOR shall at all times observe and comply with the provisions of the Charter, ordinances and regulations of the CITY and all state and federal laws, rules and regulations which in any manner limit, control, or apply to the actions or operations of CONTRACTOR, his subcontractors, or his or their employees, agents or servants, engaged upon the Work or affecting the materials supplied to or by them.

Section XVII. Remedies

17.1. No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition of this Contract.

Section XVIII. Assignment

18.1. CONTRACTOR shall not assign this Contract in whole or part, assign any of its rights or obligations under this Contract or assign any payment due or to become due under this Contract, without the prior, express written consent of the CITY. Any attempted or purported assignment by CONTRACTOR without the CITY's approval shall be void and of no force and effect and shall constitute a default under this Contract for which the CITY shall have the right to invoke Section X. of this Contract.

Section XIX. No Third-Party Beneficiaries

19.1. No claim as a third-party beneficiary under this Contract by any person, firm, or corporation other than CONTRACTOR shall be made or be valid against the CITY, and the CITY shall not be liable for or be held to pay any money to any such person.

Section XX. Severability

20.1. The provisions of this Contract shall be interpreted when possible to sustain their legality and enforceability as a whole. In the event any provision of this Contract shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provisions of this Contract, shall be in any way affected thereby. The unenforceability of any provision of this Contract in a specific situation shall not affect the enforceability of that provision in any other situation.

Section XXI. Entire Agreement

21.1. This Contract sets forth the entire agreement of the CITY and CONTRACTOR with respect to the accomplishment of the Work and the payment of the Contract price therefore, and there are no other understandings or agreements, oral or written, between CITY and CONTRACTOR with respect to the Work and the compensation therefore, nor was the making and execution of this Contract induced by any representation, statement, warranty, agreement, or action other than those expressed or explicitly referenced herein.

Section XXII. Headings

22.1. The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

Section XXIII. Venue

23.1. The parties to this Contract agree and covenant that this Contract will be enforceable in McLennan County, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in McLennan County, Texas.

Section XXIV. Amendments

24.1. No modification, addition, deletion, revision, alteration or other change to this Contract shall be effective unless and until such change is reduced to writing and executed and delivered by the CITY and CONTRACTOR.

Section XXV. Prohibition on Boycotting Israel

25.1. CONTRACTOR hereby verifies that CONTRACTOR:

- i. Does not boycott Israel; and

- ii. Will not boycott Israel during the term of this Contract.

Section XXVI. Notices

26.1. All notices, communications, and reports required under the Contract shall be personally delivered or mailed to the respective parties by certified mail, return receipt requested at the addresses shown below, unless and until either party is otherwise notified in writing by the other party of a change in address. Mailed notices shall be deemed communicated as of five (5) days after mailing regular mail.

If intended for CITY, to:

If intended for the CONTRACTOR, to:

City Manager
P.O. Box 568
214 E, Elm Street
Hillsboro, Texas 76645

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed, intending to be bound thereby on this the ___ day of _____, 2019.

CITY

CONTRACTOR

By: _____

By: _____

Title: **CITY MANAGER**

Title: _____

Date: _____

Date: _____

THE STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____ known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledge to me that they executed same for and as the act and deed of _____ and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2019.

Notary Public, State of Texas

THE STATE OF TEXAS §
COUNTY OF McLENNAN §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **Frank Johnson**, City Manager, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledge to me that they executed same for and as the act and deed of the **City of Hillsboro** and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2019.

Notary Public, State of Texas

**EXHIBIT A
SCOPE OF WORK**

- 1. Install HMAC overlay using Type D asphalt in various locations on selected streets.**
- 2. Contractor will install and compact the asphalt overlay. Overlay shall be installed at a thickness that when compacted will be 2” thick after compaction.**
- 3. Contractor will not be responsible for preparation of base, stabilization of the base, or final grading prior to placement of asphalt overlay. City will be responsible for these tasks.**
- 4. The City is requesting a bid on a per square foot cost for installation of the asphalt overlay. The City may have multiple locations where an asphalt overlay is needed during the time for which the unit cost is valid. The per square foot unit cost that is bid by the contractor will be the per square foot unit cost that is applied to each job during the period in which the bid is valid.**

**EXHIBIT B
COMPENSATION**

The City will pay properly submitted vendor invoices within thirty (30) days of receipt providing goods and/or services have been delivered, and accepted as specified. Payment will be made based on the unit cost bid by the Contractor.