

## **EXHIBIT 1**

### **A. REQUIRED DELIVERY**

- A.1.** Material must be manufactured within forty-eight (48) hours after receipt of order by the successful Supplier.

### **B. TESTING FOR CONFORMANCE**

- B.1.** Items may be tested for compliance with specifications by appropriate testing laboratories. The data derived from any test for compliance with specifications are public records and open to examination thereto in accordance with Oklahoma Statutes.
- B.2.** Items delivered not conforming to specifications may be rejected. Any violation of these stipulations may result in Supplier's name being removed from the Central Purchasing Supplier mailing list.
- B.3.** In all cases when material fails to meet specifications the cost of testing shall be paid for by the Supplier, both on samples and delivered material.

### **C. PRICE ADJUSTMENTS**

- C.1.** A price adjustment clause is included in this contract to provide additional compensation to the Supplier or a credit to the Department for fluctuations in asphalt binder prices. This price adjustment is dependent upon a change in the average price of asphalt binder which results in an increase or decrease in the price of products utilized on this contract.
- C.2.** Payment will be made to the Vendor for monthly fluctuation in the cost of asphalt binder used in performing the applicable items of Superpave work as listed in the table below when the asphalt binder cost fluctuates by more than 3% from the base price defined below. Payments may be positive, negative, or nonexistent depending on circumstances. Payments or deductions will only be calculated on that portion of the asphalt binder cost fluctuation that exceeds the 3% specified above. Payments or deductions for the asphalt binder cost adjustment will be included in the Supplier's work orders; and the payment or deduction authorized for each work order will be based upon the algebraic difference between the quantities for applicable items of work. In the event that the Market Price for Asphalt Binder is observed to fluctuate more than 3% for three (3) consecutive weeks, the Supplier may request that the State of Oklahoma switch from monthly calculation for price fluctuation to a weekly calculation for price fluctuation. It will be at the State of Oklahoma's discretion whether to switch from monthly calculation to weekly calculation and when to switch back to monthly calculation. The State of Oklahoma reserves the right to maintain the standard monthly calculation for price fluctuation despite the observed market volatility.
- C.3.** The Asphalt Binder Cost Adjustment (ACA) for the current estimate will be computed according to the following formula:

$$ACA = F \times D$$

where

**ACA = Asphalt binder cost adjustment in dollars per ton of mix;**

**F = The Asphalt Binder Use Factor for the applicable items of work subject to this price adjustment, as listed in the following table, are:**

<b>ITEM OF WORK</b>	<b>SPECIFICATION NUMBER</b>	<b>CONTRACT TYPE</b>	<b>ASPHALT BINDER USE FACTOR PER UNIT (metric and U.S. Customary units)</b>
Superpave, Type S-6	411(S6)	D & Cold Patch	0.058 ton of binder per ton of mix
Superpave, Type S-5	411(S5)	C & MC-800	0.053 ton of binder per ton of mix
Superpave, Type S-4	411(S4)	B	0.048 ton of binder per ton of mix
Superpave, Type S-3	411(S3)	A	0.042 ton of binder per ton of mix
Superpave, Type S-2	411(S2)		0.037 ton of binder per ton of mix

**Note: When the units of measure in this contract for the Items of Work listed in the table do not correspond with the units shown in the table (i.e. Superpave paid by the square yard, etc.), those Items will not be subject to the terms of this special provision or any asphalt binder price adjustment.**

**D = Allowable price differential, in dollars;**

**The allowable price differential, “D”, for the current estimate will be computed according to the following formulas:**

**If the current price, P, is greater than the base price, P<sub>(b)</sub>.**

**$D = P - (1.03 \times P_{(b)})$ , but not less than zero.**

**If the current price, P, is less than the base price, P<sub>(b)</sub>.**

**$D = P - (0.97 \times P_{(b)})$ , but not greater than zero.**

In either case, P<sub>(b)</sub> shall be the base asphalt binder price, in dollars per ton (mton), determined to be the current market value at the time of contract award. This price is taken from the last issue of Asphalt Weekly Monitor® for the month

prior to the month in which the bids for the work were received<sup>1</sup>. This document is furnished by Poten & Partners, Inc.

In either case, P shall be the asphalt binder price, in dollars per ton (mton), taken from the current issue of Asphalt Weekly Monitor®. The publication used as the current issue will be the last issue published in the month prior to the month where the current purchase price is calculated.<sup>1</sup> ODOT will verify this price monthly by the first Monday of each month.

- C.4.** Items included in the contract that are listed in the table above are subject to adjustment in accordance with this provision, regardless of any amount of overrun to the work order quantity.
- C.5.** Adjustments will be posted to the OMES Website on the first Wednesday of each month.
- C.6.** Adjustments posted after the first calendar day of each month, will be retroactive to the first calendar day of the month. For example, an adjustment posted on the 4<sup>th</sup>, will be retroactive to orders placed beginning on the 1<sup>st</sup>.

#### **D. PRICE DECREASES**

- D.1.** Price decreases are expected to be passed on to the State as Supplier(s) receive them from the manufacturers. Supplier(s) are to notify the Contracting Officer in writing regarding price decreases and include a list of all line items with their new prices.

#### **E. INDEXES**

- E.1.** Supplier to submit the raw material index used upon which pricing is based:
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#### **F. ADDITIONAL PLANT LOCATIONS**

- F.1.** The State reserves the right to add additional plant locations at any time.

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<sup>1</sup> Price defined as the average of the minimum and maximum prices shown for performance-graded binder using the Selling Price of PG64-22 paving grade, F.O.B. manufacturer's terminal, as listed under "Midwest/Mid-Continent Market – Tulsa, Oklahoma/Southern Kansas area".

## G. FUEL SURCHARGE

Attached below is an Adjustment for Market Cost (Diesel) of Fuel chart. Suppliers are to complete Fuel Surcharge (Per Ton). This is a set rate – price per ton. It is not a percentage rate. If fuel reaches ranges listed then the Supplier will be allowed to add a Fuel Surcharge to their invoices. If fuel costs drop dramatically, the State of Oklahoma reserves the right to renegotiate all pricing including Fuel Surcharges.

<b>SW0081 ASPHALT</b>	
<b>ADJUSTMENT FOR MARKET COST OF FUEL</b>	
<u>COST PER GALLON</u>	<u>FUEL SURCHARGE (PER TON)</u>
\$4.00 & BELOW	NO CHARGE
\$4.00 - \$4.20	
\$4.21 - \$4.40	
\$4.41 - \$4.60	
\$4.61 - \$4.80	
\$4.81 - \$5.00	
\$5.01 - \$5.20	
\$5.21 - \$5.40	
\$5.41 - \$5.60	
\$5.61 - \$5.80	
\$5.81 - \$6.00	
\$6.01 - \$6.20	
\$6.21 - \$6.40	
\$6.41 - \$6.60	
\$6.61 - \$6.80	
\$6.81 - \$7.00	
+ \$0.20 (EACH ADDITIONAL OVER \$7.00)	