

**Confirmation of Receipt
of
Bidding and Contract Documents
for
Crack Sealing on Borough Streets**

All prospective bidders who obtained the Bidding Documents electronically must fax this "Receipt of Confirmation" form no later than **June 18, 2019 at 10:00 a.m. EST** to:

Jamia L. Wright, Borough Secretary, at (717) 264-0224.

The undersigned confirms receipt of all 47 pages of the bidding and contract documents dated June 12, 2019 for the project referenced above as posted electronically at www.borough.chambersburg.pa.us

Name of Company _____

Name of Recipient _____

Signature of Recipient _____

Title of Recipient _____

Phone No: _____

Fax No: _____

E-mail: _____

Date: _____

SPECIFICATIONS AND CONTRACT DOCUMENTS

FOR

CRACK SEALING ON BOROUGH STREETS

FOR

THE BOROUGH OF CHAMBERSBURG

Issued

June 12, 2019

Bids for items covered by these Specifications must be received by the Borough Secretary, 100 South Second Street, Chambersburg, Pennsylvania 17201, before 10:00 a.m., legal time, June 27th, 2019.

**Borough Contact Name: David Finch, Public Works Director
Telephone: 717-660-2702
Email: dfinch@chambersburgpa.gov**

Proposal Submitted By:

NOTICE – SEEKING BIDS

The Borough of Chambersburg is accepting sealed bids for:

CRACK SEALING ON BOROUGH STREETS

A complete proposal packet may be obtained from Jamia L. Wright, Borough Secretary, Borough of Chambersburg, 100 South Second Street, Chambersburg, PA 17201, Phone: (717) 251-2437 for a \$25.00 non-refundable fee made payable to the Borough of Chambersburg or by downloading it free from the Borough of Chambersburg Website at www.borough.chambersburg.pa.us/.

The work under this Contract shall be performed throughout the 2019 construction season for areas scheduled by the Highway Department for Crack Sealing on various streets throughout the Borough of Chambersburg.

The Town Council intends to award a contract to the overall lowest responsive responsible bidder as determined by Town Council in the best interest of the Borough of Chambersburg. The lowest responsive responsible Bidder shall be the Bidder who proposes to use the greatest amount of sealant, as measured in gallons, to seal an as yet undetermined number of cracks on Borough streets and alleys for the Budgeted Cost of Eleven Thousand Two Hundred Dollars (\$11,200.00).

A Proposal Bond in the amount of One Thousand One Hundred Twenty Dollars (\$1,120.00), which represents ten percent (10%) of the Budgeted Cost of Eleven Thousand Two Hundred Dollars (\$11,200.00) must accompany each Bid. A Performance Bond and Payment Bond each in the amount of one hundred percent (100%) of the budgeted cost shall be required from the Successful Bidder. An anti-collusion affidavit must accompany each Bid.

Bids shall be submitted only on the enclosed MS-944 Form included in the specifications. While Bidders may make comments to clarify their bid, Bidders cannot change, modify, delete or make additions to the wording to any of the Bidding Documents, including the Agreement. Unauthorized conditions, exceptions, limitations, or provisions attached to a bid may be cause for rejection of the bid. Alterations by erasure or interlineation must be explained or noted in the bid over the signature of the Bidder. Any questions regarding the Bidding Documents shall be submitted as Requests for Interpretation and the Bidding Documents may only be modified by Addenda issued by the Borough prior to the Bid opening date.

The Town Council of the Borough of Chambersburg reserves the rights to reject any or all bids; to waive any defects, errors, omissions, irregularities, or informalities in a Bid or the Bid procedure; and to accept any Bid which it may deem to be for, or in the best interest of, the Borough of Chambersburg.

A pre-bid meeting will be held on **THURSDAY, June 20th, 2019 at 11:00 a.m.** in the third floor conference room in the new Utility Departments Addition to Borough Hall, 100 South Second Street, Chambersburg, Pennsylvania 17201.

Bids will be received at the above address until **10:00 A.M. on THURSDAY, June 27th, 2019**. Any Bid received after said date and time will be returned unopened. All Bids must be in a sealed envelope clearly marked "Bid for Borough of Chambersburg", bearing the name of the bidder and "**Crack Sealing on Borough Streets**". If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it. Please mail bids to the attention of:

Jamia L. Wright, Borough Secretary
Borough of Chambersburg
100 South Second Street
Chambersburg, Pennsylvania 17201

Any Bidder and any member of the public may be present at the bid opening.

The Town Council reserves the rights to formally accept a Bid and award a Contract by public announcement at a regular meeting of the Town Council.

The Borough of Chambersburg is an Equal Opportunity Employer. Minority and women owned businesses and those defined as SERB's under state regulations are encouraged to submit proposals.

INSTRUCTIONS TO BIDDERS & GENERAL TERMS AND CONDITIONS

PERMANENT RESTORATION OF SURFACE OPENINGS ON BOROUGH STREETS

INSTRUCTIONS TO BIDDERS

1. Project Overview

The Borough of Chambersburg (the "Borough") is seeking bids from qualified bidders for the general procurement of: **Crack Sealing on Borough Streets** (the "Work"), as further described in the Specifications herein.

In general, the Contract involves the competitive solicitation of **Crack Sealing on Borough Streets**. Bids will be based on gallons of Polymer Modified Crack Sealant. Work associated with this Contract shall be conducted between June 28th, 2019 and October 15, 2019, with milestones to be established in accordance with these bid documents.

From time to time throughout the term of this Contract, the Borough will provide written Notice(s) to Proceed to the Contractor that will include a list of the work to be completed, including the location of each street area requiring crack sealing with the requirement that each area requiring crack sealing must be completed within five (5) business days from the date when work begins. In no case will an area requiring crack sealing be left incomplete for more than five (5) business days.

Payments for the work associated with each written Notice to Proceed shall only be made after completion of the work associated with that particular written Notice.

2. Bidding Documents and Contract Documents

The Bidding Documents include following documents:

- Notice / Advertisement
- Instructions to Bidders & General Terms and Conditions
- Non-Discrimination Notice
- Bidder Affidavit
- Anti-Collusion Affidavit
- MS-944 Form
- Proposal Bond
- Receipt of Confirmation of Bidding and Contract Documents
- Agreement
- Performance Bond
- Payment Bond
- Affidavit RE Accepting Provisions of the Workman's Compensation Act
- Specifications
- Addenda (if released by Borough)
- Receipt of Addenda (if Addenda is released by the Borough)

3. Copies of Bidding Documents

A complete set of Bidding Documents may be obtained by the Bidder at:

Borough of Chambersburg, 100 South Second Street, Chambersburg, PA 17201

The Bidding Documents may also be obtained electronically at www.chambersburgpa.gov. All prospective Bidders who obtained the Bidding Documents electronically must fax a "Confirmation of Receipt" form no later than 10:00 a.m. EST on June 18th, 2019 to Jamia Wright at 717-264-0224.

Complete sets of the Bidding Documents shall be used in preparing the Bid. The Borough does not assume responsibility for any errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

4. Contractor

The successful Bidder will be known as the Contractor. The successful Bidder to whom the contract is awarded will be required to comply with all applicable federal and state laws, rules, regulations, orders, and approvals, as well as all applicable Borough ordinances, rules, and regulations and the terms of the Bidding and Contract Documents.

5. Qualifications of Bidders

At the Borough's request, a Bidder may be required to provide the Borough with at least three (3) references for similar work with applicable contact information within five (5) calendar days after Bid Opening. These references shall verify that the Bidder has successfully delivered or performed similar projects or commodities.

Each Bid must contain evidence of Bidder's qualification to do business in the Commonwealth of Pennsylvania, or covenant to obtain such qualification prior to, and as a condition of, the award of the Contract.

No Contract will be awarded to any person who is in arrears with the Borough upon debt or contract, or who is in default, as surety or otherwise, upon any obligation to the Borough or whose work has heretofore proved unsatisfactory or dilatory.

6. Examination of Contract Documents and Site

6.1 It is the responsibility of each Bidder before submitting a Bid to:

- 6.1.1 examine and carefully study these Bidding Documents, including any Addenda;
- 6.1.2 visit the site and become familiar with, and be satisfied as to, the general, local, and site conditions that may affect cost, progress, performance, and furnishing of the Work;
- 6.1.3 consider all federal, state, and local laws and regulations that may affect cost, progress, performance, and furnishing of the Work;
- 6.1.4 correlate the information known to Contractor, information and observations obtained from visits to the site, reports, and drawings identified in the Bidding Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents; and
- 6.1.5 promptly notify the Borough of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Bidding Documents.

The Borough shall, at its convenience, make facilities accessible to each Bidder and staff for this purpose. Failure to arrange for inspection may disqualify Bidder.

- 6.2 Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to the Borough by the owners of such Underground Facilities or others, and the Borough does not assume responsibility for the accuracy or completeness thereof.
- 6.3 Before submitting a Bid, each Bidder shall be responsible for obtaining such additional or supplementary examinations, investigations, explorations, tests studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of the Bidding Documents.

7. Interpretations and Addenda

Any questions or requests for interpretation of any provision of the Bidding Documents shall be made to Brian Fogal, Engineering Supervisor at 717-251-2415 or bfogal@chambersburgpa.gov at least five (5) days prior to the submission deadline.

The Borough may issue Addenda, if deemed necessary by the Borough, to address or clarify the Bidding Documents prior to the submission deadline. Questions received after five (5) days prior to Bid Opening may not be answered. Only questions answered by formal written Addenda will be binding. Oral statements, interpretations, or clarifications will not be binding or legally effective. A Bidder who fails to acknowledge receipt of any such Addenda with its Bid, as documented in a "Receipt of Addenda" form will be construed as though the Addenda had been received and acknowledged.

Bidders may provide comments to clarify or describe their technical offer, **but Bidders cannot change, modify, delete, or make additions to the wording to any of the Bidding Documents. Unauthorized conditions, exceptions, limitations, or provisions attached to the Bid may be cause for rejection of the Bid.** Any questions regarding the Bidding Documents shall be submitted as a request for interpretation and the Bidding Documents may only be modified by an Addendum issued by the Borough prior to the Bid.

8. Security

- 8.1 All bonds shall be in the form prescribed by the Bidding Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of this Paragraph 8, Contractor shall promptly notify the Borough and, within twenty (20) days after the event giving rise to such notification, provide another bond and surety.

The Borough anticipates that the Work to be performed by the Successful Bidder will be similar in scope and magnitude to the Work performed in previous years, approximately two thousand

(2,000) square yards. This is an estimate only, provided for the convenience of potential Bidders, and shall not be construed to limit the Work to be completed under the Contract.

- 8.2 **Proposal Bonds.** Each Bid must be accompanied by a Proposal Bond in the amount of One Thousand One Hundred Twenty Dollars (\$1,120.00), which represents ten percent (10%) of the Budgeted Cost of Eleven Thousand Two Hundred Dollars (\$11,200.00). The Proposal Bond shall be payable to the Borough and in the form of a certified or bank check, or a Bid Bond (form attached) issued by a surety meeting the requirements of this Paragraph. All instruments of the Proposal Bond shall be valid and remain in effect for at least one hundred twenty (120) days from the date of Bid Opening. Substitute Bid Bond forms are not acceptable.

The Proposal Bond of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished acceptable contract bonds and insurance certificate(s), whereupon the Proposal Bond will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish acceptable contract bonds and insurance certificate(s) within fifteen (15) days after the Notice of Intent to Award, the Borough may annul the Notice of Intent to Award and the full amount of the Proposal Bond will be forfeited.

The Borough will return the Proposal Bond and financial information, if any, of all Bidders except the three apparent lowest responsible, responsive Bidders as determined by the Borough upon evaluation, within thirty (30) days after the date of Bid Opening. Upon execution of the Agreement and furnishing of acceptable contract bonds and insurance certificate by the Successful Bidder, the remaining Proposal Bonds and financial information, if any, of each of the three lowest Bidders will also be returned.

- 8.3 **Performance and Payment Bonds.** When the apparent Successful Bidder delivers the signed Agreement to the Borough, it must be accompanied by the required PennDOT Performance and Payment Bonds on the forms provided in the Bidding Documents. Substitute Bond forms are not acceptable.

Contractor shall furnish Performance and Payment Bonds, each in an amount equal to One Hundred Percent (100%) of the estimated contract price for 2019 as security for the faithful performance and payment of all of Contractor's obligations under the contract documents.

The Performance and Payment Bonds shall each be calculated based on the total amount of money allocated for the Contract, which shall be Eleven Thousand Two Hundred Dollars (\$11,200.00).

These bonds shall remain in effect until two (2) years after the date when final payment becomes due or until completion of the correction period, whichever is later, except as provided otherwise by laws or regulations or by the Contract Documents.

9. Liquidated or Other Damages

Provisions for liquidated and other damages, if any, are set forth in the Agreement.

10. MS-944 Form

The PennDOT MS-944 Form contains six (6) pages, including the Proposal and Contract, Attachment 1, Special Provisions to Contract (Attachment 1-A), and Proposal and Contract Instructions. The Bidder is hereby advised to review all six (6) pages of the MS-944 form prior to submitting a proposal. The Bidder is required to complete Section B: Proposal, Attachment 1, and Special Provisions to Contract and return all six (6) MS-944 pages with the submission of their Bid. The Bidder's MS-944 proposal information must be typewritten or printed. Additional information on the MS 944 Forms is located in this section under "Proposal and Contract Instructions – Form 944".

The Bid amount of each item on the Proposal form must be stated in numerals and, if required, in words. Subject to the Borough's right to correct a Bidder's mathematical totals, a discrepancy between the word and numeral for a particular item will be resolved in favor of the word.

The following should be considered by Bidder when preparing the Proposal:

Tax: Pennsylvania sales tax is not to be included in the bid. The Borough's tax exemption certificate will be furnished to the successful bidder upon request. The Borough is sales tax exempt. However, the contractor is not exempt from the obligation to follow appropriate tax laws in the procurement of materials and services used in the performance of this Contract. Bidder shall obtain legal advice to determine how and to what extent the Borough's tax exemption may be utilized by the Contractor. The Borough will provide, at the Contractor's request, documentation required to obtain applicable tax exemptions.

Freight: Where applicable, freight to be prepaid and allowed. For all deliveries, FOB is site location:

PROJECT SITE, Chambersburg, PA 17201.

11. Submission of Bids

Bids shall be submitted no later than the time and place indicated in the Notice. All Bids must be in a sealed envelope clearly marked "Bid for Borough of Chambersburg", bearing the name of the bidder and "**Crack Sealing on Borough Streets**". If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it. Please mail Bids to:

Attention: Jamia L. Wright, Borough Secretary
Borough of Chambersburg
100 South Second Street
Chambersburg, Pennsylvania 17201

The Bidder is solely responsible for delivering Bid to the Borough at the location of, and by the time of, Bid Opening, as designated in the Notice.

The following completed documents are to be submitted with the Bid and will become a condition of the Bid:

- MS-944 Form
- Bidder Affidavit
- Anti-Collusion Affidavit
- Proposal Bond
- Receipt of Addenda (if applicable)

In addition, the Bidder acknowledges that any information received by the Borough may be subject to the Pennsylvania Right to Know Law, *65 P.S. § 67.101 et seq.*

12. Modification and Withdrawal of Bids

Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

After the Bid opening, Bidder may withdraw its Bid only by complying with applicable federal, state, or local laws and regulations. Unless prohibited by such applicable laws and regulations, or if there are no applicable laws and regulations, Bidder shall forfeit the entire amount of Bid Security upon withdrawal of its Bid.

After Bid Opening, Bidder may withdraw its Bid without forfeiture of any Bid security if Bidder submits credible evidence that there is an error in its Bid and such error was a clerical mistake as opposed to a judgment mistake and was due to an unintentional arithmetical error or an unintentional omission of a substantial quantity of the Work, provided:

- (1) Bidder provides notice of claim of the right to withdraw Bid in writing to the Borough within two (2) business days after Bid Opening; and
- (2) the withdrawal of the Bid will not result in the awarding of the Contract upon another Bid of the same Bidder, Bidder's partner, or a corporation or business venture owned by Bidder, or in which Bidder has a substantial interest.

A Bidder that is permitted to withdraw a Bid shall supply any products or labor to, or perform any subcontract or other work for, any entity awarded a Contract or subcontract for performance of the Work for which the withdrawn Bid was submitted.

13. Bids to Remain Subject to Acceptance

For the initial award, Bids shall remain open for a period of sixty (60) days from the date of Bid Opening unless award is delayed by a required approval from a governmental agency, the sale of bonds or notes, or the award of a grant or grants, in which event the Bids shall remain open for a period of one hundred twenty (120) days from the date of Bid Opening. The Borough will either award the Contract within the applicable time period or reject all Bids, returning the Bid security to the Bidders. Thirty (30) day extensions of the date for the award may be made by the mutual written consent of the Borough and the apparent successful Bidder. In addition, each Bidder, by submitting a Bid, agrees to keep their Bid price fixed through 2019 in the event the successful Bidder (the "Contractor") cannot agree on a completion date for a particular list of work and the Borough desires to award the particular list of work to the next lowest Bidder who can meet the completion date.

14. Award of Contract

The Borough reserves the right, without limitation, to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids and to reject the Bid of any Bidder, if the Borough believes that it would not be in the best interest of the project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the Borough. The Borough also reserves the right to waive all irregularities or informalities not involving price, time or changes in the Work and to negotiate contract terms with the successful Bidder.

The Borough will correct discrepancies in Bidder's mathematical totals. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the manner most favorable to the Borough.

In evaluating Bids, the Borough may conduct such investigations as the Borough deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, and other persons and organizations to

perform and furnish the Work in accordance with the Contract Documents to the Borough's satisfaction within the prescribed time. The Borough reserves the right to interview Bidders.

If the Contract is to be awarded, the Borough will give the apparent successful Bidder a Notice of Intent to Award.

15. Signing of Agreement

When the Borough issues a Notice of Intent to Award to the apparent Successful Bidder, it will be accompanied by three (3) unsigned counterparts of the Agreement, each with a copy of the Bid submission, the Payment and Performance Bonds, or other forms of financial security. Within fifteen (15) days thereafter, the apparent Successful Bidder shall sign and deliver to the Borough the three (3) signed counterparts of the Agreement accompanied by the executed Performance and Payment Bonds (with a power-of-attorney certificate attached to each) or other forms of financial security, required insurance certificate(s), Affidavit RE Accepting Provisions of the Workmen's Compensation Act, and a completed W-9 form. The Notice of Intent to Award may be withdrawn, at the discretion of the Borough, if the apparent Successful Bidder does not execute, and deliver to the Borough the Agreement, together with the required Performance and Payment Bonds, insurance certificate(s), Affidavit RE Accepting Provisions of the Workmen's Compensation Act, and completed W-9 form, within fifteen (15) days from the date of the Notice of Intent to Award. Such Bidder shall be considered in Default, and the full amount of its Proposal Bond shall be forfeited.

In the event the successful Bidder (the "Contractor") cannot agree on a completion date for a particular list of work and the Borough desires to award the particular list of work to the next lowest Bidder who can meet the completion date, the Borough will give the next lowest bidder the option of entering into an Agreement for that particular list of work only in the same manner and according to the same conditions as set forth in this Paragraph 15.

GENERAL TERMS AND CONDITIONS

1. Labor and Equipment

Contractor agrees to furnish all tools, material, and equipment, and to pay all expenses necessary for or in connection with the work to be completed hereunder in consideration of the payments hereinafter provided to be paid to Contractor by the Borough. The Borough may supply its own operators or may ask Contractor to supply its own operators, as indicated in the Specifications.

2. Inspection of Work

The Borough reserves the right to inspect the Contractor's Work and direct changes to the Contractor's methods and procedures within the scope of the Agreement. Periodic inspections may be performed by the Borough or its agents. The Contractor shall allow the Borough reasonable time to perform such inspections or tests. The Borough shall give prompt notice to the Contractor as to whether the Work appears to be conforming or non-conforming on the basis of any inspections or testing of conformity.

3. Warranty

Contractor warrants and guarantees to the Borough that all Work will be in accordance with the Contract Documents and will not be defective. Contractor shall guarantee workmanship against defects or failures for a period of two (2) years after the completion of the work as evidenced by final payment for projects that include construction or delivery of equipment. Neither final payment nor acceptance of the work shall relieve Contractor of responsibility for failure to comply with these specifications. Contractor shall remedy any defects in his work that shall appear within a period of two (2) years from completion and acceptance, and shall bear the expense of repairing everything that has been destroyed or damaged by such defects.

With respect to breach of warranty claims by the Borough, the Borough shall provide Contractor with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach of warranty has occurred. The Borough shall give Contractor prompt notice of defects that become apparent. Contractor shall have ten (10) days from receipt of the written notice declaring the breach (or such longer period of time as the Borough may grant in writing) within which to cure the alleged breach. These provisions shall be in addition to all other rights and remedies available to the Borough under the Agreement and any applicable laws. In case of an emergency where delay would cause serious loss or damage, the Borough may undertake to have any defects repaired without prior notice to Contractor, and the expense of such repairs shall be borne by Contractor.

Contractor's warranty and guarantee excludes defects or damage caused by normal wear and tear under normal usage. The Borough and its officers, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.

4. Permits, Licenses, etc.

All permits, licenses, inspections, ratings, or approvals related to the installation of the Work, or delivery of such commodities are the responsibility of Contractor and all costs associated with such items should be taken into consideration by Bidder when calculating the Bid Proposal.

5. Assignment

Contractor shall not assign the Agreement or any portion of it without first obtaining the written consent of the Borough. Contractor shall not obligate the Borough to make any payments to another party for, or on behalf of the Borough, without the approval of the Borough.

6. Invoices and Payment

All payments will be processed through the Borough's standard accounts payable system. Upon the completion and inspection of the Borough of all work set forth in each written Notice to Proceed, Contractor shall submit invoices marked NET 30 DAYS. The invoice must include, at a minimum, the quantity and type of materials plus unit price and total price.

If the Borough objects to any portion of an Invoice, the Borough shall so notify the Contractor in writing within thirty (30) days of receipt of the invoice. The Borough shall identify the specific cause of the disagreement and shall pay when due that portion of the invoice not in dispute. Interest as stated above shall be paid by the Borough on all disputed invoiced amounts resolved in the Contractor's favor and unpaid for more than forty-five (45) days after date of the notice of the dispute.

7. Insurance

When the apparent Successful Bidder delivers the signed Agreement to the Borough it must be accompanied by the required insurance certificate on the latest version of the ACORD 25 Certificate of Insurance Form. Chambersburg, its elected/appointed officials and employees, are to be named as an additional insured on the Contractor's Certificate of Insurance. PennDOT is also to be named an additional insured in the manner as described in this Section 8. No insurance policy shown on the Certificate of Insurance shall be cancelled or materially changed without, at minimum, thirty (30) days prior notice given to the Borough by the Contractor. Contractor agrees to furnish an original copy prior to signing and maintain during the term of this Agreement, or until delivery of the goods, commodities, equipment, and/or deliverables is complete and until the Work is completed and approved by the Borough, at Successor Bidder's sole cost and expense, the following minimum types of insurance as specified herein.

Contractor shall maintain Workmen's Compensation insurance for all of his employees employed at the site of the project, and in case any work is sublet, Contractor shall require the subcontractor similarly to provide Workmen's Compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by Contractor.

Contractor shall, at its sole cost and expense, maintain the following the minimum types of insurance as specified herein during the lifetime of the Agreement:

WORKMEN'S COMPENSATION

Statutory limit as required by the Commonwealth of Pennsylvania.

BUSINESS AUTOMOBILE

Covering Any Automobile (Symbol I)

Bodily Injury Liability and
Property Damage Liability \$1,000,000 (CSL)

COMMERCIAL GENERAL LIABILITY

General Aggregate Limit	\$1,000,000
Products-Completed Operations Aggregate Limit	\$1,000,000
Personal & Advertising injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000
Fire Damage Limit	\$ 50,000
Medical Expense Limit	\$ 5,000

The Borough, its elected/appointed officials and employees, shall be named an additional insured on the Contractor's Commercial General Liability policy.

Before starting work the Contractor shall furnish to the Borough for its examination and approval such policies of insurance with all endorsements, or a conformed specimen thereof certified by the agent of the insurance company, together with certificates of the insurance company of such insurance, such certificate to provide that insurance company will give the Borough ten (10) days written notice of any cancellation or change in the terms of such policy during the periods of coverage.

In addition, the following shall be added to the Contractor's Commercial General Liability ("CGL") policy:

It is hereby agreed and understood that the Commonwealth of Pennsylvania, Department of Transportation, is added to this policy as an additional insured for public liability insurance (including personal injury liability) for at least \$250,000.00 per individual and at least \$1,000,000.00 per occurrence. The Commonwealth of Pennsylvania, Department of Transportation, is added to this policy as an additional insured specifically for all claims, suits and damages arising out of the construction of the improvements that are the subject of Application No. _____, submitted to the Department for issuance of a Highway Occupancy Permit.

8. Indemnification

Contractor, its employees, agents, servants, and/or anyone acting under Contractor's control and/or Contractor's direction shall release, hold harmless, and indemnify the Borough, its officers, elected officials, agents, representatives, and employees acting within the scope of their official duties from and against damages, costs, and expenses (including reasonable attorneys' fees) to the extent caused by the negligent acts, errors, or omissions of Contractor, its employees, sub-consultants, agents, servants, and/or anyone acting under Contractor's control and/or Contractor's direction, in the performance of the requirements of the Agreement. Contractor shall defend any lawsuit commenced against the Borough and shall pay any judgments and costs connected with such proceeding which are based upon the negligent acts or omissions of Contractor or its employees, agents, servants, and/or anyone acting under Contractor's control and/or Contractor's direction. If Contractor is successful in defending such a lawsuit, then the Borough will reimburse Contractor for its costs and expenses associated with such defense only to the extent that such liabilities arise from an action which can be properly brought against the Borough as an exception to governmental immunity in accordance with the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. § 8541 *et. seq.* and in accordance with such limits of liability set forth in the Act.

9. Taxes

All taxes of whatsoever kind, nature, and description payable in respect to the performance of the Agreement are to be paid by the Contractor unless otherwise provided by law.

The successful bidder is required to complete an Internal Revenue Service Form (W-9) providing the bidder's taxpayer identification number (TIN), address, and, if applicable, certification regarding backup withholding. The successful bidder must submit a completed W-9 Form along with the executed Agreement. The Borough may waive this provision in the event the Borough is in possession of an accurate and up to date W-9 Form. A W-9 Form is not included with the Bidding Documents but may be provided to the successful Bidder upon request.

10. Disputes

Before any litigation is brought pursuant to the Agreement, the parties hereto agree to submit any dispute between them to mediation. Such mediation shall be a condition precedent to either party instituting litigation unless a stay of an applicable statute of limitations or repose is necessary. Such mediation may be initiated by written request and will occur within thirty (30) days of such request. A mutually agreed upon impartial mediator may be retained to assist in the mediation process at the request of either party. In the event the parties cannot agree upon a mediator, the President Judge of the Franklin County Court of Common Pleas will be requested to appoint such mediator. In the event mediation does not result in the successful resolution of the dispute, either party may institute any and all actions necessary to protect their rights at law and/or equity in accordance with the Agreement.

11. Additional Contractor Compliance

The Successful Bidder (the "Contractor") shall comply or otherwise conform to the following, if applicable:

- a. Contractor is subject to the provisions of the Pennsylvania Steel Products Procurement Act of 1978, P.L. 6, as amended. The Act and amendments require that the Contractor use or furnish only steel products (as defined in the Act and amendments) which have been produced in the United States.
- b. Contractor is subject to the provisions of Pennsylvania Act 247 of 1972, as amended, relating to the prevention of environmental pollution and the preservation of public natural resources.
- c. Contractor is subject to the provisions of the Pennsylvania Human Relations Act No. 222 of 1955, as amended.
- d. Contractor is subject to the provisions of Pennsylvania Underground Utility Line Protection Act, Act 287 of 1974, as amended by Act 121 of 2008, which requires contractors to notify public utilities prior to starting excavation or demolition work.
- e. Contractor shall comply with the Pennsylvania Public Works Contract Regulation Law, as amended by Act 142 of 1994 as it relates to timely payment by Contractor and Subcontractor to its Subcontractors.
- f. Contractor shall comply with the Antbid-Rigging Act, 62 Pa.C.S.A §4501, *et seq.*

12. Right to Know

The Contractor acknowledges and understands that any information received by the Borough may be subject to the Pennsylvania Right to Know Law, 65 P.S. § 67.101 et seq. If any information received by the Borough is subject to a request pursuant to the Pennsylvania Right to Know Law, the Borough shall notify the Contractor within five (5) days of receiving said request pursuant to the Right to Know Law. The Parties hereto shall use all reasonable efforts to coordinate a response pursuant to the Right to Know Law. In the event that the Contractor determines that the requested information is considered a Trade Secret or Confidential Proprietary Information as defined by the Right to Know Law or that any other exemption applies, the Contractor shall notify the Borough within five (5) days of it receiving notification from the Borough of the request for information pursuant to the Right to Know Law. In the event that the Borough denies a request pursuant to the Right to Know Law at the Contractor's request and that denial of information is appealed to the Pennsylvania Office of Open Records and/or Pennsylvania courts, the Contractor shall indemnify the Borough for any and all legal expenses incurred by the Borough as a result of such challenge and may participate in any proceedings as an interested party. The Contractor's duties regarding the Right To Know Law are continuing duties that survive the expiration of the Agreement.

NON-DISCRIMINATION

During the term of the Contract, the Contractor agrees as follows:

- A. Contractor shall not discriminate against any employee, applicant for employment, independent contractor, or any other person because of race, color, religious creed, ancestry, national origin, age, sex, or disability. Contractor shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.
- B. Contractor shall in advertisements or requests for employment placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, sex, or disability.
- C. Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this non-discrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by contractor.
- D. It shall be no defense to a finding of a noncompliance with Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause that contract has delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered a mitigating factor when determining appropriate sanctions.
- E. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that contractor will be unable to meet its obligations under the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause, contractor shall then employ and fill vacancies through other non-discrimination employment procedures.
- F. Contractor shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49, and with all laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the non-discrimination clause of this contract or with any such laws, this contract may, after hearing and adjudication, be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for Commonwealth of Pennsylvania contracts, and such other sanctions may be imposed and remedies invoked as provided by the Contract Compliance Regulations.
- G. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency and the Human Relations Commission, for purposes of investigation to ascertain compliance with the provisions of the Contract Compliance Regulations, pursuant to Section 49.35 (relating to information concerning compliance by contractors). If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Commission.
- H. Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.
- I. Contractor shall include the provisions of this non-discrimination clause in every subcontract, so that such provisions will be binding upon each subcontractor.
- J. The terms used in this non-discrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49.

K. Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

BIDDER AFFIDAVIT

The Specifications and all papers required by it and submitted herewith, the Contract, and all papers made a part hereof by its terms, are hereby made a part of this Proposal.

The undersigned Bidder hereby represents as follows:

- A. That he/she has carefully examined the Proposal, the Contract, and the Specifications.
- B. That no officer, agent, or employee of the Borough of Chambersburg is personally interested directly or indirectly in this Proposal and the accompanying Contract or the compensation to be paid herein under.
- C. That the Proposal is made without connection with any person, firm or corporation making a Proposal for the same work, and is in all respects fair and without collusion or fraud; and
- D. That should this Proposal be accepted by the Borough of Chambersburg within sixty (60) days of Bid Opening (unless award is delayed by a required approval from a governmental agency, the sale of bonds or notes, or the award of a grant or grants, in which event this Proposal shall be accepted within one hundred twenty (120) days from the date of Bid opening), he/she will execute the Contract and furnish any other documents within the time and in the forms and amount required by the Contract and Specifications, and that upon his/her failure, neglect, or refusal to do so, he/she shall forfeit to the Borough of Chambersburg the Proposal Security, not as a penalty, but as a liquidated damage.

Name of Bidder (Corporation, Firm, or Individual)

By: _____
Authorized Representative

Please Print Signature

Title

Business Address of Bidder

Phone #

ANTI-COLLUSION AFFIDAVIT



County _____

Municipality _____

Project Number _____

Fed. Project No. _____
(If Applicable)

State of _____

County of _____

The undersigned deponent deposes and says that he is the _____
of the _____ Company; that he is authorized to make this
affidavit on behalf of said company in compliance with section 102.06 (e) of Department Specifications,
Publication 408, as amended and that the said company has not, either directly or indirectly, entered
into any agreement, participated in any collusion, or otherwise taken any action in restraint of free
competitive bidding in connection with such contract.

(Contractor)

BY

Sworn to and subscribed before me the undersigned notary public this

_____ day of _____, _____.

Notary Public

My Commission expires _____



PROPOSAL AND CONTRACT (WHEN EXECUTED) INSTRUCTIONS ON PAGE 22

THIS PROPOSAL INCLUDES INSTRUCTIONS TO BIDDERS

A. DEPOSIT OF PROPOSALS.

All envelopes containing Bid proposals shall be clearly marked "Bid Proposal for letting of June 27, 2019 ." DATE

Borough of Chambersburg MUNICIPALITY (NAME & TYPE)

Jamia Wright SECRETARY

Sealed Proposals will be received on or before 10:00 a.m. on the above Letting Date. TIME

100 South Second Street Chambersburg PA 17201 ADDRESS

Bids will be opened and read at approximately 10:00 a.m. on the above Letting Date. TIME

PROPOSALS MUST BE MAILED OR OTHERWISE DELIVERED TO THE ABOVE ADDRESS.

- 1 The contractor proposes to furnish and deliver all materials (including Form CS-4171, CERTIFICATE OF COMPLIANCE and/ or TR-465 DAILY BITUMINOUS MIXTURE CERTIFICATION) and to do and perform all work on the following project as more specifically set forth in the Schedule of Prices (Attachment), in accordance with drawings and specifications on file at Borough of Chambersburg as well as the supplements and special requirements contained herein and/ or attached hereto and current PennDOT Specifications (Publication 408), except (a) bidders need not be prequalified by PennDOT (Sec.102.01), and (b) Volumetric testing of bituminous paving materials is not required (Sec. 409).
2 If designated as the successful bidder, the contractor will begin work on the date specified in the notice to proceed, or as otherwise provided in the special requirements, and will complete all work within see attachment 1-A calendar days.
3 Accompanying this proposal is a certified check or bid bond in the amount of \$1,120.00 made payable to the municipality as a proposal guarantee which, it is understood, will be forfeited in case the contractor fails to comply with the requirements of the proposal.

B. PROPOSAL OF:

Three horizontal lines for contractor information

NAME / ADDRESS OF CONTRACTOR

CONTRACTORS CERTIFICATION

It is hereby certified as follows:

- 1 The only person interested in the proposal as principal (s) is (are):
2 None of the above persons are employees of the municipality.
3 This proposal is made without collusion with any other person, firm or corporation.
4 All plans and specifications referred to above and the site of the work have been examined by the contractor. The contractor understands that the quantities indicated herein are approximate and are subject to change as may be required; and that all work is payable on the basis of the unit price listed on the Schedule of Prices. (Attachment 1).

- 5 The contractor will comply with all requirements of the laws and implementing regulations of the Commonwealth of Pennsylvania and the United States relating to human relations, equal opportunity and non-discrimination in employment, and will pay to workmen employed in the performance of the contract the wages to which they may be entitled.

- 6 The contractor will provide the municipality with a performance bond, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof, and a payment bond, conditioned on the prompt payment of all material furnished and labor supplied or performed in the prosecution of the work, in accordance with the Public Works Contractors' Bond Law of 1967; and an affidavit accepting the provisions of the Workmen's Compensation Act of 1915, as amended.

CONTRACTOR

BY: _____ DATE: _____
 TITLE: _____

WITNESSED OR ATTESTED BY: _____ DATE: _____
 TITLE: _____

TO BE EXECUTED ONLY IN THE EVENT THE ABOVE PROPOSAL IS ACCEPTED

ACCEPTED ON : _____
 DATE

Borough of Chambersburg
MUNICIPALITY

BY: _____
 TITLE: President of Town Council

BY: _____
 TITLE: Secretary of Town Council

BY: _____
 TITLE: _____



ATTESTED BY: _____
 TITLE: _____

PROPOSAL AND CONTRACT INSTRUCTIONS- FORM 944 (Rev. 1/2014)

- 1 The proposal must be typewritten or printed.
- 2 If more than one proposal on any project is submitted by an individual, firm or partnership, corporation or association under the same or different names, only one lowest proposal will be considered.
- 3 Description of Work- - -
 - A. If additional space is needed, insert appropriately numbered attachment and note "Continued on attached work sheets."
- 4 Part A of Page 1 to be completed by municipality. Part B of Page 1 to be completed by contractor. Schedule of Prices - Column #1 (Item), #2 (Approximate quantities), #3 (Unit, i.e., ton, square yard, linear feet, etc.) And #4 (Description, i.e., bituminous materials - 9.5 mm S & L, 12.5 mm Wearing, 25.0 mm Base Course, etc.) Must be filled in by the municipality to insure equitable bidding. Columns #5 (Unit Price), #6 (Total) and total amount of bid, must be filled in by the contractor. If more space is needed, add note at the bottom of the page; "Continued on Attachment No. 1-A", and add additional sheet designated as Attachment No. 1-A, 1-B, etc.. Repeat for each additional sheet required. As required by Publication 408, Section 102.06(e), each bidder must submit a completed Form 7126 - Anti-Collusion Affidavit with its bid proposal.
- 5 If liquidated damages are to be assessed, add the following sentence to Part A #2. If all work is not completed on time, liquidated damages will be assessed at the rate of \$1000.00 per additional working day. (OR ". . . as set forth in the attached schedule.")
- 6 Payment and Performance bonds are provided only by the successful bidder. Contracts from \$4,000.00 up to \$5,000.00 in Second Class Townships - performance bond must be not less than 10% or greater than 100% of amount of contract. Contracts greater than \$1,500.00 up to \$10,000.00 in First Class Townships, Boroughs and Third Class Cities - bonds must be between 50 % to 100% of the contract amount. Contracts in excess of \$5,000.00 in Second Class Townships and in excess of \$10,000.00 in First Class Townships, Boroughs and Third Class Cities - bonds must be in 100% of the amount of the contract. Bond Forms MS-944 Attachments 2 and 3 and Workmen's Compensation Affidavit - Attachment 4 must be submitted by the successful bidder within 15 days of the contract award. Failure to submit any of the required contract documents may constitute grounds to annul the Notice of Intent to Award.
- 7 *Construction projects, where the estimated cost of the total project exceeds \$100,000, are subject to the provisions of the Pennsylvania Prevailing Wage Act 442 and amended by Act 89 of 2013. It is the responsibility of the municipality to request the Prevailing Wage Scale for the area and include it in the proposal. If the Prevailing Wage Act applies, this fact shall be noted in the advertisement.

On projects utilizing Federal Revenue Sharing Funds, if the project cost exceeds \$2,000 and is financed with 25% or more Federal Revenue Sharing Funds, the Davis Bacon Act applies. Again, it is the responsibility of the municipality to obtain the Davis Bacon Wage Rates, include them in the proposal and note the fact in the advertisement. If both acts are applicable, The Davis Bacon Act has preference over the Pennsylvania Prevailing Wage Act.
- 8 An ESCALATOR CLAUSE is optional; if used, it must be included in the proposal prepared by the municipality. An escalator clause may not be inserted by the contractor.

*(1961, Aug. 15, P.L. 987; 43 P.S. 165)

PROPOSAL BOND

BIDDER (Name and Address):

SURETY (Name and Address):

OWNER (Name and Address):

BOROUGH OF CHAMBERSBURG
100 South 2nd Street
Chambersburg, PA 17201

PROJECT

Crack Sealing on Borough Streets

Bid Date:

Project Identification:

General Construction

Contract Number and Identification:

BOND

Date:

Amount:

1. Bidder and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns to pay to Owner upon default of Bidder the full face amount of this Bond.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents, the executed Agreement required by the Bidding Documents, and any Performance Bonds, Payment Bonds, Certificates of Insurance, or other documents required by the Bidding Documents and Contract Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers, within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any Performance Bonds, Payment Bonds, Certificates of Insurance, or other documents required by the Bidding Documents and Contract Documents, or
 - 3.2 All Bids are rejected by Owner; or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within thirty (30) calendar days after receipt of Bidder and Surety of written notice of default from Owner, which notice

will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue Notice of Award, provided that the time for issuing Notice of Award shall not in the aggregate exceed One Hundred Twenty (120) days from Bid opening date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to thirty (30) calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety, and in no case later than one (1) year after Bid opening date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notice required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the first page of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of the Bond conflicts with any applicable provision of any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

(If Bidder is an Individual)

Signature of Witness

Signature of Individual

Trading and doing business as:

Name of Business

Address of Business

(If Bidder is a Partnership All General Partners Must Sign)

Name of Partnership

Address of Partnership

Signature of Witness

Signature of Partner

Signature of Witness

Signature of Partner

Signature of Witness

Signature of Partner

(If Bidder is a Corporation / LLC)

Attest (Witness for LLC):

	Name of Corporation
_____	_____
Signature of Secretary or Assistant Secretary (Signature of Witness for LLC)	Address of Principal Office
(Corporate Seal)	_____
	State of Incorporation

	Signature of President or Vice President (Signature of authorized member for LLC)

Type or print name below each signature.

(Corporation Surety)

	Name of Corporation

	Address of Office
_____	_____
Signature of Witness	Signature of Attorney-in-fact

Attach an appropriate power of attorney, dated as of the same date as the Bond, evidencing the authority of the Attorney-in-fact to act in behalf of the corporation.

Type or print name below each signature.

NOTE: Substitute Proposal Bond Form is not acceptable. Failure to submit Bond on this form will be reason for rejection of Bid.

END OF PROPOSAL BOND

AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2019, by and between the Borough of Chambersburg, a municipal corporation of the Commonwealth of Pennsylvania, (hereinafter the "Borough"), and _____ (hereinafter the "Contractor").

WITNESSEH

WHEREAS, the Borough has authorized certain items of work in connection with the Specifications and Contract Documents for **Crack Sealing on Borough Streets** (hereinafter the "Specifications"), as required, all in accordance with said Contract Documents as further defined below, attached hereto and made a part herein; and

WHEREAS, the Contractor has submitted to the Borough a Bid for certain work in conformity with said Specifications, a copy of which proposal is hereto attached and made a part hereof (hereinafter the "Proposal"); and

WHEREAS, the Borough, after due consideration and appropriate action, has decided to award a contract to the Contractor for said Item(s) of work included in said Bid (hereinafter the "Agreement").

NOW THEREFORE, the Borough and the Contractor in consideration of the requirements, terms and conditions of said Specifications and the offers, promises, and representations made by the Contractor in said Proposal, by each of the parties hereto, on their parts, to be observed and fulfilled, do hereby agree as follows:

1. Recitals

The above recitals are incorporated herein by reference thereto and made a part of this Agreement.

2. Contract Documents

The Contract Documents include the following documents issued under the title "**Specifications and Contract Documents for Crack Sealing on Borough Streets**": Notice / Advertisement, General Terms and Conditions, Non-Discrimination Notice, Bidder Affidavit, Anti-Collusion Affidavit, Proposal Bond, Receipt of Confirmation of Bidding and Contract Documents (if applicable), any and all Addenda (if applicable), Receipt of Addenda (if applicable), the Contractor's completed MS-944 Form (the "Proposal"), Agreement, Performance Bond, Payment Bond, Affidavit RE Accepting Provisions of the Workers' Compensation Act, and Specifications (hereinafter the "Contract Documents"), which documents are incorporated into this Agreement by reference.

3. Basis of Agreement

The parties hereto recognize that the Contract Documents are the basis of this Agreement, and the parties accept the same, and declare that there are no understandings, representations or promises, written or verbal, having any bearing on this Agreement which are not expressed in said Contract Documents and Contractor's Proposal or written in this Agreement.

4. Scope of Work

Contractor agrees to furnish all labor, superintendence, materials, necessary equipment, and other utilities and facilities, and to otherwise perform all work and services necessary for or incidental to and otherwise perform all obligations imposed by this Agreement and to faithfully perform and complete all of said work connected therewith in full and strict conformity with the Contract Documents and this Agreement and to demonstrate and make good any guarantees and warranties therein required and contained, for all of which things faithfully and fully performed and completed for the following items (hereinafter the "Work"):

Item 1: Crack Sealing on Borough Streets

5. Payment

5.1 The Borough shall pay and the Contractor shall receive and accept as full payment for the performance of the Contractor's obligations hereunder, the price(s) per gallon stipulated in the Proposal hereto attached and in the manner as specified in the Contract Documents and this Agreement.

5.2 Final Payment for work performed according to the particular list of work for each written Notice to Proceed shall be pursuant to Paragraph 6 below.

5.2.1 Final Inspection. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete for the particular list of work for each written Notice to Proceed, the Borough will promptly make a final inspection with Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies. Contractor shall perform such work in accordance with Paragraph 6 below.

5.2.2 Application for Final Payment.

5.2.2.1 After Contractor has, in the sole discretion of the Borough, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents, and other documents, Contractor may make application for final payment.

5.2.2.2 The final Application for Payment shall be accompanied by:

- a. an invoice for the work performed and approved by the Borough;
- b. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance as required;
- c. consent of the surety, if any, to final payment;
- d. a list of all Claims against the Borough that Contractor believes are unsettled; and

- e. complete and legally effective releases or waivers (satisfactory to the Borough) of all Lien rights arising out of or Liens filed in connection with the Work.

5.2.2.3 In lieu of the releases or waivers of Liens specified in Paragraph 5.2.2.2(e) and as approved by the Borough, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material, and equipment bills, and other indebtedness connected with the Work for which the Borough might in any way be responsible, or which might in any way result in liens or other burdens on the Borough's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to the Borough to indemnify the Borough against any Lien.

5.2.3 Final Payment and Acceptance.

Upon final completion and acceptance of the Work in accordance with Paragraph 5.2.1, the Borough shall pay the Contract Price for the work performed pursuant to Paragraph 6 below less the amount of liquidated and/or other damages and the amount of any unresolved claims which have been filed against the Borough in connection with the Work within thirty (30) days of final completion and acceptance of the Work as provided for herein.

5.3 Interest.

The final payment, if not paid when due in accordance with Paragraph 5.2.3, less any deduction for liquidated and/or other damages or unresolved claims, shall bear interest at the rate of ten percent (10%) per annum or, when the Borough has issued bonds or notes to finance the Project, at the rate of interest of the bond or note issue, whichever is less. No interest will be paid on progress payments.

6. Contract Times

- 6.1. **Contract Times/Date of Completion.** Throughout the term of this Agreement, the Borough shall set the work to be completed and the time for completion. The Borough will provide written Notice(s) to Proceed to Contractor, which said Notice to Proceed shall include the following:
 - a. Date of Issuance;
 - b. A list of the work to be completed including the location of each street area requiring Crack Sealing; and
 - c. Date of Completion. Each area requiring a patch must be completed within five (5) business days from the date when work begins. In no case will an area requiring a patch be left incomplete for more than five (5) business days and in no case will an area requiring a patch with wearing course be left without wearing course for more than one (1) business day.
- 6.2 **Inspection of Work.** Contractor, upon completion of the list of work as included in the Notice to Proceed, shall schedule an inspection of each individual street patch listed in the Notice to Proceed prior to the Date of Completion. In the event that any street patch fails inspection, Contractor agrees to take any and all necessary and/or requested actions of the

Borough to ensure that each street patch passes inspection within five (5) business days from the date of the initial inspection of the street patch.

- 6.3 Time is of the Essence. The time for completion of all work contemplated in this Section, including but not limited to the work to be completed in each written Notice issued by the Borough is deemed to be of the essence and a material part of this Agreement.
- 6.4 Payment. The payment for work associated with each written Notice issued by the Borough will be made in accordance with the provisions of Section 5 of this Agreement.
- 6.5 Liquidated Damages. As set forth above in Section 6.3 above, the Borough and Contractor recognize that time is deemed of the essence and that the Borough will suffer financial loss if the Work to be Completed in each written Notice to Proceed is not completed by the Date of Completion as set forth in each written Notice to Proceed. The parties recognize the delays, expense, and difficulties involved in proving the actual loss suffered by the Borough if the Work in each written Notice to Proceed is not completed, which shall be defined as inspected and approved by the Borough according to the terms of this Agreement, by the Date of Completion as set forth each written Notice. Therefore, instead of requiring any such proof, the Borough and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay the Borough One Thousand Dollars (\$1,000.00) for each calendar day that all the Work to be Completed in accordance with each respective written Notice to Proceed is not completed by the Date of Completion.
- 6.6 Additional Damages. In addition to the liquidated damages specified above in Section 6.5, Contractor also agrees to be fully responsible for, and to reimburse the Borough for, all administrative, legal, engineering, construction, inspection costs, and/or any other costs associated with Contractor's failure to meet any of the Date of Completion as set forth in any and all of the written Notice to Proceed of the Borough as set forth herein.
- 6.7 Alternate Damages. The Borough, at its sole option, may waive liquidated damages as provided in Section 6.5 above and elect to recover from Contractor the Borough's actual damages for such delay. Actual damages may include, without limitation, any fines and/or penalties imposed on the Borough by any regulatory body plus all actual damages suffered by the Borough as a result of such delay including but not limited to loss of revenue, engineering fees, consultant fees, construction fees, inspection fees, and legal fees incurred by the Borough as a result of such delay.

7. Termination/Suspension

Should the Contractor fail to perform the Work and/or Services to the satisfaction of the Borough or to comply with any of the provisions of the Agreement or the Contract Documents, the Borough may terminate the Agreement and the Contract for cause upon twenty-four (24) hours written Notice of Intent to Terminate to Contractor. Contractor's services will not be terminated if the Contractor begins within twenty-four (24) hours of receipt of the Notice of Intent to Terminate to correct and cure the deficiencies set forth in said Notice and it proceeds in a diligent manner to cure such deficiencies within no more than five (5) days of receipt of said Notice, unless the Borough in its sole and absolute discretion extends such time to cure in writing.

Notwithstanding the foregoing, the Borough may terminate this Agreement and the Contract without cause and without prejudice to any other right or remedy of the Borough upon ten (10) days' written notice to Contractor.

Contractor may only terminate this Agreement and the Contract in the event the Borough is in default and fails to cure said default within thirty (30) days from the date the Borough receives written notice from Contractor, which said notice shall set forth the alleged default.

In the event that the Borough terminates the Agreement and the Contract as provided for herein, Contractor agrees that Contractor shall not be entitled to, and shall not be paid, an amount of loss of anticipated profits or revenue or other economic loss arising out of and/or resulting from such termination. Contractor agrees that its sole remedy shall be payment for services rendered prior to termination of the Contract, provided however that the Borough may offset any amount owed to the Contractor for services rendered by Contractor prior to termination for any damages, and/or costs suffered and/or incurred by the Borough as a result of any breach or failure by Contractor.

The Borough has the right to suspend performance of the Agreement and the Contract, at any time and without cause, by written notice, upon which the Contractor shall be entitled to an increase in the contract time and contract price caused by the suspension, as determined by the Borough in its sole and absolute discretion.

8. Contractor's Representations

In order to induce the Borough to enter into this Agreement, Contractor makes the following representations:

- 8.1 Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Contract Documents including any applicable "technical data".
- 8.2 Contractor has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, and furnishing of the Work.
- 8.3 Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, performance, and furnishing of the Work.
- 8.4 Contractor is aware of the general nature of work to be performed by the Borough and others at the site that relates to the Work as indicated in the Contract Documents.
- 8.5 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports, and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- 8.6 Contractor has given the Borough written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, prior to executing this Agreement, and the written resolution thereof by the Borough is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- 8.7 Contractor acknowledges the Borough may apply for other funding assistance for the Work and if such funding is awarded, Contractor and/or subcontractors may be required to submit additional information or documentation, and contractor and/or subcontractors may be required to adhere to additional criteria necessary to satisfy additional funding requirements.
- 8.8 Contractor is authorized to do business in Pennsylvania and that the person signing on behalf of the Contractor is authorized to bind Contractor to the terms and conditions set forth herein.

9. Subsurface and Physical Conditions and Underground Facilities

The Borough may furnish to Contractor reports and or drawings known to the Borough relating to subsurface and physical conditions, explorations, tests, and Underground Facilities at or contiguous to the location for which the Work contemplated under this Agreement is to be performed. The Borough makes no warranties or representations regarding the accuracy of such information and Contractor shall not rely on the information as accurate. Contractor acknowledges that such reports and drawings may not be complete for Contractor's purposes. Contractor acknowledges that the Borough does not assume responsibility for the accuracy or completeness of information and data shown or indicated. Underground Facilities shall include underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated, or not shown or indicated with reasonable accuracy, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith identify the owner of such Underground Facility and give written notice to that owner and to the Borough.

10. Existing Utilities

Contractor shall comply with federal, state, and local regulations relating to the requirement to notify utility companies, including any utility owned and operated by the Borough, prior to performing work that has the potential to damage the facilities of such utility companies. Where such utility company facilities are located underground, Contractor shall make arrangements for a utility company representative to locate the underground facilities prior to initiating excavation work. If any utility company facility is damaged during the Work, Contractor shall immediately notify the affected utility company. If the utility had been correctly located and marked in the field by its owner, Contractor shall be fully responsible for repairing or replacing such damaged facilities, at no cost to the Borough, in accordance with utility company's requirements. If Contractor fails to promptly repair or replace damaged facilities, Borough or utility company may arrange to have the required work performed by others and the cost of such work will be charged to the Contractor by deduction from a progress payment.

11. Correction of Defective Work

- 11.1 Prompt notice of all defective Work of which the Borough has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Paragraph 11.
- 11.2 If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, the Borough may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Borough to stop the Work shall not give rise to any duty on the part of the Borough to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.
- 11.3 Correction Period
- 11.3.1 If within two (2) years after the date of completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents), which shall be evidenced by final payment under Paragraph 5.2 for each Written Notice to Proceed, or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by the Borough is found to be defective, Contractor shall promptly, without cost to the Borough and in accordance with the Borough' written instructions:
- 11.3.1.1 repair such defective land or areas; or
- 11.3.1.2 correct such defective Work; or
- 11.3.1.3 if the defective Work has been rejected by the Borough, remove it from the Project and replace it with Work that is not defective, and
- 11.3.1.4 satisfactorily correct, repair, or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- 11.3.2 If Contractor does not promptly comply with the terms of the Borough' written instructions, or in an emergency where delay would cause serious risk of loss or damage, the Borough may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- 11.3.3 In special circumstances where a particular item of equipment is placed in continuous service before completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- 11.3.4 Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

11.3.5 Contractor's obligations under this Paragraph are in addition to any other obligation or warranty. The provisions of this Paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

11.4 Acceptance of Defective Work

If, instead of requiring correction or removal and replacement of defective Work, the Borough prefers to accept it, the Borough may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to the Borough's evaluation of and determination to accept such defective Work and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to the recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the Borough shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted.

11.5 The Borough May Correct Defective Work

If Contractor fails within a reasonable time after written notice from the Borough to correct defective Work, or to remove and replace rejected Work, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, the Borough may, after seven (7) days written notice to Contractor, correct, or remedy any such deficiency.

In exercising the rights and remedies under this Paragraph, the Borough shall proceed expeditiously. In connection with such corrective or remedial action, the Borough may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which the Borough has paid Contractor but which are stored elsewhere. Contractor shall allow the Borough, the Borough's representatives, agents and employees, the Borough's other contractors, access to the Site to enable the Borough to exercise the rights and remedies under this Paragraph.

All claims, costs, losses, and damages, including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, incurred or sustained by the Borough in exercising the rights and remedies under this Paragraph will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the Borough shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses, and damages will include, but not be limited to, all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

12. Force Majeure

The Borough, the Contractor, and sub-contractors shall not be held responsible for any delay, default, or nonperformance directly caused by an act of God, unforeseen adverse weather events, accident, labor strike, fire, explosion, riot, war, rebellion, terrorist activity, sabotage, flood, epidemic, act of federal or state government, labor, material, equipment, or supply shortage. Notwithstanding the foregoing, such delays, defaults, or nonperformance shall result from matters that would not be reasonably foreseen by a Contractor exercising reasonable due diligence and/or care.

13. Non-Discrimination

Contractor shall not discriminate against any employee, applicant for employment, or any person seeking the Services of Contractor to be provided under this Agreement on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental, or physical handicap.

14. Remedies

No remedy herein conferred upon any party is exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or provided by law, equity, statute, or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other exercise or further exercise thereof.

15. Governing Law/Venue

This Agreement shall be construed according to, be subject to, and be governed by the laws of the Commonwealth of Pennsylvania. Any legal and/or equitable action taken involving this Agreement shall be filed with the Court of Common Pleas in Franklin County, Pennsylvania.

16. Entire Agreement

This Agreement contains the entire Agreement between the parties and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties. No modification, amendment, change, or addition to this Agreement shall be binding on the parties unless reduced in writing, mutually agreed upon, and signed by the parties authorized representatives.

17. Successors and Assigns

The Borough and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18. Severability

If any terms, provisions, and/or portions thereof of this Agreement or application thereof become invalid, the remainder of said term or provision and/or portion thereof of this Agreement shall not be affected thereby; and, to this end, the parties hereto agree that the terms and provisions of this Agreement are severable.

19. Interpretation

The parties have had the opportunity to review this Agreement with their respective legal counsel and therefore, the parties agree that this Agreement shall not be construed against or in favor of either party as the drafter of this Agreement.

20. Independent Contractors

Any services for the Work to be performed by the Contractor or its sub-contractors, if any, under this Agreement are provided as independent contractors. Nothing in this Agreement shall be construed to create the relationship of employer and employee between the parties. All persons engaged in any of the Work to be performed pursuant to this Agreement shall at all times and places be subject to the Contractor's sole direction, supervision, and control. The Contractor shall exercise control over the means and manner in which it, its employees, and sub-contractors perform the Work. The Contractor does not have the power or authority to bind the Borough in any promise, agreement, or representation unless expressly provided written authorization to do so. The Contractor also hereby represents and warrants that it and any sub-contractors has and will continue to maintain all licenses and approvals required to conduct its business and to provide the Work as required pursuant to this Agreement.

21. Counterparts

This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same instrument.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused these present to be executed by their duly authorized officials.

(If Contractor is an Individual)

Signature of Witness

Signature of Individual

Trading and doing business as:

Name of Business

Address of Business

Date

(If Contractor is a Partnership - All General Partners Must Sign)

Name of Partnership

Address of Partnership

Signature of Witness

Signature of Partner

Signature of Witness

Signature of Partner

Signature of Witness

Signature of Partner

Date

(If Contractor is a Limited Liability Company - All General Partners / Members Must Sign)

Name of Company

Address of Company

Signature of Witness

Signature of General Partner / Member

Signature of Witness

Signature of General Partner / Member

Signature of Witness

Signature of General Partner / Member

Date

(If Contractor is a Corporation)

Attest:

Name of Corporation

Signature of Secretary or
Assistant Secretary

Address of Principal Office

(Corporate Seal)

State of Incorporation

Signature of

President or Vice President

Date

Attest:

BOROUGH OF CHAMBERSBURG

100 South 2nd Street

Chambersburg, PA 17201

Jamia L. Wright

Borough Secretary

Heath E. Talhelm

President of Town Council

Date

PERFORMANCE BOND (With Corporate Surety)



KNOW ALL MEN BY THESE PRESENTS, That we,

(NAME AND ADDRESS OF CONTRACTOR)

as Principal and _____
(SURETY COMPANY)

a corporation incorporated under the laws of the State of _____ as Surety
(NAME OF STATE)

are held and firmly bound unto _____ in the full and just sum of
(NAME OF MUNICIPALITY)

(\$ _____) dollars

lawful money to the United States of America, to be paid to the above Municipality or its assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has entered into a contract with the above Municipality, bearing even date herewith, for the undertaking of certain obligations as therein set forth.

NOW, THEREFORE, the condition of this obligation is such that if the above bounden Principal, as Contractor, shall in all respects comply with and faithfully perform the terms and conditions of said Contract, including the Specifications and conditions referred to and made a part thereof, and such alterations as may be made in said Specifications as therein provided, and shall well and truly, and in a manner satisfactory to the municipality fulfill all obligations as therein set forth, then this Obligation shall be void, but otherwise the same shall be and remain in full force, virtue and effect.

It is further provided that any alteration which may be made in the terms of the contractor or its specifications with the express approval of the Municipality or the Principal to the other, shall not in any way release the Principal and the Surety or either or any of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the surety of any such alteration or forbearance being hereby waived.

IN WITNESS WHEREOF, the said Principal and Surety have duly executed this Bond under Seal, pursuant to due and legal action authorizing the same to be done on _____

(DATE OF BOND)



Attest / Witness:

CONTRACTOR

BY

TITLE:

TITLE:



Attest / Witness:

SURETY COMPANY

TITLE:

TITLE:



KNOW ALL MEN BY THESE PRESENTS, that we

[Empty box for name]

as PRINCIPAL and a corporation incorporated under the laws of the State of _____ as SURETY, are held and firmly bond unto the _____, in the full and just sum of _____ (\$ _____) dollars, lawful money of the United States of America, to be paid to the said _____ or its assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has entered into a contract with the above municipality hereinafter called Obligee, bearing even date herewith, for the improvement of a certain section of highway or bridge in said Municipality consisting of:

for approximately the sum of: _____ (\$ _____) dollars.

NOW, THEREFORE, the condition of this obligation is such that if the above bounden PRINCIPAL shall and will promptly pay or cause to be paid in full all sums of money which may be due by contract or otherwise, to any individual, firm, partnership, association or corporation, for all material furnished or labor supplied or performed in the prosecution of the work, whether or not the said for material or labor entered into and became component parts of the work and for rental of the equipment used and services rendered by public utilities in, or in connection with the prosecution of such work, then this obligation to be void, otherwise to remain in full force and effect.

The PRINCIPAL and SURETY, hereby, jointly and severally, agree with the Obligee herein that any individual firm, partnership, association or corporation, which has performed labor or furnished material in the prosecution of the work as provided, and any public utility which has not been paid in full therefor, may sue in assumpsit on this Payment Bond in his, their, or its own name and may prosecute the same to final for such sum or sums as may be justly due him, them or it, and have execution thereon. Provided, however, that the Obligee shall not be liable for the payment of any costs of expenses of such suit.

RECOVERY by any individual, firm, partnership, association or corporation hereunder shall be subject to the provisions of the "Public Works Contractors' Bond Law of 1967", Act No. 385, approved December 20, 1967, P.L. 869, which Act shall be incorporated herein and made a part hereof, as fully and completely as though its provisions were fully and at length herein recited.

It is further provided that any alterations which may be made in the terms of the contract or in the work to be done or materials to be furnished or labor to be supplied or performed under it or the giving by the Obligee of any extension of time for the performance of the contract or any other forbearance on the part of either the Obligee or the Principal to the other, shall not in any way release the PRINCIPAL and the SURETY or SURETIES of any such alteration, extension of forbearance being hereby waived.

IN WITNESS WHEREOF, the said PRINCIPAL and SURETY have duly executed this Bond under seal this _____ day of _____, 20 _____.



WITNESS:

CONTRACTOR

TITLE:

BY:

TITLE:



WITNESS:

SURETY COMPANY

TITLE:

TITLE:



AFFIDAVIT RE

ACCEPTING PROVISIONS OF THE WORKMEN'S COMPENSATION ACT

State of _____)
)
) ss:
)
County of _____)

being duly sworn according to law deposes and says that they have
he has
it has

accepted the provisions of the Workmen's Compensation Act of 1915 of the Commonwealth of Pennsylvania, with

has his
its supplements and amendments, and have insured their liability thereunder in accordance with the terms of said
its

Act with _____
(SURETY COMPANY)

(TYPE OR PRINT) CONTRACTOR

BY _____
SIGNATURE

Sworn to and subscribed before me this _____ day of _____ A.D. 20 ____.

SIGNATURE

My Commission Expires _____ (DATE)

Polymer Modified Crack Sealing Specifications

GENERAL DESCRIPTION

It is the intent of this INVITATION to secure a qualified contractor to apply Polymer Modified Crack Sealant on various roads. The work to be performed under this contract consists of furnishing and delivering all materials to the job site and performing all work required to install the Polymer Modified Crack Sealant complete in-place.

The Work is the cleaning and sealing of random cracks in existing bituminous pavements. The Work shall be performed complete in-place. The contractor shall provide all necessary labor, equipment, and materials for the application of the crack sealant and any necessary labor and equipment for the maintenance and protection of traffic. The Work shall be deemed to be complete when the allocated amount of funds, Eleven Thousand Two Hundred Dollars (\$11,200), has been expended or when the Borough decides that sufficient work has been completed. **All work shall be completed as per Penn DOT Publication 408/2016 Section 469, Penn DOT Publication 213, and the specifications listed herein.**

EXPERIENCE

Bidders shall be Penn DOT pre-qualified as a prime contractor prior to the time of Bid Opening and shall submit a valid pre-qualification certificate with Bid. Work shall be completed by the contractor. Sub-letting of project will not be permitted without the written approval of the Borough.

MATERIALS

The polymer modified joint sealing material shall meet the **ASTM D6690 Type II** specification listed in **Penn DOT PUB 408/2016 Section 705.4(b)**. Determine the safe heating temperature range and recommended pouring temperature from the label on the manufacturer's shipping container. Heat and maintain the material temperature within these recommended safe temperatures. Place the material as close as possible to the recommended pouring temperature. Do not maintain any single batch of material at the pouring temperature for more than six (6) hours. Reheat only in accordance with the manufacturer's recommendations.

CONSTRUCTION

Apply sealant only after cracks are completely cleaned of dirt and debris by using compressed air of at least 100 PSI. The air compressor shall be equipped with traps that will maintain the compressed air free of oil and water. All vegetation shall be removed prior to sealing using a motorized wire brush or other adequate means necessary.

All cracks shall be leveled using a 3-4 inch dish mounted at the end of the application wand. A squeegee shall only be used if this work is in preparation of an asphalt overlay or micro-surfacing. The thickness of the material shall not to exceed $\frac{1}{8}$ inch.

No crack sealant shall be placed if cracks are wet or damp. No crack sealant shall be placed when air temperature is below forty (40) degrees Fahrenheit unless a heat lance is used.

Contractor must use Detack or equivalent material to protect the uncured crack sealant from vehicles and pedestrians.

Contractor shall be responsible for posting "NO PARKING" signs and door hanger notifications 24 hours prior to any work being performed, if required.

MEASUREMENT AND PAYMENT

Crack sealing shall be paid for by the gallon; it shall be understood that the cost per gallon shall include labor, other materials, and all other expenses required to complete the contract.

BOROUGH'S RIGHT TO EXTEND CONTRACT

Borough has the option to extend the awarded contract for a period of three (3) years, renewable in one-year increments, upon mutual agreement between the Borough and the Contractor.

469.1

SECTION 469—ASPHALT JOINT AND CRACK SEALING
469-1 Initial Edition

469.1 DESCRIPTION—The Work is cleaning and sealing longitudinal and transverse joints and cleaning and sealing cracks in existing pavement surfaces as part of routine maintenance and before placing an overlay.

469.2 MATERIAL—

- (a) **Asphalt Rubber Sealing Compound.** Section 705.4(g)
- (b) **Rubberized Joint Sealing Material.** Section 705.4(c)
- (c) **Bituminous Wearing Course FJ-1.** Section 422.2

469.3 CONSTRUCTION—

- (a) **General.** Obtain materials from a source listed in Bulletin 15 or Bulletin 41 as applicable.
- (b) **Heating Procedures.** Use a premixed, prepackaged material. Heat the material within the safe heating temperature range and recommended pouring temperatures found on the label on the manufacturer's shipping container. Place the material as close as possible to the manufacturer's recommended pouring temperature. Do not maintain batches of material at the pouring temperature for more than 6 hours. Reheat according to the manufacturer's recommendations.
- (c) **Surface Preparation.** Clean, dry, and remove debris and loose material from cracks, joints, and adjacent pavement surfaces. If required, rout cracks to create a reservoir 12.5 mm (1/2 inch) deep. Clean the pavement for 100 mm to 150 mm (4 inches to 6 inches) on either side of the joint or crack. Immediately before sealing, use a compressed air stream of at least 700 kPa (100 pounds per square inch) measured at the source, or a hot compressed air lance to clean and dry damp cracks in bituminous pavements. If using the hot compressed air lance, do not damage the surrounding pavement area from overheating.
- (d) **Sealing.** Seal joints and cracks from 6 mm to 25 mm (1/4 inch to 1 inch) wide with asphalt sealant and filling joints and cracks over 25 mm (1 inch) wide with Bituminous Wearing Course FJ-1.
If using asphalt sealant, fill prepared joints and cracks level with the pavement surface. Wipe the sealant flush with the pavement surface, leaving a film of sealant from 1 mm to 1.5 mm (1/32 inch to 1/16 inch) thick and from 25 mm to 75 mm (1 inch to 3 inches) wide. After wiping the joint or crack, remove and dispose of excess sealant. Unless allowed, do not place sealant when the air temperature is below 4 °C (40F) or above 32 °C (90F).

469.4 MEASUREMENT AND PAYMENT—

Asphalt Joint and Crack Sealing. Gallons of sealant material.
For the type specified.