

EXHIBIT**"A"**

**CITY OF ROUND ROCK
AGREEMENT FOR PURCHASE OF HOT-MIX ASPHALT
WITH
ASPHALT INC., LLC
D/B/A "LONE STAR PAVING COMPANY"**

THE STATE OF TEXAS	§	
	§	
CITY OF ROUND ROCK	§	KNOW ALL BY THESE PRESENTS:
	§	
COUNTY OF WILLIAMSON	§	
COUNTY OF TRAVIS	§	

THAT THIS Agreement for purchase of Hot-Mix Asphalt for the City of Round Rock, Texas (referred to herein as the "Agreement"), is made and entered into on this the ____ day of the month of _____, 2023, by and between the CITY OF ROUND ROCK, TEXAS, a home-rule municipality whose offices are located at 221 East Main Street, Round Rock, Texas 78664 (referred to herein as the "City") and ASPHALT INC., LLC d/b/a "LONE STAR PAVING COMPANY," whose offices are located at 11675 Jollyville Road, Suite 150, Austin, Texas 78759 (referred to herein as the "Vendor").

RECITALS:

WHEREAS, City desires to purchase Hot-Mix Asphalt for use by the City; and

WHEREAS, City has issued its "Invitation for Bid" (hereinafter "IFB") for the provision of said goods and services;

WHEREAS, Vendor has submitted the lowest responsible bid; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Vendor whereby City is obligated to buy specified services and Vendor is obligated to pay for said goods and services. The Agreement includes the following: (a) City's IFB, designated Solicitation Number 23-030; (b) Vendor's Response to the IFB; (c) contract award; and (d) any exhibits, addenda, and/or amendments thereto. Any inconsistencies or conflicts in the contract documents shall be

resolved by giving preference in the following order:

- (1) This Agreement;
- (2) Vendor's Response to IFB;
- (3) City's IFB, exhibits, and attachments.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods and services** mean the specified services, supplies, materials, commodities, or equipment.

2.01 EFFECTIVE DATE AND TERM

A. This Agreement shall be effective on the date it has been signed by both parties hereto, and shall remain in full force and effect, unless and until it expires by operation of the term stated herein, or until terminated as provided herein.

B. The term of this Agreement is for sixty months (60) months from the effective date hereof. City reserves the right to review the relationship at any time, and may elect to terminate this Agreement, with or without cause, or may elect to continue.

3.01 CONTRACT DOCUMENTS AND EXHIBITS

City selected Vendor to supply the goods and services as outlined in the IFB and Response to IFB submitted by Vendor, all as specified in Exhibit "A," attached hereto and incorporated herein by reference. The intent of these documents is to formulate an Agreement listing the responsibilities of both parties as outlined in the IFB and as offered by Vendor in its Response to the IFB.

The goods and services which are the subject of this Agreement are described in Exhibit "A" and, together with this Agreement, comprise the total Agreement and they are fully a part of this Agreement as if repeated herein in full.

4.01 ITEMS AWARDED AND SCOPE OF WORK

A. All bid items listed on "Attachment B – Bid Sheet" in Exhibit "A" are awarded to Vendor.

B. For purposes of this Agreement, City has issued documents delineating the required goods and services (specifically IFB Solicitation Number 23-030). Vendor has issued its response agreeing to provide all such required goods and services in all specified particulars. All such referenced documents are included in Exhibit "A." When taken together with the appended exhibits, this Agreement shall evidence the entire understanding and agreement between the parties and shall supersede any prior proposals, correspondence or discussions.

C. Vendor shall satisfactorily provide all goods and services described under the attached exhibits within the contract term specified in Section 2.01. Vendor's undertakings shall be limited to providing goods and services for the City and/or advising City concerning those matters on which Vendor has been specifically engaged. Vendor shall provide its goods and services in accordance with this Agreement, in accordance with the appended exhibits, in accordance with due care, and in accordance with prevailing industry standards for comparable goods and services.

5.01 COSTS

A. The bid costs listed on Attachment B – Bid Sheet of Exhibit "A," which are specifically relevant to the referenced bid items, shall be the basis of any charges collected by Vendor.

B. Vendor specifically acknowledges and agrees that City may not expend in excess of **Two Hundred Twenty-Four Thousand No/100 Dollars (\$224,000.00) per year** for Vendor's goods and services for a total not-to-exceed amount of **One Million One Hundred Twenty Thousand and No/100 Dollars (\$1,120,000.00)** for the term of this Agreement.

6.01 INVOICES

All invoices shall include, at a minimum, the following information:

- A. Name and address of Vendor;
- B. Purchase Order Number;
- C. Description and quantity of items received or services provided; and
- D. Delivery or performance dates.

7.01 INTERLOCAL COOPERATIVE CONTRACTING/PURCHASING

Authority for local governments to contract with one another to perform certain governmental functions and services, including but not limited to purchasing functions, is granted under Government Code, Title 7, Chapter 791, Interlocal Cooperation Contracts, Subchapter B and Subchapter C, and Local Government Code, Title 8, Chapter 271, Subchapter F, Section 271.101 and Section 271.102.

Other governmental entities within the State of Texas may be extended the opportunity to purchase off of the City's bid, with the consent and agreement of the successful vendor(s) and the City. Such agreement shall be conclusively inferred for the vendor from lack of exception to this clause in the vendor's response. However, all parties hereby expressly agree that the City is not an agent of, partner to, or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that may arise out of such independently-negotiated "piggyback" procurements.

8.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the goods and services as determined by City's budget for the fiscal year in question. City may effect such termination by giving Vendor a written notice of termination at the end of its then current fiscal year.

9.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Vendor will be made within thirty (30) days of the day on which City receives the performance, supplies, materials, equipment, and/or deliverables, or within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which City receives a correct invoice for the performance and/or deliverables or services, whichever is later. Vendor may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b); however, this Policy does not apply to payments made by City in the event:

- A. There is a bona fide dispute between City and Vendor, a contractor, a subcontractor or supplier about the goods delivered or the service performed that cause the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed

that causes the payment to be late; or

- D. Invoices are not mailed to City in strict accordance with instructions, if any, on the purchase order or the Agreement or other such contractual agreement.

10.01 GRATUITIES AND BRIBES

City may, by written notice to Vendor, cancel this Agreement without liability to Vendor if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Vendor or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Vendor may be subject to penalties stated in Title 8 of the Texas Penal Code.

11.01 TAXES

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Vendor's charges.

12.01 ORDERS PLACED WITH ALTERNATE VENDORS

If Vendor cannot provide the goods as specified, City reserves the right and option to obtain the products or services from another supplier or suppliers.

13.01 INSURANCE

Vendor shall meet all requirements as stated in the attached IFB Number 18-037, including all attachments and exhibits thereto, and Vendor's bid response.

14.01 CITY'S REPRESENTATIVE

City hereby designates the following representatives authorized to act in its behalf with regard to this Agreement:

Matt Fitzgerald
Transportation Superintendent
3400 Sunrise Road
Round Rock, Texas 78665
(512) 341-3186
mfitzgerald@roundrocktexas.gov

15.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the

reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

16.01 DEFAULT

If Vendor abandons or defaults under this Agreement and is a cause of City purchasing the specified goods or services elsewhere, Vendor agrees that it may be charged the difference in cost, if any, and that it will not be considered in the re-advertisement of the goods and services and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Vendor shall be declared in default of this Agreement if it does any of the following:

- A. Fails to make any payment in full when due;
- B. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- C. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or
- D. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

17.01 TERMINATION AND SUSPENSION

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days' written notice to Vendor.

B. In the event of any default by Vendor, City has the right to terminate this Agreement for cause, upon ten (10) days' written notice to Vendor.

C. Vendor has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City's delivery of the referenced notice to Vendor, Vendor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Vendor shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Vendor that portion of the charges, if undisputed. The parties agree that Vendor is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

18.01 INDEMNIFICATION

Vendor shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Vendor, or Vendor's agents, employees or subcontractors, in the performance of Vendor's obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Vendor (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

19.01 COMPLIANCE WITH LAWS, CHARTER, AND ORDINANCES

A. Vendor, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. In accordance with Chapter 2271, Texas Government Code, a governmental entity may not enter into a contract with a company for goods and services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not boycott Israel and will not boycott Israel at any term of this Agreement.

C. In accordance with Chapter 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has a provision verifying that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

D. In accordance with Chapter 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has a provision verifying that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not boycott energy companies, and it will not boycott energy companies during the term of this Agreement.

20.01 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

21.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

1. When delivered personally to the recipient's address as stated in this Agreement;
or
2. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Vendor:

Asphalt Inc., LLC
11675 Jollyville Road, Suite 150
Austin, Texas 78759

Notice to City:

City Manager
221 East Main Street
Round Rock, TX 78664

Stephanie L. Sandre, City Attorney
AND TO: 309 East Main Street
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Vendor.

22.01 APPLICABLE LAW, ENFORCEMENT, AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

23.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Vendor and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

24.01 DISPUTE RESOLUTION

City and Vendor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

25.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

26.01 MISCELLANEOUS PROVISIONS

Standard of Care. Vendor represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

Time is of the Essence. Vendor understands and agrees that time is of the essence and that any failure of Vendor to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Vendor shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Vendor's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

Force Majeure. Neither City nor Vendor shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

[Signatures on the following page.]

IN WITNESS WHEREOF, City and Vendor have executed this Agreement on the dates indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

Asphalt Inc., LLC

By: Tony Bermudez
Printed Name: Tony Bermudez
Title: Operations Manager
Date Signed: 9-13-23

Attest:

By: _____
Meagan Spinks, City Clerk

For City, Approved as to Form:

By: _____
Stephanie L. Sandre, City Attorney



City of Round Rock, Texas
Purchasing Division
221 East Main Street
Round Rock, Texas 78664-5299
www.roundrocktexas.gov

INVITATION FOR BID (IFB)

HOT MIX ASPHALT

SOLICITATION NUMBER 23-030

JUNE 2023

City of Round Rock
 Hot Mix Asphalt
 IFB 23-030
 Commodity Code: 745-21
 June 2023

**HOT MIX ASPHALT
 PART I
 GENERAL REQUIREMENTS**

1. **PURPOSE AND BACKGROUND:** The City of Round Rock, herein after "the City" seeks a bid from firms experienced in providing hot-mix asphalt.

The City of Round Rock – Transportation Department is seeking bids for Types B, C, D, and F, dense-graded, hot-mix asphalt for pick-up "only" on an as needed basis for street repairs.

2. **SOLICITATION PACKET:** This solicitation packet is comprised of the following-

Description	Index
Part I – General Requirements	Page(s) 2-5
Part II – Definitions, Standard Terms and Conditions, and Insurance Requirements	Page 6
Part III – Supplemental Terms and Conditions	Page(s) 7-9
Part IV – Scope of Work/Specifications	Page 10
Attachment A – Reference Sheet	Separate Attachment
Attachment B – Bid Sheet	Separate Attachment

3. **SCHEDULE OF EVENTS:** It is the City's intention to follow the solicitation timeline below.

EVENT	DATE
Solicitation released	June 28, 2023
Deadline for submission of questions	July 11, 2023 @ 5:00 PM, CST
City responses to questions or addendums	Approximately July 14, 2023 @ 5:00 PM, CST
Deadline for submission of responses	July 21, 2023 @ 3:00 PM, CST

All questions regarding the solicitation shall be submitted through Bonfire by 5:00 PM CST on the due date noted above. A copy of all questions submitted and the City's response to the questions shall be posted on the City's webpage in the form of an addendum at:
<https://roundrocktexas.bonfirehub.com>

The City reserves the right to modify these dates. Notice of date change will be posted to the City's website:
<https://roundrocktexas.bonfirehub.com>

4. **SOLICITATION UPDATES:** Respondents shall be responsible for monitoring the City's website at <https://roundrocktexas.bonfirehub.com> for any updates pertaining to the solicitation described herein. Various updates may include addendums, cancellations, notifications, and any other pertinent information necessary for the submission of a correct and accurate response. The City will not be held responsible for any further communication beyond updating the website.
5. **RESPONSE DUE DATE:** Appropriately submitted responses are due at or before 3:00 PM, on the due date noted in PART I, Section 3 – Schedule of Events. The Offeror shall respond via the City's electronic bidding platform, Bonfire: <https://roundrocktexas.bonfirehub.com>
- A. This request for proposal (RFP) does not commit the City to contract for any supply or service.
- B. No paper or submittals outside of Bonfire will be accepted by the City.

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- C. Responses cannot be altered or amended after digital opening.
- D. No response can be withdrawn after opening without written approval from the City for an acceptable reason.
- E. The City will not be bound by any oral statement or offer made contrary to the written specifications.
- F. Samples and/or copies shall be provided at the Respondent's expense and shall become the property of the City.

6. RESPONDENT QUALIFICATIONS: The City has established the following minimum qualifications. Respondents who do not meet the minimum qualifications will not be considered for award. The Respondent shall:

- A. Must have a physical office located in Central Texas.
- B. Be firms, corporations, individuals, or partnerships normally engaged in providing hot asphalt mix as specified herein and have adequate organization, facilities, equipment, financial capability, and personnel to ensure prompt and efficient service to the City.
- C. In order to confirm financial stability, the City may choose to review audited financial statements at any time throughout the RFP evaluation process. Upon request, the Respondent shall provide two years audited financial statements, including any notes or supplemental schedules within 2 business days of the original request.
- D. The Respondent shall include in the proposal a list of all litigation the company or its principals have been involved in within the last three (3) years.
- E. Be domiciled in or have a home office inside the United States. Respondents domiciled outside the United States, or not having a home office inside the United States will not be included for consideration in this RFP process.

In order to do business with the City of Round Rock you must be registered with the City's Vendor Database. To register, go to: <https://roundrocktxvendors.munisselfservice.com/Vendors/default.aspx>

7. RESPONSE REQUIREMENTS: The Respondent, by electronically submitting their Offer, acknowledges that he/she is an authorized representative of the Vendor, has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein. The Respondent shall include the following information with their bid response:

- ☐ Attachment A – Reference Sheet
- ☐ Attachment B – Bid Sheet
- ☐ Acknowledged Addenda (if applicable)

8. BEST VALUE EVALUATION AND CRITERIA: The City reserves the right to reject any or all responses, or to accept any response deemed most advantageous, or to waive any irregularities or informalities in the response received that best serves the interest and at the sole discretion of the City. All solicitations received may be evaluated based on the best value for the City. In determining best value, the City may consider:

- A. Purchase price.
- B. Reputation of Respondent and of Respondent's goods and services.
- C. Quality of the Respondent's goods and services.
- D. The extent to which the goods and services meet the City's needs.
- E. Respondent's past performance with the City.
- F. The total long-term cost to the City to acquire the Respondent's goods or services.
- G. Any relevant criteria specifically listed in the solicitation.
- H. If the solicitation is evaluated with points, the respondent must earn a minimum of 15 points on criteria not related to cost in order to be considered for contract award.

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Respondents may be contacted for clarification of bid and/or to discuss details of the services they are proposing.

9. **CERTIFICATE OF INTERESTED PARTIES:** Section 2252.908 of the Texas Government Code requires the successful offeror to complete a Form 1295 "Certificate of Interested Parties" that is signed for a contract award requiring council authorization. The "Certificate of Interested Parties" form must be completed on the Texas Ethics Commission website, printed, signed, and submitted to the City by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury prior to final contract execution. Link to Texas Ethics Commission Webpage:
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

10. **EX PARTE COMMUNICATION:** Please note that to insure the proper and fair evaluation of a bid, the City of Round Rock prohibits ex parte communication (e.g., unsolicited) initiated by the Bidder to the City Official, Employee, City Consultant, or Evaluation Team member evaluating or considering the bids prior to the time a bid decision has been made. Communication between Bidder and the City will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the bid. Ex parte communication may be grounds for disqualifying the offending Bidder from consideration or award of the bid then in evaluation, or any future bid.

11. **OPPORTUNITY TO PROTEST:** The Purchasing Manager for the City of Round Rock ("City"), in consultation with the City Attorney, shall have the authority to settle or resolve any dispute concerning the solicitation or award of a contract. The Purchasing Manager may solicit written responses to the protest from other interested parties. The aggrieved person must prepare his or her complaint in writing and send it by electronic mail to the City's Purchasing Department at protest@roundrocktexas.gov.
 In the event of a timely protest, the City shall not proceed further with the solicitation or award of a contract unless it is determined that the award must take place without delay, to protect the best interests of the City. The procedures for notifying the City of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Purchasing Office may dismiss your complaint or protest.
 - A. **Prior to Offer Due Date:** If you are a prospective offeror for the award of a contract ("Offeror") and you become aware of the facts regarding what you believe is a deficiency in the solicitation process before the due date for receipt of offers in response to a solicitation ("Offers"), you must notify the City in writing of the alleged deficiency before that date, giving the City an opportunity to resolve the situation prior to the Offer due date.
 - B. **After Offer Due Date:** If you submit an Offer to the City and you believe that there has been a deficiency in the solicitation process or the award, you have the opportunity to protest the solicitation process, or the recommended award as follows:
 - i. You must file a written notice of your intent to protest within four (4) working days of the date that you know or should have known of the facts relating to the protest. If you do not file a written notice of intent within this time, you have waived all rights to protest the solicitation process or the award.
 - ii. You must file your formal written protest within ten (10) working days of the date that you know or should have known of the facts relating to the protest unless you know of the facts before the Offer has been closed. If you know of the facts before those dates, you must notify the City as stated in section (A) above.
 - iii. You must submit your protest in writing and must include the following information:
 - a. your name, address, telephone number, and email address.
 - b. the solicitation number.
 - c. a specific identification of the statutory or regulatory provision that you are alleging has been violated.
 - d. a detailed statement of the factual grounds for your protest, including copies of any relevant documents.
 - e. a statement of any issues of law or fact that you contend must be resolved; and
 - f. a statement of the argument and authority that you offer in support of your protest.
 - iv. Your protest must be concise and presented logically and factually to help with the City's review.
 - C. **Receipt of Timely Protest:** When the City receives a timely and complete written protest, the Purchasing Manager, with assistance from the City Attorney, shall make one of the following determinations:

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- i. Determine that a violation of rules and statutes has occurred prior to the award of the contract and inform you and other interested parties of the determination. The City will prepare updated solicitation documents and will re-solicit.
- ii. Determine that no violation of rules or statutes has occurred and inform you and other interested parties of the decision by letter. The reasons for the determination will be presented in the letter.
- iii. Determine that a violation of rules and statutes has occurred after the award of the contract and inform you and other interested parties of the determination. However, the awarded contract will not be canceled. As needed, corrective actions may be taken with purchasing or any other pertinent City staff.
- iv. A determination will usually be made within fifteen (15) business days after receipt of the formal protest.
- v. **Any written decisions by the Purchasing Manager shall be the final administrative action for the City.**

All documentation pertaining to a protest will be kept on file at the City and are subject to open records requests.

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PART II
DEFINITIONS, STANDARD TERMS AND CONDITIONS
AND INSURANCE REQUIREMENTS

1. **DEFINITIONS, STANDARD TERMS AND CONDITIONS:** By submitting a response to this solicitation, the Respondent agrees that the City's Definitions and Standard Terms and Conditions, in effect at the time of release of the solicitation, shall govern unless specifically provided otherwise in a separate agreement or on the face of a purchase order. These can be obtained from the City's website at: <https://www.roundrocktexas.gov/city-departments/purchasing/>. In addition, the Supplemental Terms and Conditions listed in Section III shall also be enforced as part of the contract.
2. **INSURANCE:** Insurance does not apply to this solicitation.

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PART III SUPPLEMENTAL TERMS AND CONDITIONS

1. **AGREEMENT TERM:** The terms of the awarded agreement shall include but not be limited to the following:
 - A. The term of the Agreement shall begin from date of award and shall remain in full force for sixty (60) months.
 - B. The Respondent agrees, if this Offer is accepted within 120 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications, and the amounts shown on the bid sheet.
 - C. Upon expiration of the contract term, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period as is reasonably necessary to re-solicit and/or complete the project up to 120 days.
2. **SUBCONTRACTORS:** Respondent shall not subcontract or otherwise engage subcontractors to perform required services. The City seeks to do business directly with a company experienced in hot asphalt mix.
3. **SAFETY:** The City reserves the right to remove any employee from City property for violation of federal, state, and local health, safety and environmental laws, ordinances, rules, and regulations. The Respondent shall:
 - A. Ensure that all employees comply with all Occupational Safety and Health Administration (OSHA), State and City safety and occupational health standards and other applicable federal, state, and local health, safety, and environmental laws ordinances, rules, and regulations in the performance of these services.
 - B. Be held responsible for the safety of their employees and unsafe acts or conditions that may cause injury or damage to any person or property within and around the work site. In case of conflict, the most stringent safety requirement shall govern.
 - C. Indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.
4. **WORKFORCE:** Successful Respondent shall:
 - A. Ensure Respondent's employees perform the services in a timely, professional, and efficient manner.
 - B. Employ all personnel for work in accordance with the requirements set forth by the United States Department of Labor. The City reserves the right to verify citizenship or right to work in the United States.
5. **PRICING:** The Respondent shall determine and submit a fixed cost for the work and shall include all incidental costs, labor, overhead charges, travel, payroll expenses, freight, equipment acquisition and maintenance, demurrage, fuel surcharges, delivery charges, costs associated with obtaining permits, insurance, bonds, and risk management. No separate line-item charges shall be permitted for either response or invoice purposes.
6. **PRICE INCREASE:** Contract prices for hot asphalt mix shall remain firm throughout the initial twelve (12) month term of the contract. A price increase to the agreement may be considered on the anniversary date of the Contract each year and shall be equal to the consumer price index for that year, but at no time can the increase be greater than 10% for any single line item unless otherwise approved by the City.
 - A. **Consumer Price Index (CPI):** Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-U) for all Urban Consumers. The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year six-month average (January through June OR July through December), and each (January through June OR July through December six month average) thereafter. The percentage difference between those two CPI issues will be the price adjustment rate. No retroactive contract price adjustments will be allowed. The Consumer Price Index (CPI) is found at the Bureau of Labor Statistics, Consumer Price Index website: <http://www.bls.gov/cpi>

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B. Procedure to Request Increase:

- i. Email the written price increase request to purchasing@roundrocktexas.gov with the rate detail comparison, a comprehensive calculation, and any supporting documentation to the designated City Contract Specialist a minimum of 45 days prior to the annual Contract anniversary date. The detailed written calculation will be verified and confirmed. All written requests for increases must include the City of Round Rock contract number, solicitation reference information and contact information for the authorized representative requesting the increase.
- ii. Upon receipt of the request, the City reserves the right to either accept the escalation and make change to the purchase order within 30 days of the request or negotiate with the Vendor or cancel the agreement or purchase order if an agreement cannot be reached on the value of the increase.

7. **ACCEPTANCE/INSPECTION:** Acceptance/Inspection should not take more than five (5) working days. The Contractor will be notified within the time frame if the services delivered are not in full compliance with the specifications. In the event the services are not performed to the satisfaction of the City the Contractor shall agree to reperform services to specification at no additional cost to the City. If any agreement or purchase order is cancelled for non-acceptance, the needed services may be purchased elsewhere.
8. **PERFORMANCE REVIEW:** The City reserves the right to review the awarded Contractor's performance anytime during the contract term.
9. **SAMPLES:** The Respondent shall-
 - A. Provide no cost samples to the City, which will be retained by the City, and may be used to assure compliance with materials specifications after award. Failure to supply samples when requested shall subject the Bid to disqualification from consideration for award.
 - B. Submit a sample of Types B, C, D, and F, dense-graded hot-mix asphalt to be provided per the specification contained herein.
 - i. This sample shall be provided within five (5) working days after request by the City.
 - ii. Deliver samples of Types B, C, D, and F, dense-graded hot-mix to the City at the following address: 910 Luther Peterson, Round Rock, Texas 78664.
 - C. All products provided to the City under this solicitation will be evaluated or tested and must meet all requirements of the specification, regardless of whether or not all requirements are to be evaluated or tested.
10. **MATERIALS SPECIFICATIONS/DESCRIPTIVE LITERATURE:**
 - A. If a solicitation refers to a Qualified Products List (QPL), Standard Products List (SPL) or a manufacturer's name and product, any Respondent bidding products not referenced in the solicitation must submit as part of their bid materials specifications/descriptive literature for the non-referenced product. Materials specifications/descriptive literature must be identified to show the item(s) in the bid to which it applies.
 - B. Materials specifications/descriptive literature are defined as product manufacturer's catalog pages, "cut sheets" applicable tests results, or related detailed documents that specify material construction, performance parameters, and any industrial standards that are applicable such as ANSI, ASTM, ASME, SAE, NFPA, NBS, EIA, ESL, and NSA. The submitted material specifications/descriptive literature must include the manufacturer's name and product number of the product being bid
 - C. The failure of the materials specifications/descriptive literature to show that the product bid conforms to the requirements of the Solicitation shall result in rejection of the bid.
 - D. Failure to submit the materials specifications/descriptive literature as part of the bid may subject the bid to disqualification from consideration for award.
11. **ORDER QUANTITY:** The quantities shown on the solicitation are estimates only. No guarantee of any minimum or maximum purchase is made or implied. The City will only order the services/goods needed to satisfy requirements within budgetary constraints, which may be more or less than indicated.

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12. **AWARD:** The City reserves the right to enter into an Agreement or a Purchase Order with a single award, split award, primary and secondary award, non-award, or use any combination that best serves the interest and at the sole discretion of the City. Respondents to the solicitation will be notified when City staff recommendation of award has been made. The award announcement will be posted to the City's website at <https://roundrocktexas.bonfirehub.com> once City Council has approved the recommendation of award and the agreement has been executed.
13. **POST AWARD MEETING:** The City and successful Respondent(s) may have a post award meeting to discuss, but not be limited to the following:
- A. The method to provide a smooth and orderly transition of services performed from the current Contractor.
 - B. Provide City contact(s) information for implementation of agreement.
 - C. Identify specific milestones, goals, and strategies to meet objectives.
14. **POINT OF CONTACT / DESIGNATED REPRESENTATIVE:**
- A. **Contractor's point of contact:** In order to maintain consistent standards of quality work performed across the City, the City shall be provided with a designated and identified point of contact upon award of the contract to include contact information. The City's designated representative shall be notified by the Respondent immediately should the point of contact change.
 - B. **The City's designated representative:** The City's designated representative shall be:
Matthew Fitzgerald
Superintendent
Transportation
Phone: (512) 341-3186
E-mail: mattfitzgerald@roundrocktexas.gov
- Do not contact the individual listed above with questions or comments regarding this solicitation during the solicitation.

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PART IV SPECIFICATIONS

1. **Purpose:** The City of Round Rock, Texas herein after "City", is soliciting bids for dense-graded hot-mix asphalt types B, C, D, and F for pick-up on an as needed basis for street repairs.
2. **Delivery/Pick-Up Requirements:** The City of Round Rock – Transportation Department will be responsible for the pick-up of all dense-graded hot-mix asphalt orders from the Contractor's location. The City does not anticipate delivery services will be required.
3. **Requirements:** Dense-graded, Type B, C, D, and F, hot-mix asphalt must meet the minimum specifications in accordance with Texas Department of Transportation Specification Item No. 340 for dense-graded hot-mix asphalt, pages 1-16. Please refer to the table below-

Dense-Graded, Hot-Mix Asphalt, Type B, C, D and F	
1.	Hot-Mix Asphalt, Dense Graded, Type B, RAP 30%, SAC-B or Better, Reference: TxDOT - Item No. 340 or buyers approved equal.
2.	Hot-Mix Asphalt, Dense Graded, Type C, RAP 20%, Reference: TxDOT - Item No. 340 or buyers approved equal.
3.	Hot-Mix Asphalt, Dense Graded, Type D, RAP 20%, SAC-B or Better, Reference: TxDOT - Item No. 340 or buyers approved equal
4.	Hot-Mix Asphalt, Dense Graded, Type F, RAP 0%, SAC-B or Better, Reference: TxDOT - Item No. 340 or buyers approved equal

4. **DESIGNATED CONTACT PERSON:** In order to maintain consistent standards of quality work performed across the City, the City shall be provided with a designated and identified crew leader/point of contact (POC) upon award of the contract.
 - A. The City shall be provided with the designated person's name and telephone number.
 - B. This contact person shall remain the same throughout the term of the contract or upon termination of the contact person. If a change has been made in the contact person due to internal personnel changes, the City's designated representative shall be notified by the Contractor immediately at the time of the change. NO substitutions of key personnel shall be permitted without written approval of the authorized City's designated representative.
 - C. The contact person shall be identified in the solicitation response.
 - D. The Contractor shall provide the City with a secondary POC if the primary POC is unavailable.
5. **WARRANTY:** The Contractor shall provide at minimum a one (1) year warranty on all materials, including but not limited to manufacturer's warranty.
6. **CONTRACTOR RESPONSIBILITIES:** The Contractor shall-
 - A. **Maintain Communication-** Communication is vital to the City of Round Rock. The City requires timely communication throughout the entire order process. The City understands that lead times can vary depending upon the size, manufacturer, and difficulty of the required material needs.
7. **CITY'S RESPONSIBILITIES:** The City will-
 - A. Coordinate scheduling with the Contractor.

EXHIBIT "A"

ATTACHMENT A
REFERENCE SHEET

PLEASE COMPLETE AND RETURN THIS FORM WITH THE SOLICITATION RESPONSE

SOLICITATION NUMBER: 23-030RESPONDENT'S NAME: Andrew Warner DATE: 7-11-23

Provide the name, address, telephone number and E-MAIL of at least three (3) valid Municipal, Government agencies or firms of comparable size that have utilized services that are similar in type and capacity within the last two (2) years. City of Round Rock references are not applicable. References may be checked prior to award. If references cannot be confirmed or if any negative responses are received it may result in the disqualification of submittal.

- | | | | |
|-----------------------|--|---------------------|------------------------|
| 1. Company's Name | <u>The State of Texas</u> | | |
| Name of Contact | <u>Mike Arellano</u> | | |
| Title of Contact | <u>Austin district Construction Engineer</u> | | |
| E-Mail Address | <u>Miguel.Arellano@txdot.gov</u> | | |
| Present Address | <u>7901 N Interstate HWY 35</u> | | |
| City, State, Zip Code | <u>Austin , Texas , 78753</u> | | |
| Telephone Number | <u>()</u> | <u>512-585-3197</u> | Fax Number: <u>()</u> |
| | | | |
| 2. Company's Name | <u>Travis County</u> | | |
| Name of Contact | <u>Scott Lambert</u> | | |
| Title of Contact | <u>Pavement Management Engineer</u> | | |
| E-Mail Address | <u>Scott.Lambert@traviscountytx.gov</u> | | |
| Present Address | <u>700 Lavaca St.</u> | | |
| City, State, Zip Code | <u>Austin , TX , 78701</u> | | |
| Telephone Number | <u>()</u> | <u>512-848-7673</u> | Fax Number: <u>()</u> |
| | | | |
| 3. Company's Name | <u>DNT</u> | | |
| Name of Contact | <u>Jeff Berger</u> | | |
| Title of Contact | <u>Chief Estimator</u> | | |
| E-Mail Address | <u>jberger@dniconstruction.com</u> | | |
| Present Address | <u>2300 Picadilly Dr.</u> | | |
| City, State, Zip Code | <u>Round Rock , TX , 78664</u> | | |
| Telephone Number | <u>()</u> | <u>512-837-6700</u> | Fax Number: <u>()</u> |

FAILURE TO PROVIDE THE REQUIRED INFORMATION WITH THE SOLICITATION RESPONSE MAY AUTOMATICALLY DISQUALIFY THE RESPONSE FROM CONSIDERATION FOR AWARD.

EXHIBIT "A"
Attachment B- Bid Sheet
Hot Mix Asphalt
IFB 23-030

The Respondent represents by their signature below that they are submitting a binding offer and are authorized to bind the respondent to fully comply with the solicitation documents contained in IFB 23-030. The Respondent acknowledges that they have received and read the entire solicitation packet, attachments, and all documents incorporated by reference, and agrees to be bound by the terms therein.

Special Instructions: All prices must be quoted in order to be considered responsive, be advised that exceptions taken to any portion of the solicitation will jeopardize acceptance of the bid. Alternative bids will not be considered, and unauthorized modifications to the bid sheet format will result in the rejection of the bid. The City reserves the right to purchase more or less than the quantities indicated below

Section I: Hot Mix Asphalt-Commodity Goods

No.	Description	Estimated Quantity	Unit	Unit Cost	Extended Total
1	Hot-Mix Asphalt, Dense Graded, Type B, RAP 30%, SAC-B or Better, Reference: TxDOT - Item No. 340 or buyers approved equal.	750	Tons	\$79.00	\$59,250.00
2	Hot-Mix Asphalt, Dense Graded, Type C, RAP 20%, Reference: TxDOT - Item No. 340 or buyers approved equal.	750	Tons	\$79.00	\$59,250.00
3	Hot-Mix Asphalt, Dense Graded, Type D, RAP 20%, SAC-B or Better, Reference: TxDOT - Item No. 340 or buyers approved equal.	2,000	Tons	\$79.00	\$158,000.00
4	Hot-Mix Asphalt, Dense Graded, Type F, RAP 0% RAP, SAC-B or Better, Reference: TxDOT - Item No. 340 or buyers approved equal.	750	Tons	\$88.00	\$66,000.00
Annual Total:					\$224,000.00