

**CITY CLERK
ORIGINAL**

**C-11355
11/22/2016**

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
PAVEMENT RESTORATION, INC.**

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this *22* day of *November*, 2016, between the City of Glendale, an Arizona municipal corporation (the "City"), and Pavement Restoration, Inc., a Florida corporation authorized to do business in Arizona ("Contractor"), collectively, the "Parties."

RECITALS

- A. On March 6, 2013, under the S.A.V.E. Cooperative Purchasing Agreement, the Town of Queen Creek entered into a contract with Contractor to purchase the goods and services described in the Contract No. 2013-014, Surface Rejuvenation ("Cooperative Purchasing Agreement"), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

1. **Term of Agreement.** The City is purchasing the supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement purchases can be made by governmental entities from the date of award, which was March 6, 2013, until the date the contract expires on March 5, 2017, unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond March 5, 2018. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until March 5, 2017. The City Manager or designee, however, may renew the term of this Agreement for an additional one year periods

8/10/16

designee, however, may renew the term of this Agreement for an additional one year periods until the Cooperative Purchasing Agreement expires on March 5, 2018. Renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit B.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed one hundred twenty-six thousand, two hundred ninety-six dollars (\$126,296.00) for the entire term of the Agreement (initial term plus any renewals).

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. No Boycott of Israel. The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

9. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale
c/o Wade Ansell, P.E.
5850 West Glendale Avenue, Suite 315
Glendale, Arizona 8530
623-930-

and

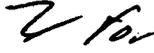
Pavement Restoration, Inc.
c/o Johnathon Kreibich
5423 North 59th Street
Tampa, Florida 33610

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

“City”

City of Glendale, an Arizona
municipal corporation

By:



Kevin R. Phelps
City Manager

“Contractor”

Pavement Restoration, Inc.,
a Florida corporation

By:



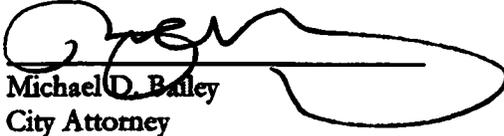
Name: Hybert L. Beasley
Title: Vice President

ATTEST:



Julie K. Bower (SEAL)
City Clerk

APPROVED AS TO FORM:



Michael D. Bailey
City Attorney

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
PAVEMENT RESTORATION, INC.**

EXHIBIT A

Contract No. 2013-014, Surface Rejuvenation Dated March 5, 2013
Contract Renewal to Extend Term to March 5, 2015
Contract Renewal to Extend Term to March 5, 2016
Contract Renewal to Extend Term to March 5, 2017



**TOWN OF
QUEEN CREEK**

March 24, 2016

Via email: leebeasley@palmettoprime.com

Pavement Restoration, Inc.
Attn: Hubert L. Beasley
5423 N. 59th St.
Tampa, FL 33610

Re: Renewal of Contract No. 2013-014, Surface Rejuvenation (the "Contract")

Dear Mr. Beasley:

Pursuant to Section 4 of the Contract between the Town of Queen Creek ("Town") and Pavement Restoration, Inc., the Town hereby exercises its option to renew the Contract for one (1) additional one year period. All terms of the Contract shall remain in full force and effect. The extended term of the Contract shall run through March 5, 2017.

Please submit updated Certificate of Insurance to cover the renewal period. If you have any questions regarding this extension, please contact me at (480) 358-3173 or myrna.quihuis@queencreek.org.

Sincerely,

Myrna Quihuis, CPPB
Procurement Officer

Cc: Jan Martin, Streets Superintendent
Contract File



**TOWN OF
QUEEN CREEK**

June 16, 2015

Via email: leebeasley@palmettoprime.com

Pavement Restoration, Inc.
Attn: Hubert L. Beasley
5423 N. 59th St.
Tampa, FL 33610

Re: Renewal of Contract No. 2013-014, Surface Rejuvenation (the "Contract")

Dear Mr. Beasley:

Pursuant to Section 4 of the Contract between the Town of Queen Creek ("Town") and Pavement Restoration, Inc., the Town hereby exercises its option to renew the Contract for one (1) additional one year period. All terms of the Contract shall remain in full force and effect. The extended term of the Contract shall run through March 5, 2016.

Please submit updated Certificate of Insurance to cover the renewal period. If you have any questions regarding this extension, please contact me at (480) 358-3173 or myrna.quihuis@queencreek.org.

Sincerely,

Myrna Quihuis, CPPB
Procurement Officer

Cc: Jan Martin, Streets Superintendent
Contract File



February 3, 2014

**Pavement Restoration, Inc.
Attn: Hubert L. Beasley
5423 N. 59th St.
Tampa, FL 33610**

Re: 2013-014 Surface Rejuvenation Contract (the "Contract")

Dear Mr. Beasley:

Pursuant to Article 3 of the Contract between the Town of Queen Creek ("Town") and Pavement Restoration, Inc., the Town hereby exercises its option to renew the Contract for (1) additional one year period(s). All terms of the Contract shall remain in full force and effect. The extended term of the Contract shall run through March 5, 2015.

If you have any questions regarding this extension, please contact me at (480) 358-3000 or candace.vis@queencreek.org.

Sincerely,

**Candace Vis, CPPB
Purchasing Associate**

2013-014

**TOWN OF QUEEN CREEK, ARIZONA
CONTRACT FOR IFB No. 13-006, SURFACE REJUVENATION**

~~THIS~~ THIS CONTRACT (The "Contract") is made and entered into effective as of the ⁶20th day of ~~February~~, 2013 (the "Effective Date"), by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation ("Town"), and Pavement Restoration, Inc., an Arizona corporation ("Vendor", "Contractor", "Offeror") and, together with the Contract Documents referred to and incorporated herein, is the "resultant contract" contemplated in the IFB No13-006, Surface Rejuvenation. The Town and the Vendor are sometimes referred to in this Contract collectively as the "Parties" and each individually as a "Party."

1. **CONTRACT DOCUMENTS:** The Contract consists of the following contract documents, which by this reference are incorporated herein:
 - A. This signed Contract;
 - B. The Invitation for Bids for Surface Rejuvenation (IFB 13-006), including Instructions to Bidders, Standard Terms and Conditions, Special Terms and Conditions, Scope of Work marked as Exhibit A, Material Specifications, Exhibit A Insurance Requirements, Exhibit B maps and aerial photographs of Town areas for surface rejuvenation work; Price Sheet marked as Exhibit C - Pricing, Offer Sheet, Contractor's Affidavits, and List of Subcontractors;
 - C. The bid submitted by Pavement Restoration, Inc. attached hereto, only to the extent it is consistent with the terms of IFB No. 13-006.
2. **SCOPE OF WORK:** The Vendor shall provide the Town the work described in the attached scope of services set forth in Exhibit A.
3. **CONTRACT PRICING:** Contract pricing is listed in Exhibit C.
4. **TERM OF CONTRACT:** The term of the Contract is one (1) year, commencing on ~~February 20~~ ^{March} 20, 2013 and terminating on ~~February 18~~ ^{March 18}, 2014 unless sooner terminated in accordance with the provisions set forth in the contract documents. The Town reserves the right, at its sole discretion, to extend the Contract for up to four (4) additional terms of one year each. If the Contract is renewed, the total length of the Contract shall not exceed five (5) years. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.

IN WITNESS WHEREOF, the Parties have executed this Contract effective as of the Effective Date set forth above.

Date: 3/6/13

Town of Queen Creek, an Arizona municipal corporation

By: Gail Barney
Mayor Gail Barney

By: John Kross
Town Manager John Kross

Attest: Jennifer Robinson
Town Clerk Jennifer Robinson

Approved as to form:

By: 
Attorney for the Town

Pavement Restoration, Inc., an Arizona corporation

By: 

Its: Vice President

Date: 2/8/2013

EXHIBIT A

SCOPE OF WORK

1. Background:

The Town of Queen Creek is seeking bids from qualified contractors to perform a surface treatment on designated residential streets.

2. Proposed Work:

The work shall consist of, but not be limited to, furnishing all labor, material, and equipment to apply an asphalt rejuvenating agent and blotting sand to an existing asphaltic concrete surface. The rejuvenation of surface courses shall be by spray application of a cationic rejuvenating agent composed of petroleum oils and resins emulsified with water. All work shall be in accordance with the specifications and any applicable drawings.

a. Application

The Contractor's Project Superintendent, knowledgeable and experienced in the application of rejuvenating fog seals, must be on site during each day's work. The bidder shall submit in writing the experience of the Project Superintendent prior to beginning the project.

The Contractor shall apply the asphalt rejuvenating emulsion at the temperature recommended by the manufacturer. The asphalt rejuvenating agent shall be applied when the existing surface is thoroughly dry and when no rain is imminent. Application is restricted to when ambient temperatures are 40°F or greater.

The emulsion shall be applied so that uniform distribution is obtained. Areas missed shall receive additional treatment, possibly by hand sprayer application. The average rate of application will be 0.10 gallons per square yard, or as approved by the Town's Project Manager following a ring test.

Where more than one application is to be made, successive applications shall be made as soon as penetration is achieved by the first application.

After the rejuvenating agent has penetrated, a coating of dry sand shall be applied to the surface in a sufficient amount to prevent a slick surface to traffic upon opening the road. The sand used shall be free flowing, without any organic debris, dirt, stones, etc. Wet sand shall not be used.

b. Material Specifications

Each bidder must submit with his bid a certified statement from the asphalt rejuvenator manufacturer showing that the asphalt rejuvenator emulsion conforms to the required physical and chemical requirements listed below:

Tests	Test Method ASTM	Test Method AASHTO	Requirements Min.	Requirements Max.
Tests on Emulsion:				
Viscosity @ 25°C, SFS	D-244	T-59 (Mod)	15	40
Residue, % W ₁	D-244 (Mod)	T-59 (Mod)	60	65
Miscibility Test ₂	D-244 (Mod)	T-59 (Mod)	No Coagulation	
Sieve Test, % W ₃	D-244 (Mod)	T-59 (Mod)	-	0.1
Particle Charge Test	D-244	T-59	Positive	
% Light Transmittance ₄	GB	GB	-	30
Test on Residue from Distillation:				
Flash Point, COC, °C	D-92	T-48	196	-
Viscosity @ 60°C, cSt	D-445	-	100	200
Asphaltenes, %w	D-2008-70	-	-	1.00
Maltene Dist. Ratio	D-2008-70	-	0.3	0.6
PC + A15				
S + A2				
PC/S Ratios	D-2008-70	-	0.5	-
Saturated Hydrocarbons, S ₅	D-2008-70	-	21	28

1. ASTM D-244 Modified Evaporation Test for percent of residue is made by heating 50 gram sample to 149°C (300°F) until foaming ceases, then cool immediately and calculate results.
2. Test procedure identical with ASTM D-244-80 except that 0.02 Normal Calcium Chloride solution shall be used on place of distilled water.
3. Test procedure identical with ASTM D-244 except that distilled water shall be used in place of two percent sodium oleate solution.
4. Test procedure is attached.
5. Chemical composition by ASTM Method D-2008-70:

PC = Polar Compounds
A1 = First Acidaffins
A2 = Second Acidaffins
S = Saturated Hydrocarbons

c. Material Performance

The bidder must submit with his bid records of the product documenting at least three years of satisfactory service as an asphalt rejuvenating agent. Satisfactory service shall be based on the capability of the material to decrease viscosity and increase the penetration value of the asphalt binder as follows: the viscosity shall be reduced by a minimum of 45 percent and the penetration value shall be increased by a minimum of 25 percent. Testing shall be performed on extracted asphalt cement from the pavement to a depth of three-eighths inch (3/8").

d. Product Alternates

RECLAMITE®, manufactured by Tricor Refining, LLC, is a product of known quality and accepted performance, and is the standard for these specifications. The prices offered on the bid sheet shall be for this standard.

Bidders may offer an alternate for the standard under the following procedures:

1. List the proposed alternate on the BID SHEET form, including the product name and price. *May bid the preferred and/or alternate.* The Project Manager for the Town project will determine if the alternate is an acceptable alternative.
2. Furnish complete specifications and descriptive literature for the alternate and a one-gallon sample of the material proposed for use.
3. Submit a current Material Safety Data Sheet for the alternative materials.

Should the alternate offered be found unacceptable by the Town based on the material submitted with the bid, then the bid will be considered non-responsive. If no alternative is indicated on the bid sheet, the Contractor shall furnish the standard specified in this proposal.

e. Application Equipment

The distributor for spreading emulsion shall be self-propelled, and shall have pneumatic tires. The distributor shall be designed and equipped to distribute the asphalt rejuvenating agent uniformly on variable widths of surface, and with allowable variation from any specified rate not to exceed 5 percent of the specified rate.

Distributor equipment shall include full circulation spray bars, pump tachometer, volume measuring device and a hand hose attachment suitable for application of the emulsion manually to cover areas inaccessible to the distributor. The distributor shall be equipped to circulate and agitate the emulsion within the tank.

A check of distributor equipment, as well as application rate accuracy and uniformity of distribution shall be made when directed by the Town's project manager.

The truck used for sanding shall be equipped with a spreader that allows sand to be uniformly distributed on the pavement. The spreader shall be able to apply ½ pound to 3 pounds of sand per square yard in a single pass. The spreader shall be adjustable so as to not broadcast sand onto driveways or lawns. Used sand may be disposed of at the Municipal Corp Yard, located at 22700 E. Queen Creek Road.

f. Testing

The Contractor shall furnish a quality inspection report showing the source, manufacturer, and date shipped, for each load of asphalt rejuvenating agent. When directed by the Town's Project Manager, the Contractor shall take a representative sample of material for testing.

g. Street Sweeping

The contractor shall be responsible for sweeping and cleaning the streets prior to, and after treatment. All sweepers must be PM-10 compliant and certified. Prior to treatment, the street will be cleared of all standing water, dirt, leaves, rocks, etc.

All blotting sand must be removed no later than 48 hours after application. This may be accomplished by means of both hand and mechanical sweeping. Street sweeping is included in the price offered per square yard for asphalt rejuvenating agent.

After the sand is swept, the street will be evaluated by the Town's project manager. If it is determined a hazardous condition exists as a result of inadequate surface friction, the contractor must immediately apply additional sand. Sweeping shall occur within 24 hours. No additional compensation will be allowed for reapplication and removal of sand.

h. Traffic Control

The Contractor shall be responsible for all traffic control and signing needed as indicated by the Town's traffic requirements and regulations. A traffic control plan (TCP) shall be submitted and approved prior to beginning project. The Town will notify the Sheriff and Fire Department of closures as needed.

The Contractor shall schedule his operations between the hours of 6:00am and 6:00pm. The actual application of the rejuvenating agent shall be after 8:30am and before 3:30pm. Treated portions of the pavement surfaces shall be kept closed and free from traffic until rejuvenator penetration is complete and the area is suitable for traffic. If a street must be kept open to facilitate traffic access to homes, the Contractor shall treat one lane at a time.

i. Resident Notification

The contractor shall distribute at each household a door hanger to all residences and businesses on the streets receiving an application. The notice will be delivered no more than 72 hours and no less than 24 hours prior to beginning work on that street. The notice shall contain the Contractor's contact information, explanation of the treatment, and the date of the work.

j. Method of Measurement

Asphalt rejuvenating agent will be measured by the square yard.

3. **Project Location(s):** Refer to Exhibit B for a complete map of the areas to be serviced.
4. **Bid Unit Cost:** Bid unit cost shall be inclusive of incidentals including the following, upon submission of the Vendor's bid document:
 - a. Sweeping
 - b. Sand
 - c. Residential Traffic Control
 - d. Residential Notification
 - e. On-site Superintendent
 - f. Ring testing

5. **Payment:**

Asphalt rejuvenating agent shall be paid for per square yard. Compensation shall include incidentals, listed above.

EXHIBIT B - IFB RESPONSE

Include the name, address and telephone number of three (3) to five (5) firms or government organizations for whom similar services have been provided. References must be current, and should be relevant to the required services. Please provide description of services/work provided with each reference.

1. Firms' Name: CITY OF TUCSON
Address: 4004 SOUTH PARK AVE. TUCSON, AZ 85726
Contact Person and Phone # LANCE PETERSON 520-437-8312
Description of services/work provided SURFACE REJUVENATION WITH RECLAIMITE, 80,000 SQ. YARDS
2. Firms' Name: CITY OF SCOTTSDALE
Address: 9191 E. SAN SALVADOR DR. SCOTTSDALE AZ 85258
Contact Person and Phone # JOHN ALLEN 480-440-0765
Description of services/work provided SURFACE REJUVENATION WITH RECLAIMITE, 280,000 SQ. YARDS
3. Firms' Name: CITY OF LAKEWOOD
Address: 850 PAPER STREET, LAKEWOOD, COLORADO
Contact Person and Phone # CHRIS JACOBSEN 303-987-7951
Description of services/work provided SURFACE REJUVENATION WITH RECLAIMITE, 207,000 SQ. YARDS
4. Firms' Name: TRAVIS COUNTY
Address: 411 W. 13TH STREET AUSTIN, TX 78701
Contact Person and Phone # DON WARR 512-560-6885
Description of services/work provided SURFACE REJUVENATION WITH RECLAIMITE, 600,000 SQ. YARDS
5. Firms' Name: Greenwood Village
Address: 16061 EAST CASTILLA AVE. Greenwood Village, CO 80111
Contact Person and Phone # JOHN WANNIGMAN 303-944-3229
Description of services/work provided SURFACE REJUVENATION WITH RECLAIMITE, 300,000 SQ. YARDS

OFFER SHEET

MANDATORY - RETURN THIS PAGE WITH YOUR RESPONSE. UNSIGNED OFFERS WILL BE CONSIDERED NON-RESPONSIVE AND REJECTED.

To the Town of Queen Creek: By signing below, Offeror certifies that he/she has read, understands, and will faithfully execute the terms and conditions stated herein. The signer also certifies that he/she is an officer or duly authorized agent of the Offeror's firm with full power and authority to submit binding offers for the goods or services as specified. Offeror certifies that the prices offered were independently developed without consultation with any of the other offerors or potential offerors.

Hubert L. Beasley
Authorized Signature (required)

PALMVIEW RESTORATION, INC.
Company Name

HUBERT L. BEASLEY
Printed Name

5423 N. 59TH STREET
Address

VICE PRESIDENT
Title

TAMPA, FL 33610
City, State, Zip

20556138-D
Arizona Transaction (Sales) Privilege Tax License Number

813-626-4287
Telephone Number

141934204
Federal Employer Identification Number

813-626-5646
Fax Number

For clarification of this offer contact:
(if different from above)

leebeasley@palmviewrest.com
Company E-mail Address

Contact Name

E-mail Address

Telephone Number

Name of requester (print or type name of partnership or other entity)
Payment Restoration, Inc.

Check appropriate box:
 Sole proprietor or individual
 Partnership
 Corporation
 Partnership
 Other P
 Except from backup withholding

Requester's name, street, and city, state, and ZIP code
**2015 N 54th St
 Tampa, FL 33610**

Requester's name and address (optional)

U.S. Taxpayer Identification Number (TIN)

Enter your TIN or the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number given. However, for a resident alien, nonresident alien, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see Part I for a TIN on page 3. Note: If the amount to be paid to you is small, see the chart on page 4 for guidelines on when a number is not needed.

Special entity marker
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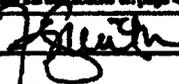
or
 Taxpayer identification number
14411913412404

Part II Certification

Under penalty of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am acting for a number to be shown to you), and
- I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. person (including a U.S. resident alien).

Continuation instructions. You must check one of boxes 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For all other transactions, box 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contribution to an individual retirement arrangement (IRA), and generally, regardless of other tax interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign here
 Signature of requester
 Date **11/12/12**

Purpose of Form
 A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, and certain transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States.
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-4(a) and 7(b) for additional information.

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partner's share of income from such business. Partner in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity.

See ENCLOSED BID BOARD.

STATUTORY BID BOND
PURSUANT TO TITLE 34, CHAPTER 2, ARTICLE 1
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 10% of the bid amount)

KNOW ALL MEN BY THESE PRESENTS:

That _____ (hereafter
"Principal"), as Principal, and _____, a corporation organized
and existing under the laws of the State of _____, with its principal offices in the City of
_____, (hereafter "Surety"), as Surety, are held and firmly bound unto the
_____ (hereafter
"Obligee"), in the amount of _____ (Dollars)
(\$ _____), for the payment whereof, the said Principal and Surety bind
themselves, and their heirs, administrators, executors, successors and assigns, jointly and
severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for _____

*NOW, THEREFORE, if the Obligee shall accept the proposal of the Principal and the
Principal shall enter into a contract with the Obligee in accordance with the terms of the
proposal and give bonds and certificates of insurance as specified in the standard specifications
with good and sufficient surety for the faithful performance of the contract and for prompt
payment of labor and materials furnished in the prosecution of the contract, or in the event of
the failure of the Principal to enter into the contract and give the bonds and certificates of
insurance if the Principal pays to the Obligee the difference not to exceed the penalty of the
bond between the amount specified in the proposal and such larger amount for which the
Obligee may in good faith contract with another party to perform the work covered by the
proposal then this obligation is void. Otherwise, it remains in full force and effect provided,
however, that this bond is executed pursuant to the provisions of Section 34-201, Arizona
Revised Statutes, and all liabilities on this bond shall be determined in accordance with the
provisions of the section to the extent as if it were copied at length herein.*

Witness our hands this _____ day of _____, 2008.

PRINCIPAL

SEAL

BY: _____

SURETY

BY: _____

AGENCY OF RECORD

STATUTORY BID BOND
PURSUANT TO TITLE 34, CHAPTER 2, ARTICLE 1
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 10% of the bid amount)

KNOW ALL MEN BY THESE PRESENTS:

That Pavement Restoration, Inc. (hereafter
"Principal"), as Principal, and Merchants Bonding Company (Mutual), a corporation organized
and existing under the laws of the State of Iowa, with its principal offices in the City of
Des Moines, (hereafter "Surety"), as Surety, are held and firmly bound unto the
Town of Queen Creek, Arizona (hereafter
"Obligee"), in the amount of 10% of Bid Amount (Dollars)
(\$10% of Bid Amount), for the payment whereof, the said Principal and Surety bind
themselves, and their heirs, administrators, executors, successors and assigns, jointly and
severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Surface Rejuvenation

*NOW, THEREFORE, if the Obligee shall accept the proposal of the Principal and the
Principal shall enter into a contract with the Obligee in accordance with the terms of the
proposal and give bonds and certificates of insurance as specified in the standard specifications
with good and sufficient surety for the faithful performance of the contract and for prompt
payment of labor and materials furnished in the prosecution of the contract, or in the event
of the failure of the Principal to enter into the contract and give the bonds and certificates of
insurance if the Principal pays to the Obligee the difference not to exceed the penalty of the
bond between the amount specified in the proposal and such larger amount for which the
Obligee may in good faith contract with another party to perform the work covered by the
proposal then this obligation is void. Otherwise, it remains in full force and effect provided,
however, that this bond is executed pursuant to the provisions of Section 34-201, Arizona
Revised Statutes, and all liabilities on this bond shall be determined in accordance with the
provisions of this section to the extent as if it were copied at length herein.*



Witness our hands this 21st day of November 2012

2012
EJWJX
EJWJX

[Signature]
PRINCIPAL

SEAL



BY: HUGERT L BEASLEY

Merchants Bonding Company (Mutual)
SURETY

BY: Sherry R. Heywood
Sherry R. Heywood, Attorney in fact

M. E. Wilson Company, Inc.
AGENCY OF RECORD

MERCHANTS
BONDING COMPANY.
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations duly organized under the laws of the State of Iowa (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint, individually,

Douglas W. King, Dwight Wilson, Sherry R. Heywood, Kelly Banks Sutton

of Tampa and State of Florida their true and lawful Attorney-in-Fact, with full power and authority hereby conferred in their name, place and stead, to sign, execute, acknowledge and deliver in their behalf as surety any and all bonds, undertakings, recognizances or other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

THREE MILLION (\$3,000,000.00) DOLLARS

and to bind the Companies thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of the Companies, and all the acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This Power-of-Attorney is made and executed pursuant to and by authority of the following By-Laws adopted by the Board of Directors of the Merchants Bonding Company (Mutual) on April 23, 2011 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 24, 2011.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 13th day of January, 2012.



MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

Larry Taylor
President

STATE OF IOWA
COUNTY OF POLK ss.

On this 13th day of January, 2012, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument is the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at the City of Des Moines, Iowa, the day and year first above written.



Maranda Greenwalt

Notary Public, Polk County, Iowa

STATE OF IOWA
COUNTY OF POLK ss.

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 22nd day of November, 2012.



William Warner Jr.
Secretary

POA 0014 (11/11)

CONTRACTOR'S AFFIDAVITS

BIDDERS QUALIFICATION STATEMENT

(Completion of this statement is required for consideration for award contract).

SUBMITTED TO:

Town of Queen Creek
22358 S. Ellsworth Road
Queen Creek, Arizona 85142

SUBMITTED FOR:

Town Project Title: SURFACE REJUVENATION

SUBMITTED BY:

Name: PAVEMENT RESTORATION, INC.

(A Corporation/A Partnership/An Individual/A Joint Venture)
(Bidder to strike out inapplicable terms)

Address: 5423 N. 59TH STREET, TAMPA FL 33610

The undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter.

- 1.0 How many years has your organization been in business as a contractor?
- 2.0 How many years has your organization been in business under its present name?
- 3.0 If a corporation, answer the following:
 - 3.1 Date of incorporation:
 - 3.2 State of incorporation:
 - 3.3 President's name:
 - 3.4 Vice president's name(s):
 - 3.5 Secretary's or Clerk's Name:
 - 3.6 Treasurer's Name:
- 4.0 If individual or partnership, answer the following:
 - 4.1 Date of organization:

(See ATTACHED)



(see Attached)

- 4.2 Name and address of all partners (State whether general or limited partnership):
- 5.0 If other than corporation or partnership, describe organization and name principals:
- 6.0 Do you plan to subcontract any part of this project? _____. If so, give details:
- 7.0 Has any construction contract to which you have been a party been terminated by the owner; have you ever terminated work on a project prior to its completion for any reason; has any surety which issued a performance bond on your behalf ever completed the work in its own name or financed such completion on your behalf; has any surety expended any monies in connection with the contract for which they furnished a bond on your behalf? If the answer to any portion of this question is "yes", please furnish details of all such occurrences, including name of owner, architect or engineer, and surety, and name and date of project.
- 8.0 Has any officer or partner of your organization ever been an officer or partner of another organization that had any construction terminated by the owner; terminated work on a project prior to its completion for any reason; had any surety which issued a performance bond complete the work in its own name or financed such completion; or had any surety expend any monies in connection with a contract for which they furnished a bond? If the answer to any portion of this question is "yes", please furnish details of all such occurrences including name of owner, architect or engineer, and surety, and name and date of project.
- 9.0 List name of project, owner, architect or engineer, contract amount, percent complete and scheduled completion of the major construction projects that your organization has in progress on this date:
- 10.0 List name of project, owner, architect or engineer, contract amount, date of completion and percent of work with own forces of the major projects of the same general nature as this project which your organization has completed in the past five years:
- 11.0 List name, address and telephone number of a reference for each project listed under items 9.0 and 10.0 above:
- 12.0 List name and construction experience of the principal individual of your organization:
- 13.0 List the states and categories of construction in which your organization is legally qualified to do business.
- 13.1 Arizona Contractor's License No. ROC_____ and Classification ____.
- 14.0 List name, address, and telephone number of an individual who represents each of the following and who OWNER may contact for a financial reference:
- 14.1 A surety:
- 14.2 A bank:
- 14.3 A major material supplier:

15.0 Attach a financial statement, prepared on an accrual basis, in a form, which clearly indicated Bidder's assets, liabilities and net worth.

15.1 Date of financial statement: 12/31/12

15.2 Name of firm preparing statement: BOYLES, ROOKS, & JOHNSON CPA, P.A.

16.0 Date at November, this 26th day of November 2012

Hubert L. Beasley
(Print or type name of Bidder)

By: HUBERT L. BEASLEY
VICE PRESIDENT
Title

(Seal, if Corporation)

PAVEMENT RESTORATION, INC.
(An S Corporation)
Statement of Assets, Liabilities and
Stockholders' Equity - Income Tax Basis

As of
December 31,
2011

ASSETS

CURRENT ASSETS

Cash and cash equivalents	\$ 213,476
Contract receivables	232,768
Inventory	48,190
Affiliate receivable	<u>40,666</u>

TOTAL CURRENT ASSETS 535,100

FIXED ASSETS

Transportation equipment	808,629
Accumulated depreciation	<u>(526,421)</u>

NET FIXED ASSETS 282,208

TOTAL ASSETS \$ 817,308

LIABILITIES AND STOCKHOLDERS' EQUITY

CURRENT LIABILITIES

Accounts Payable	\$ 15,081
Due to shareholders	64,012
Line of credit	300,000
Notes payable	<u>106,131</u>

TOTAL CURRENT LIABILITIES 485,224

LONG TERM LIABILITIES

Notes payable	73,785
Due to shareholders	<u>53,171</u>

TOTAL LONG TERM LIABILITIES 126,956

TOTAL LIABILITIES \$ 612,180

STOCKHOLDERS' EQUITY

Common stock, \$1 par value; 10,000 shares authorized, issues and outstanding	\$ 10,000
Additional paid in capital	170,000
Retained earnings	<u>25,128</u>
TOTAL STOCKHOLDERS' EQUITY	<u>205,128</u>

**TOTAL LIABILITIES AND STOCKHOLDERS'
EQUITY** \$ 817,308

The accompanying notes are an integral part of these financial statements.
See independent accountants' review report

PAVEMENT RESTORATION, INC.
(An S Corporation)
Statement of Revenue, Expenses and Retained Earnings
Income Tax Basis

		For year ended December 31, <u>2011</u>
REVENUE		
	Contract revenue	\$ 2,443,017
	Contract cost	<u>(1,278,315)</u>
	GROSS PROFIT	1,164,702
EXPENSES		
	Administrative	1,013,812
	Depreciation expense	129,970
	Interest expense	<u>39,697</u>
	TOTAL EXPENSES	<u>1,183,479</u>
	EXCESS OF EXPENSES OVER REVENUE	\$ (18,777)
RETAINED EARNINGS:		
	Beginning balance	87,641
	Shareholder distributions	<u>(43,736)</u>
	Ending retained earnings	<u>\$ 25,128</u>

The accompanying notes are an integral part of these financial statements.
 See independent accountants' review report

Affidavit for Individual

N/A

_____ being duly sworn, deposes and says that: a) the financial statement, taken from his/her books, is a true and accurate statement of his/her financial condition as of the date thereof; b) all off the foregoing qualification information is true, complete, and accurate.

Affidavit for Partnership

_____ being duly sworn, deposes and says that: a) he/she is a member of the partnership of _____; b) he/she is familiar with the books of said partnership showing its financial condition; c) the financial statement, taken from the books of said partnership, is a true and accurate statement of the financial condition of the partnership as of the date thereof; and d) all of the foregoing qualification information is true, complete and accurate.

Affidavit for Corporation

HUBERT L. BEASLEY being duly sworn, deposes and says that: a) he/she is Vice President of Pavement Restoration, Inc.; b) he/she is familiar with the books of said corporation showing its financial condition; c) the financial statement, taken from the books of said corporation, is a true and accurate statement of the financial condition of said corporation as of the date thereof; and d) that all of the foregoing qualification information is true, complete and accurate.

Acknowledgement

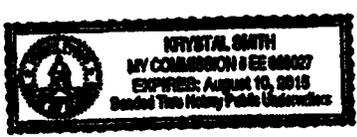
Hubert L. Beasley being duly sworn, deposes and says that he/she is the Vice President of Pavement Restoration, Inc. that he/she is duly authorized to make the foregoing affidavit and that he/she makes it on behalf of () himself/herself () said partnership (x) said corporation.

Sworn to before me this 20th day of November, 2012, in the County of Hillsborough, State of Florida

[Signature]
(Notary Public)

My commission expiration date 8/10/15

(Seal)



CERTIFIED COPY OF RESOLUTION OF
BOARD OF DIRECTORS OF

PAVEMENT RESTORATION, INC
(Name of Corporation)

RESOLVED that HUBERT L. BOSLEY VICE PRESIDENT
(Person Authorized to Sign) (Title)

Of PAVEMENT RESTORATION, INC be authorized to sign and submit
the bid or proposal of this corporation for the following project:

TOWN of Queen Creek

The foregoing is a true and correct copy of the resolution adopted by

PAVEMENT RESTORATION, INC. at the meeting of its Board of Directors held on
the

27th day of NOVEMBER, 2012

By [Signature]

Title VICE PRESIDENT

(SEAL)

(THIS FORM MUST BE COMPLETED IF BIDDER IS A CORPORATION)

NONCOLLUSIVE BIDDING CERTIFICATION

(STATE OF)
SS.
(COUNTY OF)

I, Hubert L. Beasley of the City of Tampa FLORIDA, in the County of Hillsborough and the State of FLORIDA, of full age, being duly sworn according to the law of my oath depose and say that:

I am Hubert L. Beasley a VICE PRESIDENT of the firm of Payment Restoration, Inc., the Bidder making the Bid for the Town of Queen Creek Project and that I executed the said Bid with full authority to do so; that said Bidder has not, 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 the above named Project; and that all statements contained in said Bid and in this affidavit are true and correct, and made with full knowledge that the Town of Queen Creek relies upon the truth of the statements contained in said Bid and in the statements contained in this affidavit in awarding the Contract for the said Project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such Contract upon an agreement of understanding, for a commission, percentage, brokerage or contingent fee, except bonafide employees or bonafide established commercial or selling agencies maintained by:

[Handwritten Signature]
(Signature of Bidder)

Hubert L. Beasley
(Printed or Typed Name of Bidder)

(Seal of Corporation)

Sworn to before me this 26th day of November, 2012, in the County of Hillsborough, State of Florida

[Handwritten Signature]
(Notary Public)



EXHIBIT C - PRICING

PREFERRED:

Item	Description	Unit	Qty	Unit Price	Total Price
01	Apply Asphalt Rejuvenator	Sq Yds	220,696	1.10	\$242,765.60
02	Additional Traffic Control Allowance - to pay for message boards or other traffic device not common to residential set up	ATC	1	\$13,500.00	\$13,500.00
TOTAL					\$256,265.60

TOTAL BID AMOUNT: \$ 256,265.60

WARRANTY PERIOD: 2 (YEARS)

ESTIMATED COMPLETION TIME AFTER NOTICE TO PROCEED/PO: 18 (DAYS)

ALTERNATE:

Item	Description	Unit	Qty	Unit Price	Total Price
01	Apply Asphalt Rejuvenator	Sq Yds	220,696		
02	Additional Traffic Control Allowance - to pay for message boards or other traffic device not common to residential set up	ATC	1		
TOTAL					

TOTAL ALTERNATE BID AMOUNT: _____

**Please refer to Section 2.d. of the Scope of Work regarding alternates.*

WARRANTY PERIOD: _____ (YEARS)

ESTIMATED COMPLETION TIME AFTER NOTICE TO PROCEED/PO: _____ (DAYS)



**TOWN OF QUEEN CREEK, AZ
INVITATION FOR BIDS**

SURFACE REJUVENATION

IFB NO. 13-006

SUBMITTAL DUE DATE AND TIME: November 29, 2012 at 10:00 A.M. LOCAL AZ TIME

SUBMITTAL LOCATION: Town of Queen Creek
Municipal Services Building
22358 S. Ellsworth Road
Queen Creek, AZ 85142

GENERAL OR BID PROCESS QUESTIONS: Kim Clark
Sr. Financial Services Analyst
Finance Department
(480)358-3000
kim.clark@queencreek.org

TECHNICAL QUESTIONS: Jan Martin
Streets and Environmental Superintendent
Public Works Department
(480)358-3000
jan.martin@queencreek.org

Notice is hereby given that sealed bids for the specified materials or services will be received at the Town of Queen Creek, Municipal Services Building located at 22358 S. Ellsworth Road, Queen Creek, AZ 85142, until the time and date cited. Late bids will not be considered.

One original and one (1) copies of the bid shall be submitted in a sealed envelope with the bid name, bid number, Bidder's name and address clearly indicated on the envelope. All bids must be submitted in ink or typewritten. No oral, telegraphic, electronic, facsimile, or telephonic bids or modifications will be considered unless specified. Additional instructions for preparing an offer are provided within.

Offerors are strongly encouraged to carefully read the entire solicitation.

PLEASE NOTE: VENDOR IS RESPONSIBLE FOR OBTAINING ANY AMENDMENTS EITHER THROUGH UPDATES ON THE WEB SITE, OR BY CONTACTING THE PERSON CITED ABOVE FOR GENERAL QUESTIONS.

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SOLICITATION SUBMITTAL CHECKLIST

It is the Bidder's/Offeror's responsibility to be thoroughly familiar with all requirements and specifications.

- 1. The Offer section has been signed by an authorized representative of the firm. Unsigned solicitations will not be considered.
- 2. The prices offered (if applicable) have been reviewed.
- 3. Any amendments have been signed and are included. It is the Vendor's responsibility to obtain all amendments relevant to this solicitation via the Town's Web site or other means.
- 4. Review all instructions, terms and conditions, and specifications to ensure your response complies.
- 5. Any required samples, descriptive literature, or enclosures have been included, if applicable. (Identify samples with Vendor's name and solicitation number.)
- 6. Solicitation Package and/or Envelope have been identified with Vendor's name, solicitation number and solicitation title.
- 7. The specified number of copies of your offer has been included if more than one copy was requested on the cover page.
- 8. Bid Bond has been included.
- 9. W-9 Form is complete and included.

INSTRUCTIONS TO BIDDERS

1. **Preparation of Bid:**
 - a. Telegraphic (facsimile), e-mailed, or Mailgram Bids will not be considered.
 - b. The offer document shall be submitted with an original ink signature by a person authorized to sign the offer.
 - c. Erasures, interlineations, or other modifications in the Bid shall be initialed in original ink by the authorized person signing the Offer.
 - d. If price is a consideration and in case of error of prices in the Bid, the unit price shall govern. If there is a conflict between values or prices written-out in text and values or prices expressed in numbers, the text values or prices shall control.
 - e. No Bid shall be altered, amended, or withdrawn after the specified due date and time.
 - f. Periods of time, stated as a number of days, shall be calendar days.
 - g. It is the responsibility of all Bidders to examine the entire Invitation for Bid package and seek clarification of any item or requirement and to check all responses for accuracy before submitting a Bid. Negligence in preparing a bid confers no right of withdrawal after Bid due date and time.
2. **Inquiries:** Any question related to this Invitation for Bid (IFB) shall be directed in writing or via e-mail to the person whose name appears on the front. Any correspondence related to this IFB should refer to the appropriate IFB ID, page, and paragraph number. However, the Bidder shall not place the IFB ID on the outside of any envelope containing questions since such an envelope may be identified as a sealed Bid and may not be opened until after the official Invitation for Bid due date and time.
3. **Due Date and Time:** Offerors must submit Bids to the Municipal Services Building, Front Office by 10:00 AM/Local AZ time on November 29, 2012 at the address or physical location listed on the cover page. Late Bids will not be accepted.
4. **Withdrawal of Bid:** At any time prior to the specified Bid due date and time, an Offeror (or designated representative) may withdraw the Bid by submitting a request in writing or via e-mail to the contact person whose name appears on the front page. Request must be made by a duly authorized representative of the Bidder. Bidder is responsible for making arrangements and expenses associated with the return of Bid.
5. **Amendment of Bid:** Receipt of a Bid Amendment shall be acknowledged by signing and returning the IFB with the Bid by the specified Bid due date and time. Potential Offerors are responsible for obtaining all amendments relevant to this solicitation via the Town's Web site or other means.
6. **Bid Opening:** Bids shall be opened at the time and place designated on the cover page of this document. The name of each Bidder and the price shall be publicly read and recorded in the presence of a witness. Bids, modifications, and all other information received in response of this IFB shall be shown only to Town personnel having legitimate interest in the evaluation. After award of the contract the successful Bidder and the evaluation documentation shall be open for public inspection.
7. **Confidential Information:**
 - a. If a person believes that a bid, IFB, offer, specification, or protest contains information that should be withheld, a statement advising the Town of this fact shall accompany the submission and the information shall be identified.
 - b. The information identified by the person as confidential shall not be disclosed until the Town makes a written determination.
8. **Offer Acceptance Period:** In order to allow for an adequate evaluation, the Town requires an offer

In response to this Solicitation to be valid and irrevocable for one hundred and twenty (120) days after the opening time and date and each Offeror agrees that it will hold open its offer for such period.

9. **Award of Contract:** Notwithstanding any other provision of this IFB, the Town expressly reserves the right, when determining whether to award a contract to an Offeror, to the lowest responsive and responsible bidder who has neither been disqualified nor rejected pursuant to the terms and conditions of the IFB, to:
- a. Waive any immaterial defect or informality; and/or
 - b. Reject any or all Bids, or portions thereof; and/or
 - c. Reissue an Invitation For Bids; and/or
 - d. Exercise any other rights available to the Town under the terms of the IFB, the Town Code, law, or equity.
11. **Bid Security:** A cashier's check, certified check or Bid Bond must accompany Bid for the sum of ten percent (10%) of the amount of the Bid, satisfactory to and payable to the order of the Town (Bid Security). Said check or bond shall be given as a guarantee that the Bidder, if awarded the Contract, will enter into an Agreement and furnish the required bonds and insurance certificates and endorsements.

Bid Bond shall be on the form bound in the Contract Documents. A surety meeting the requirements of the General Conditions shall issue the Bid Bond.

The Bid security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required contract securities and insurance certificates and endorsements, whereupon the bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract securities and insurance certificates and endorsements within 10 days or such additional time as may be allowed by the Town from the date of mailing the Notice of Award from the Town to the Successful Bidder or from the date of personal delivery of the Notice of Award to the Successful Bidder, Town may annul the Notice of Award and the bid security of that Bidder will be forfeited to the Town as damages for such failure. Forfeiture will not preclude the Town from seeking any or all other remedies provided by law to recover losses sustained as a result of the Bidder's failure to enter into the Agreement or to furnish the contract securities or insurance certificates and endorsements.

A Bidder who is awarded the Contract and fails to execute the Agreement or furnishes the required contract securities or insurance certificates and endorsements shall be liable to the Town for all damages resulting there from including reasonable attorney's fees and costs. The Bid Security forfeited shall not be a limitation thereon.

The Bid Security of any Bidder whom Town believes to have a reasonable chance of receiving the Award may be retained by the Town until the earlier of the tenth day after the execution of the Agreement by the Successful Bidder, or rejection of all Bids, or the sixtieth day after the Bid opening. The Bid security of other Bidders will be returned within two weeks after issuance of Notice of Award to the Successful Bidder.

12. **Subcontractors:** The Bidders shall submit to the Town with its response to this IFB a complete listing of all Subcontractors the Bidder intends to use in the performance of the work specified in this contract along with a percentage participation of each Subcontractor.

NO BID FOR WORK INVOLVING THESE CLASSIFICATIONS WILL BE VALID WITHOUT THE COMPLETE LISTING OF BOTH SUBCONTRACTORS AND MAJOR MATERIAL SUPPLIERS AS LISTED IN THE FORMS OF BID.

- 13. Contract Applicability:** The Offeror shall substantially conform to the terms, conditions, specifications, and other requirements found within the text of this specific IFB. All previous agreements, contracts, or other documents, which have been executed between the Offeror and the Town, are not applicable to this IFB or any resultant contract.
- 14. Gratuities:** The Town may, by written notice to the Offeror, cancel the resultant contract if it is found by the Town that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Offeror or any agent or representative of the Offeror, to any officer or employee of the Town with a view toward securing an order, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such order. In the event the Town pursuant to this provision cancels the resultant contract, the Town shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of gratuity. Paying the expense of normal business meals, which are generally made available to all eligible Town government customers, shall not be prohibited by this paragraph.
- 15. Cost of Bid/Proposal:** The Town shall not reimburse the cost of developing or providing any response to this IFB and development and provision of any offer shall be at the respective Offeror's sole cost. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.
- 16. Public Record:** All offers submitted in response to this IFB, whether or not accepted by the town, shall become a matter of public record available for review, subsequent to the award notification, in accordance with the Town's Procurement Policy.
- 17. Certification:** By signature in the Offer section of the Offer Award Page, the Offeror certifies that:
- The submission of the offer did not involve collusion or other anti-competitive practices.
 - The Offeror shall not discriminate against any employee or applicant for employment in violation of the Federal Executive Order 11246.
 - The Offeror has not given or offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with the submitted offer.
 - Failure to sign the offer, or the falsity of a statement in a signed offer, shall void the submitted offer or any resulting contracts, and the Offeror may be debarred.
- 18. Lobbying Prohibition:** Any communication regarding this solicitation for the purpose of influencing the process or the award, between any person or affiliates seeking an award from this solicitation and the Town, including but not limited to the Town Council, employees, and Contractors hired to assist in the solicitation, is prohibited.

This prohibition is imposed from the time of the first public notice of the solicitation until the Town cancels the solicitation, rejects all responses, awards a contractor, otherwise takes action which ends the solicitation process. This section shall not prohibit public comment at any Town Council meeting, study session or Town committee meeting

This prohibition shall not apply to communication with the official contact(s) specifically identified in the solicitation or Town-initiated communications for the purposes of conducting the procurement, and in the manner prescribed in the solicitation, including but not limited to pre-bid conferences, clarification of responses, presentations if provided for in the solicitation, requests for Best and Final Proposals, contract negotiations, interviews, protest/appeal resolution, or surveying non-responsive vendors.

Violations of this provision shall be reported to Purchasing and may be a basis for rejecting a response or debarment of the violator by the Town. Persons and/or entities violating this prohibition

may be subject to a warning letter, rejection of their response, or disbarment by the Town, in the Town's discretion, depending on the nature of the violation.

STANDARD TERMS AND CONDITIONS

1. Definitions

- a. The "Contract" is set forth in the IFB and Contract Form and includes as part of the specifications the Instructions to Bidder, Vendor, Standard Terms and Conditions, Special Terms and Conditions, Scope of Work, General Contract Conditions, Exhibits and Attachments, Federal Provisions, Special Provisions, and Technical Provisions plus the Reference Plan Sheets, to the extent they exist (collectively "Contract Documents").
- b. After award of a contract pursuant to this IFB (if any) the successful Bidder (if any) shall be referred to as the "Contractor" and thus the terms Offeror and Contractor may be utilized interchangeably in those provisions of this IFB dealing with the terms of the resultant contract, if any
- c. The "Work" of the Contractor shall consist of furnishing all labor, materials, equipment, tools, machinery, supplies, transportation, traffic control, supervision services, etc., necessary for the completion of the Project.
- d. The authorized representative of the Town shall be the Town Manager, or his/her designee.

2. **Authority:** This IFB as well as any resultant Contract(s) are issued under the authority of the Town. No alteration of any Contract may be made without the express written approval of the Town in the form of an official contract amendment. Any attempt to alter any Contract without such approval is a material breach of the Contract. Any such action is subject to the legal and contractual remedies available to the Town inclusive of, but not limited to, Contract cancellation, suspension and/or debarment of the Contractor.

3. **Applicable Law:** In the performance of the Contract, Contractors shall abide by and conform to any and all laws of the United States, State of Arizona, Maricopa County, and the Town of Queen Creek including but not limited to federal and state executive orders providing for equal opportunities, the Federal Occupational Safety and Health Act and any other federal, state, county or local laws applicable to the Contract.

The Contract shall be governed by the State of Arizona and suit pertaining to the Contract may be brought only in courts in the State of Arizona.

The Contract is subject to the provisions of ARS § 38-511; the Town may cancel the Contract without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the Town or any of its departments or agencies, is at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity, or a Contractor to any other party of the Contract with respect to the subject matter of the contract.

4. **Legal Remedies:** All claims and controversies shall be subject to resolution according to the terms of the Town of Queen Creek Purchasing Policy.
5. **Key Personnel:** It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under any resultant contract. The Contractor must agree to assign specific individuals to the key positions.
 - a. The Contractor agrees that, once assigned to work under any resultant contract, key personnel shall not be removed or replaced without written notice to the Town.
 - b. If key personnel are not available for work under any resultant contract for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the Town in writing, and shall, subject to the concurrence of the Town, replace such personnel with personnel of substantially equal ability and qualifications.

6. **Contract Amendments:** This Contract shall be modified only by a written contract amendment signed by the Town of Queen Creek and persons duly authorized to enter into contracts on behalf of the Contractor.
7. **Non-Exclusive Contract:** Any Contract resulting from this IFB shall be awarded with the understanding and agreement that it is for the sole convenience of the Town of Queen Creek. The Town reserves the right to obtain like goods or services from another source when necessary.
8. **Relationship to Parties:** It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever.
9. **Subcontracts:** The Contractor shall enter into no subcontract with any other party to furnish any of the material, service, or construction specified herein without the advance written approval of the Town. The Contractor is responsible for contract performance whether or not Subcontractors are used.
10. **Payment: Payments and Retention shall be made as follows:**
 - a. **Progress Payments:**
 - i. Progress billings will be processed monthly starting upon project commencement.
 - ii. Contractor billings shall be submitted on Contractor's typical invoice form.
 - iii. A list of all suppliers (including name, contact info and phone numbers) to be used by Contractor must be received and approved by Town, prior to release of Contractor's monthly progress payment. Town's approval of Contractor's suppliers shall not release Contractor from any of its obligations under this Contract, including without limitation, Contractor's indemnification, and insurance obligations.
 - iv. If required by the Town, Contractor will be required to execute an Unconditional Waiver and Release on Progress Payment or Unconditional Waiver and Release on final payment contemporaneously with the receipt of partial or final payments, or other form of acknowledgment of payment and/or release of claims as required by the Town, as well as unconditional lien waivers executed by subcontractors and/or suppliers who have provided labor, materials, or rental equipment to Contractor. Payments of any amounts covered by any conditional lien waivers may, at the Town's sole discretion, be made by joint check issued to the Contractor and the subcontractor or supplier.
 - v. Contractor shall submit all other supporting documentation substantiating its Invoice as may be reasonably required by Architect, the Town, and applicable laws.

The Offeror is advised that taxes or Social Security payments will not be withheld from any Town payments issued hereunder and that the Offeror should make arrangements to directly pay such expenses, if any.

- b. **Final Payment:** Final payment including retainage shall be paid only after: (i) the Work has been fully completed (including completion of all incorrect or incomplete work items) and accepted by Town and Architect; (ii) necessary operating manuals, any excess materials and supplies necessary for matching materials and supplies incorporated into the Work, and complete "as-built" drawings, plans and specifications have been delivered by Contractor; (iii) if required by the Town, full and unconditional lien waivers and releases by Contractor and any person performing labor or supplying material, machinery, fixtures, or tools for the Work have been delivered to Town; (iv) all conditions

and requirements imposed by the Town or any financing entity for the corresponding disbursement have been met; and (v) Contractor delivers to Town an invoice requesting payment.

c. **Town's Right to Withhold Payment:** The Town may withhold payment to such extent as may be necessary in the Town's opinion to protect the Town from loss for which the Contractor is responsible, including, without limitation:

- i. Defective Work not remedied;
- ii. Third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Town is provided by the Contractor;
- iii. Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- iv. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- v. Damage to the Town or another contractor;
- vi. Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- vii. Persistent failure to carry out the Work in accordance with the Contract Documents.

d. **Joint/Direct Checks:** Payments to Contractor may be made by checks payable jointly to Contractor and its employees, agents, subcontractors and suppliers, or any of them, and when in the sole opinion of the Town it is advisable, payments may be made directly to Contractor's subcontractors and any amount so paid shall be deducted from the amounts owed to Contractor under this Contract.

e. **Payment Not A Waiver:** No payment (nor use or occupancy of the Project by the Town) shall be deemed acceptance or approval of the Work or as a waiver of any claims, rights, or remedies of Town.

11. **Liens and Bond Claims:** Contractor shall make all payments, in the time required, of all labor and materials furnished to Contractor in the course of the Work and shall promptly furnish evidence of such payments as the Town may require. Contractor shall pay when due all claims arising out of performance of the Work covered by this Contract for which a lien may be filed either against the real estate or leasehold interest of the Town, or against payments due from the Town to Contractor, or for which a claim may be made against any payment or performance bond or both. To the fullest extent permitted by law, Contractor agrees that no liens or other claims in the nature of a lien against the real estate, leasehold, or other interest of the Town, against payment due from Town to Contractor, or against any payment or performance bond, shall be filed or made in connection with the Work by any party who has supplied professional services, labor, materials, machinery, fixtures, tools, or equipment used in or in connection with the performance of this Contract, and Contractor agrees to remove or to cause to be removed any such liens or claims in the nature of a lien or bond claim within ten (10) days upon receiving notice or obtaining actual knowledge of the existence of such liens or claims. In addition, Contractor agrees to defend, indemnify, and hold harmless the Town from and against any and all such liens and claims. This paragraph does not apply to claims and liens of Contractor due to non-payment for work performed.

12. **Indemnification:** Any Contract shall contain the following indemnification:

To the fullest extent permitted by law, the contractor shall defend, indemnify and hold harmless the Town of Queen Creek and its officers, officials, agents and employees from and against all claims, damages, losses, and expenses (including but not limited to attorneys' fees, court costs, and the costs of any appellate proceedings), arising out of, alleged to have arisen out of, related to, or resulting from the performance of the work or the delivery of goods or materials under the contract. In addition, the contractor shall, at his or her own expense, defend the Town of Queen Creek in all litigation, pay all attorney's fees, damages, court costs and other expenses arising out of the litigation

of claim or incurred in connection therewith; and shall at his or her own expense, satisfy and cause to be discharged such judgments as may be obtained against the Town or any of its officers, agents and employees.

In any and all claims against the Town of Queen Creek and its officers, agents and employees, by any employee of the contractor and / or subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by the amount and type of insurance coverage that Contractor is required to obtain, any limitation on the amount or type of damages, compensation or benefits payable by or for the contractor or any subcontractor under Worker's Compensation acts, disability benefits acts or other employee benefits acts.

13. **Overcharges by Antitrust Violations:** The Town maintains that, in practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the Town any and all claims for such overcharges as to the goods and services used to fulfill the Contract.

14. **Force Majeure:** Except for payment for sums due, neither party shall be liable to the other not deemed in default under the Contract if and to the extent that such party's performance of the contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts; injunctions, intervention, acts, or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party in writing of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party, exercising reasonable diligence, from resuming performance in accordance with the resultant contract. Force Majeure shall not include the following occurrences:

- a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
- b. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition.

Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure. If either party is delayed at any time in the progress of work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed *certificate-return receipt* and shall make specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing of the end of the majeure delay. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with the resultant contract.

15. **Right to Assurance:** Whenever the Town in good faith has reason to question the Contractor's intent to perform the Town may demand that the Contractor give written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the Town may treat this failure as an anticipatory repudiation of the Contract.

16. **Right to Audit Records:** The Town may, at reasonable times and places, audit the books and records of any contractor as related to any contract held with the Town and the Contractor shall

reasonably cooperate with such audit.

17. **Right to Inspect Place of Business:** The Town may, at reasonable times inspect the place of business of a contractor or subcontractor which is related to the performance of any contract as awarded or to be awarded, and the Contractor shall reasonably cooperate with such inspection, and reserve such inspection right to the Town in any agreement with any subcontractor.
18. **Inspection:** All material and/or services are subject to final inspection and acceptance by the Town. If materials and/or services provided by the Contractor fall, in the Town's reasonable judgment, to conform to the specifications of the resultant contract the Town may elect, in the Town's sole discretion to do any or all of the following, which shall be cumulative and non-exclusive:
 - a. Hold such non-conforming goods at the Contractor's risk;
 - b. Return such non-conforming goods to the Contractor, in which event all costs, including the cost of bringing such goods into compliance, will be the responsibility of the Contractor;
 - c. Waive the non-conformance; and
 - d. Direct the contractor to stop the work immediately.
19. **Confidentiality of Records:** The contractor shall establish and maintain procedures and controls that are acceptable to the Town for the purpose of assuring that information contained in its records or obtained from the Town remains confidential pursuant to applicable requirements.
20. **Liens:** The Contractor shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Contractor shall deliver appropriate written releases, in statutory form of all liens to the Town.
21. **Licenses:** Contractor shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by the Contractor and the services and work to be performed under the resultant contract. It is the Contractor's responsibility to determine which licenses (if any) are required for specific service stated within this solicitation document. All submitted licenses will be verified with the Arizona Registrar of Contractors to verify compliance. Should a Contractor's license fail to meet the licensing requirements as stated within this solicitation document, their offer may be deemed non-responsive.
22. **Permits and Responsibilities:** The Contractor shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.
23. **Patents and Copyrights:** All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this IFB or the resultant contract are the property of the Town and shall not be used or released by the Contractor or any other person except with the prior written permission of the Town.
24. **Sales and Use Tax:** The Contractor agrees to comply with and to require all of his subcontractors to comply with all provisions of the Arizona State Sales Tax Law and Compensation Use Tax Law and all amendments to same. The Contractor further agrees to indemnify and save harmless the Town of Queen Creek, Arizona, of and from any and all claims and demands made against it by virtue of the failure of the Contractor or any subcontractor to comply with the provisions of any or all said laws and amendments.
25. **Termination for Non-Appropriation:** Any Contract entered into by the Town shall automatically terminate at the end of the then current fiscal period for non-appropriation of funds if the Town's governing body fails to appropriate funds to pay for the payments contemplated by the contract. The Town's fiscal period ends June 30th of each year.

26. **Termination for Convenience:** Town reserves the right to terminate the resultant contract or any part thereof for its sole convenience with thirty (30) days written notice. Contractor shall receive payment for the goods and materials already shipped to the Town, provided such goods and materials conform to the requirements of the applicable contract.
27. **Warranties:** Vendor warrants that all goods delivered under this contract will conform to the requirements of this contract (including all applicable descriptions, specifications, drawings and samples), and will be free from defects in material and workmanship and will be free from defects in design and fit for the intended purpose. Any inspection or acceptance of the goods by Buyer shall not alter or affect the obligation of vendor or the right of Buyer under the foregoing warranties. Within fourteen (14) days of the completion of the Work (or at such earlier time as requested by the Town), Contractor shall execute and deliver to the Town all warranties regarding the Work required by the Project plans and specifications. These warranties shall be in form and content satisfactory to the Town, the Project building owner (if different than the Town), the Town's lender(s), if any, and any other person reasonably requested by the Town, or the Town's lender(s).
28. **Supervision of the Work:** The Contractor shall keep on this project a competent Superintendent and any necessary assistants, all satisfactory to the Town. The superintendent shall represent the Contractor in his absence and all directions given to or by him shall be binding as if given to or by the Contractor.
29. **Workmanship:** Where not more specifically described in any of the various Sections of these Specifications, workmanship shall conform to all of the methods and operations of best standards and accepted practices of the trade or trades involved, and shall include all items of fabrication, construction or installation regularly furnished or required for completion.
- All work shall be executed by skilled journeymen, laborers or mechanics thoroughly trained in their respective lines of work.
- When completed, all parts shall have been durably and substantially built and shall present a neat, workmanlike appearance.
30. **Site Investigation and Representations:** Contractor acknowledge satisfaction as to the nature and location of the WORK, the general and local conditions, particularly those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads, and uncertainties of weather, the conformation and condition of the ground, the character and quality and quantity of surface and subsurface materials to be encountered, the character of equipment and facilities needed preliminary to and during the progression of the WORK, and all other matters which can in any way affect the WORK or the cost thereof under this contract. Any failure by the Contractor to acquaint himself with all the available information concerning these conditions will not relieve him from the responsibility for estimating properly the difficulty or cost of successfully performing the WORK.
- The Town assumes no responsibility for any understanding or representation made by any of its officers or agents during or prior to the negotiation and execution of this contract, unless (1) such understanding or representations are expressly stated in the contract; and (2) the contract expressly provides that responsibility therefore is assumed by the Town.
31. **Contractor's Responsibility:** The Contractor assumes full responsibility for the safekeeping of all materials and equipment and for the protection of all unfinished WORK until final acceptance by the Town, and if any of it be damaged or be destroyed from any cause, he shall replace it at his own expense.

32. Use of Premises

- a. The Contractor shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits or directions of the authorized representative and shall not unreasonably encumber the premises with his materials.
- b. Any damages caused to sidewalks, driveways, fences, windows, buildings, etc., shall be immediately repaired or replaced at no expense to the Town. The Contractor shall be responsible for the proper care and protection of all his materials, equipment, etc. They may be stored on the premises but placement of items shall be subject to the approval of the Town Manager or designee.
- c. Access to the site and designation of parking areas for Contractor vehicles shall be provided by the Town and clarified at the pre-construction meeting.

33. Changes in Work

- a. The Town may, from time to time, by written instructions or drawings issued to the Contractor make changes in the drawings and specifications, issue additional instructions, require additional Work, or direct the omission of Work previously ordered, and the provisions of the contract shall apply to all such changes, modifications and additions with the same effect as if they were embodied in the original drawings and specifications.
- b. If such changes are likely to cause an increase or decrease in the Contractor's cost of, or time required for, performance of the contract, the Town will execute a formal Change Order based on detailed quotations received from the Contractor for the Work related to the change. Change Orders affecting contract amount or time are subject to approval by the Town Council or Town Manager.

34. Owners Right to Carry Out the Work: If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Town may, after seven (7) days written notice to the Contractor and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Town.

35. Removal of Rubbish and Final Clean up. The Contractor shall, at all times, keep the premises free from accumulation of waste materials or rubbish caused by his employees or Work. Upon completion of the Work under this contract, the Contractor shall remove all temporary structures, superfluous and waste materials of whatever kind both within buildings and around the site generally. The Contractor shall leave improvements and adjacent streets in a "broom clean" condition and shall be responsible for the removal of all stains, paint spots, and accumulated debris, dirt or dust caused by both his operation and those of his subcontractors.

36. Protection of Work, People and Property

- a. The Contractor shall continuously maintain adequate protection of all Work from damage including vandalism, and shall protect the Town's property from injury or loss arising in connection with this contract. He shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Town, or due to causes beyond the Contractor's control and not to his fault or negligence. He shall adequately protect adjacent property as provided by law and the Contract Documents.

37. Safety: The Contractor shall take all necessary precautions for the safety of employees on the work site, and shall comply with all applicable provisions of Federal, State and Municipal safety laws and

Engineering or Traffic codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.

38. **Cancellation:** The Town reserves the right to cancel the whole or any part of any resultant contract due to failure by the contractor to carry out any obligation, term or condition of any resultant contract. The Town will issue written notice to the contractor for acting or failing to act as in any of the following:

- a. The contractor provides material that does not meet the specifications of the contract;
- b. The contractor fails to adequately perform the services set forth in the specifications of the contract;
- c. The contractor fails to complete the work required or to furnish the materials required within the time stipulated in the contract;
- d. The contractor fails to make progress in the performance of the contract and/or gives the Town reason to believe that the contractor will not or cannot perform to the requirements of the contract.

Upon receipt of the written notice of concern, the contractor shall have ten (10) days to provide a satisfactory response to the Town. Failure on the part of the contractor to adequately address all issues of concern may result in the Town resorting to any single or combination of the following remedies:

- a. Cancel any contract;
- b. Reserve all rights or claims to damage for breach of any covenants of the contract;
- c. In case of default, the Town reserves the right to purchase materials, or to complete the required work. The Town may recover any actual excess costs from the contractor by:
 - i. Deduction from an unpaid balance;
 - ii. Collection against the bid and/or performance bond, or;
 - iii. Any combination of the above or any other remedies as provided by law.

39. **Performance and Payment bonds:** Contractor shall provide performance and payment bonds in the form and amounts required under A.R.S. § 34-221, et seq during the initial construction phase of the project.

40. **Specifications:** The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Work, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Work when and where appropriate and the Contractor shall fully comply therewith. Any questions or concerns the applicability of any specific MAG or Town Specification to the Work shall be directed in writing to the Town Engineer.

41. **Revisions to MAG Specifications:** The following special provisions modify the sections of the MAG Specifications.

Section 102.2: INTERPRETATION OF QUANTITIES IN PROPOSAL:

Add the following at the end of the section:

Notwithstanding any other provision in the Contract Documents, Contractor shall not be entitled to increase the unit prices on any basis, including increases, decreases or reallocation of any quantities, no matter what the quantum of the increase, decrease or reallocation may be.

Section 104.2 ALTERATION OF WORK:

Delete the second paragraph in Section 104.2.1 in total, and replace with the following:

No payment will be made for any changes in the Work, whether initiated by the Town, the Engineer, or the Contractor, unless and until a written change order has been fully executed and approved by the Town.

Delete Section 104.2.2 in its entirety.

In Section 104.2.3, delete the following from the first paragraph in Section 104.2.3:

"and payment will be made in accordance with the provisions set forth in Section 109."

Section 106.11 TERMINATION OF CONTRACT:

Add the following at the end of the first paragraph:

The Town may also terminate the Contract for its convenience without cause. Contractor shall only be entitled to payment for the actual costs of Work actually completed as of the date of termination, and no payment shall be due or made for any anticipated costs, profits, overhead or other costs not actually incurred, and no payment shall be paid for idle time or labor cost, legal or accounting charges, claim preparation charges, subcontractor costs, lost profits, general conditions or overhead, bidding and/or project investigation costs, acceleration or efficiency claims, or any other additional expense or claim related to the termination.

Section 109.4 COMPENSATION FOR ALTERATION OF WORK:

Before Section 109.4.1, add the following:

Any deduction or increase in the Contract Price must be supported by a signed, written change order fully executed by the Town, and supported by such backup as the Engineer, Project Manager, and the Town may require. No adjustments in any unit prices will be allowed.

Delete Sections 109.4.1(A) and (B) and 109.4.2(A) in their entirety.

Section 109.9 DOLLAR AMOUNT OF MAJOR ITEM:

Delete in its entirety.

Section 110.3 ADMINISTRATIVE PROCESS FOR DISPUTE RESOLUTION:

Delete the entire section after the first 2 paragraphs in Section 110.3.1.

Section 110.4 ARBITRATION:

Delete the entire section and replace with the following:

110.4 Resolution of Claims and Disputes Not Resolved Through "Initial Notification and Dispute Resolution":

1. **Mediation:** Any and all disputes and/or claims arising under or related to the Contract which are not resolved through the process provided under Section 110.2 shall be first submitted to mediation before a single mediator selected by the parties.
 - a. The mediation shall be commenced by written demand upon the other party for mediation. The mediation shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association ("AAA") currently in effect, but not administered or conducted by the AAA. If the parties cannot agree upon a mediator within ten (10) days of the written demand, either party may submit the mediation to the AAA, the AAA shall select the mediator, and thereafter the mediation shall be administered by the AAA which mediation shall be held in Queen Creek, Arizona. The mediation shall occur within thirty (30) days of the written demand for mediation, unless the parties agree, in writing, to a longer period of time.

- b. The qualifications for the mediator, whether selected by the Parties or the AAA, shall be that they be: (a) an experienced mediator, arbitrator or litigator of construction disputes; and (b) having engaged a significant portion of their time involving and/or resolving construction disputes for at least the past five (5) years.
 - c. Each party shall provide to the other party and the mediator, in writing, the following information and documentation, in detail: (i) the basis for the Claim; (ii) the effect of the Claim upon the construction of, and/or Project Schedule for, the Project; (iii) the specific relief requested, the amount thereof, and how such was calculated; (iv) the parties involved in the Claim, and how they are involved; (v) the specific contract provisions in the Contract Documents (including, if applicable, drawings and specifications) which apply; and (vi) efforts made to date to resolve the Claim, together with any additional information and documentation which the party believes relevant. In addition, the parties shall exchange, and provide to the mediator such additional memoranda, information and/or documentation, as the mediator may request, and in the form and at such times, as the mediator may direct.
 - d. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be specifically enforceable in any court having jurisdiction thereof.
2. Arbitration: If the mediation is unsuccessful, the parties shall submit the dispute and/or claim to be resolved through binding arbitration conducted according to the then current Construction Industry Arbitration Rules of the AAA, but not administrated or conducted by the AAA, which arbitration shall be held in Queen Creek, Arizona, utilizing a single arbitrator selected by the parties, unless the parties agree, in writing, to an alternative arbitration procedure.
- a. If: (a) the parties cannot agree on a single arbitrator within two (2) weeks of the demand for arbitration; or (b) the parties at any time prior to the arbitrator being appointed and the arbitrator has accepted the appointment, cannot agree upon any significant aspect of the arbitration, not already addressed herein, either party may submit the Claim directly to the AAA to select the Arbitrator, and thereafter the arbitration shall be administered by the AAA.
 - b. The arbitrator shall be an attorney with at least fifteen (15) years of experience in construction related practice, and whose practice, for at least the last five (5) years, consists of at least 50% construction law.
 - c. At the request of either party, the arbitration may include as parties, through joinder, consolidation or otherwise, additional persons or entities involved in the Project, involving claims and/or disputes with common issues and/or facts. The arbitrator shall promptly rule upon any request for joinder or consolidation.
 - d. In relation to claims in which the amount in controversy is less than \$250,000, no discovery other than exchange of documents, designation of witnesses and detailed disclosure of claims and defenses (including specifically a detailed basis for calculating all claims), and no more than 3 depositions and 1 expert per side, shall be allowed, subject to disclosure of such other information as approved by the arbitrator. Otherwise, discovery shall be allowed and/or limited as decided by the arbitrator.
 - e. The prevailing party in any arbitration or court proceeding under this Agreement shall be entitled to an award of its attorneys' fees, costs, and expenses (including expert witness fees) incurred.

- f. A demand for arbitration shall be made within the time limits specified in the Contract Documents as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.
- g. The Parties agree to participate as a party, by joinder and/or consolidation, in any arbitration, litigation, or other dispute resolution involving as an issue, claim, or defense, any action, inaction, or service provided under this Contract or in relation to the Project or the Work, or any defect or deficiency in the Work.
- h. The party filing a notice of demand for arbitration, or a counterclaim, must assert in the demand or counterclaim all Claims then known to that party on which arbitration is permitted to be demanded.
- i. Any award by the arbitrator shall not include any consequential or punitive damages.
- j. The award entered by the arbitrator shall be a reasoned award.
- k. The award entered by the arbitrator shall be final and judgment may be entered thereon in the Arizona Superior Court.

Section 110.5 DISPUTE REVIEW BOARD:

Delete in its entirety.

- 42. Compliance With Federal and State Laws:** Pursuant to the provisions of A.R.S. §41-4401, the Contractor warrants to the Town that the Contractor and all its subContractors are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Contractor acknowledges that a breach of this warranty by the Contractor or any of its subContractors is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Contractor or any subContractor who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Contractor and any of its subContractors to ensure compliance with this warranty.

The Town will not consider Contractor or any of its subContractors in material breach of the foregoing warranty if Contractor and its subContractors establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subContractors who provide services under this Contract or any subcontract. As used in this section "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

- 43. Prohibition of Doing Business With Sudan and Iran:** Pursuant to A.R.S. §§35-391.06 and 35-393-06, Contractor hereby certifies to the Town that Contractor does not have "scrutinized" business operations, as defined in A.R.S. §§35-391 and 35-393, in either Sudan or Iran. Contractor acknowledges that, in the event either of the certifications to the Town by Contractor contained in this

paragraph is determined by the Town to be false, the Town may terminate this Contract and exercise other remedies as provided by law, in accordance with A.R.S. §§35-391.06 and 35-393-06.

44. **Cooperative Use of Contract:** In addition to the Town of Queen Creek and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, Charter and/or procurement rules and regulations of the respective political entity.

45. **Work:** The Contractor shall, except as may be specified elsewhere in the Contract, furnish all necessary labor, materials, tools, supplies, equipment, transportation, supervision, management, and perform all operations necessary and required for survey, design, and construction work which will be defined and further described as to specific project requirement in each order/notice to proceed. Performance of the Work shall be undertaken only upon the issuance of an order/notice to proceed by Town.

46. **Final Completion:** Final completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a final completion inspection and acceptance by the Town. Final completion shall not be deemed to have occurred and no final payment shall be due the Contractor or any of its subcontractors or suppliers until the Work has passed final completion inspection and acceptance and all required final completion close-out documentation items have been produced to the Town by the Contractor.

47. **Contract Term:** The term of the Contract shall commence on the date it is executed by both parties and be in effect for one (1) year in accordance with the terms and conditions of this Contract. The term can be extended up to an additional four (4) years, the optional periods exercised in 12 month increments. This Contract will remain in full force and effect during the performance of any order for Work.

48. **Permits and Responsibilities:** Contractor shall be responsible for processing of drawings, for approval by appropriate oversight bodies, for obtaining any necessary licenses and permits, and for complying with any Federal, State and municipal laws, codes, and regulations applicable to the performance of the Work. Town will reimburse Contractor for the actual, documented costs of construction permits required for the performance of the Work. Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the Work, the workers, the public, and all property of others. Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire Work, except for any completed unit of Work which may have been accepted under the contract.

49. **Jobsite Superintendent:** During performance of an order and until the Work is completed and accepted, Contractor shall directly superintend the Work or assign a competent superintendent who will supervise the performance of work and is satisfactory to Town and has authority to act for Contractor.

50. **Traffic Regulations:** All traffic affected by this construction shall be regulated in accordance with the City of Phoenix-Traffic Barricade manual, latest edition, and the City of Phoenix in the Traffic Barricade Manual shall be referred to as the Town of Queen Creek Town Engineer for interpretation. The Contractor shall provide, erect and maintain all necessary flashing arrow boards, barricades, suitable and sufficient warning lights signals and signs, and shall take all necessary precautions for the protection of the work and safety of the public. The Contractor shall provide, erect and maintain acceptable and adequate detour signs at all closures and along detour routes. All barricades and signs used by the Contractor shall conform to the standard design, generally accepted for such

purposes and payment for all such services and materials shall be considered as included in the other pay items of the contract. It shall be the Contractor's responsibility to provide adequate personnel including flagmen to direct traffic safely. Contractor shall provide warning signs, barricades and verbal warnings as required.

51. **Safety:** Contractor shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 (OSHA), all applicable state and local laws, ordinances, and regulations during the performance of the Work. Contractor shall indemnify Town for fines, penalties, and corrective measures that result from the acts of commission or omission of Contractor, its subcontractors, if any, agents, employees, and assigned and its failure to comply with safety rules and regulations.
52. **Material, Equipment and Workmanship:** All equipment, material, and articles incorporated in the Work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract. References in the specifications to equipment, material, article, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Contractor may, at its option, use any equipment, material, article, or process that, in the sole judgment and prior written approval of the Town, is equal to that named in the specifications. All Work under the Contract shall be performed in a skillful and workmanlike manner.
53. **Inspection Systems:** Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work called for conforms to order requirements. Contractor shall maintain complete inspection records and make them available to Town. All work shall be conducted under the general direction of Town and is subject to inspection and test by Town at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of this Contract.
54. **Town Inspections and Tests:** Town inspections and tests are for the sole benefit of Town and do not: (i) Relieve Contractor of responsibility for providing adequate quality control measures; (ii) Relieve Contractor of responsibility for damage to or loss of the material before acceptance; (iii) Constitute or imply acceptance; or (iv) Affect the continuing rights of Town after acceptance of the complete work.
55. **Contractor Performance:** Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Town. Town may charge Contractor any additional cost of inspection or test when Work is not ready at the time specified by Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. Contractor shall, without charge, replace or correct Work found by Town not to conform to the order requirements, unless Town consents to accept the Work with an appropriate adjustment in Contract price. Contractor shall promptly segregate and remove rejected material from the premises.
56. **Failure to Replace or Correct Work:** If Contractor does not promptly replace or correct rejected Work, Town may: (i) By contract or otherwise, replace or correct the Work and charge the cost to Contractor; or (ii) Terminate for default Contractor's right to proceed.
57. **Contractor Insurance:** Contractor shall purchase and maintain in effect during the term of this Contract insurance of the types and with minimum limits of liability as stated in the attached **Exhibit "A"**: Insurance. Such insurance shall protect Contractor and Town from claims which may arise out of or result from Contractor's operations whether such operations are performed by Contractor or by a subcontractor or by anyone for whose acts any of them may be liable. The Contractor is primarily responsible for the risk management of its services and Work under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements

herein at any time during the Contract subject to at least 30 days written notice. The Contractor shall require any and all subcontractors to maintain insurance as required herein naming Town and Contractor as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provision of this Contract. To the extent permitted by law, Contractor waives all rights of subrogation or similar rights against Town, its representatives, agents, and employees. All insurance policies, except Workers' Compensation and Professional Liability required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, Town of Queen Creek, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

58. **Bonds:** If required by the Town, Contractor shall furnish Performance and Payment Bonds, each in an amount equal to one hundred percent (100%) of the Work, in a penal sum equal to the aggregate price of all Work issued to the Contractor. The Performance and Payment bonds must be submitted to Town prior to issuance of a Notice to Proceed.
59. **Notice to Proceed:** Notice to Proceed will not be issued until properly executed bonds and certificates of insurance are received and accepted by Town. No Work shall be started until after all required permits, licenses, and easements have been obtained. No Work shall be started until all applicable submittals have been submitted and returned approved by the Town's representative.
60. **Termination for Convenience:** Town may terminated performance of the work under this Contract in whole or, from time to time, in part if Town determines that termination is in Town's Interest. Town shall effect such termination by delivering to Contractor a Notice of Termination specifying the extent of termination and the effective date. After receipt of a Notice of Termination, and except as directed by Town, Contractor shall immediately proceed with the following obligations: (i) Stop work as specified in the notice; (ii) Complete performance of the Work not terminated; and (iii) Take any action necessary, or that Town may direct, for the protection and preservation of the property and work related to this Contract that is in possession or control of Contractor and in which Town has or may acquire an interest.
61. **Termination for Cause/Remedies:** Town reserves the right to terminate the contract or any part thereof for cause, upon such written notice as shall be reasonable in the circumstances. Cause as used herein shall include but not be limited to: (i) Contractor provides material that does not meet the specifications of this contract; (ii) Contractor fails to adequately perform the services set forth in this contract; (iii) Contractor fails to complete the work required or to furnish the materials required within the time stipulated in the contract; (iv) Contractor fails to make progress in the performance of the contract and/or gives the Town reason to believe that the Contractor will not or cannot perform to the requirements of the contract. In the event Contractor fails to address any issue of concern, the Town may, at its sole option, pursue one or more of the following remedies: (i) Cancel any contract; (ii) Reserve all rights or claims to damages for breach of any covenants of the contract; (iii) In case of default, Town reserves the right to purchase materials, or to complete the required work. The Town may recover any actual excess costs from the Contractor by deduction from an unpaid balance, collection against the bid and/or performance bid, or any combination of the above or other remedies as provided by law.
62. **Applicable Warranties:** In addition to any warranties in any order, Contractor warrants that work performed conforms to the contract requirements and is free of any defect in equipment, material or design furnished, or workmanship performed by Contractor or any of its subcontractors or suppliers at any tier. This warranty shall continue for a period of one (1) year from the date of final acceptance of the Work. If Contractor fails to remedy any failure, defect, or damage within ten (10) days after receipt of notice, Town shall have the right to replace, repair, or otherwise remedy the failure, defect

or damage at Contractor's expense.

63. **Legal Remedies:** All claims and controversies shall be subject to resolution according to the terms of the Town of Queen Creek Procurement Code.
64. **Liens:** All materials, service, work, and construction shall be free of all liens, and if the Town requests, a formal release of all liens shall be delivered to the Town.
65. **Cost of Bid:** The Town shall not reimburse the cost of developing presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.
66. **Public Records:** All offers submitted in response to this solicitation shall become the property of the Town and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the Town's Procurement Code.
67. **Orders for Work:** The Town shall issue a Purchase Order for the material and/or services covered by this contract. All such documents shall reference the contract number as indicated on the Offer and Contract Award.
68. **Funding:** Any contract entered into by the Town is subject to funding availability. Fiscal years for the Town are July 1 to June 30. The Town Council approves all budget requests. If a specific funding request is not approved, this contract shall be terminated.
69. **Governing Law:** This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both parties consent to jurisdiction and venue in such court for such purposes.
70. **Attorneys' Fees:** In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses (including expert witness fees), determined by the arbitrator or court sitting without a jury, which fees shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.
71. **Contract:** The contract between the Town and the Contractor shall consist of: (i) the Solicitation, including instructions, all terms and conditions, specifications, scopes of work, attachments, price sheet(s) and any amendments thereto, and (ii) the Offer submitted by the Contractor in response to the solicitation; and (iii) any resulting contract executed by the Town. In the event of a conflict in language between the Solicitation and the Offer, the provisions and requirements in the Solicitation shall govern. The resulting written contract executed by the Town shall govern in the case of a conflict with the applicable requirements in the Solicitation or the Contractor's Offer. The Solicitation shall govern in all other matters not affected by the resulting written contract.

SPECIAL TERMS AND CONDITIONS

1. **Basis for Payment:** Asphalt rejuvenating agent shall be paid for per square yard, which shall be full compensation for furnishing all materials, equipment, labor and incidentals to complete the work. The following items are incidental and included in the bid unit cost:
 - a. Sweeping
 - b. Sand
 - c. Residential Traffic Control
 - d. Residential Notification
 - e. On-site Superintendent
 - f. Ring testing

2. **Insurance:** The Town requires a complete and valid certificate of insurance prior to the commencement of any service or activity specified in this solicitation. The Town will notify the successful contractor(s) of the intent to issue a contract award. The successful contractor(s) shall at that time submit a copy of the insurance certificate for coverage with minimum amounts stated. The coverage shall be maintained in full force and effect during the term of the contract and shall not serve to limit any liabilities or any other contractor obligations. Insurance requirements are outlined in Exhibit A.

SCOPE OF WORK

1. Background:

The Town of Queen Creek is seeking bids from qualified contractors to perform a surface treatment on designated residential streets.

2. Proposed Work:

The work shall consist of, but not be limited to, furnishing all labor, material, and equipment to apply an asphalt rejuvenating agent and blotting sand to an existing asphaltic concrete surface. The rejuvenation of surface courses shall be by spray application of a cationic rejuvenating agent composed of petroleum oils and resins emulsified with water. All work shall be in accordance with the specifications and any applicable drawings.

a. Application

The Contractor's Project Superintendent, knowledgeable and experienced in the application of rejuvenating fog seals, must be on site during each day's work. The bidder shall submit in writing the experience of the Project Superintendent prior to beginning the project.

The Contractor shall apply the asphalt rejuvenating emulsion at the temperature recommended by the manufacturer. The asphalt rejuvenating agent shall be applied when the existing surface is thoroughly dry and when no rain is imminent. Application is restricted to when ambient temperatures are 40°F or greater.

The emulsion shall be applied so that uniform distribution is obtained. Areas missed shall receive additional treatment, possibly by hand sprayer application. The average rate of application will be 0.10 gallons per square yard, or as approved by the Town's Project Manager following a ring test.

Where more than one application is to be made, successive applications shall be made as soon as penetration is achieved by the first application.

After the rejuvenating agent has penetrated, a coating of dry sand shall be applied to the surface in a sufficient amount to prevent a slick surface to traffic upon opening the road. The sand used shall be free flowing, without any organic debris, dirt, stones, etc. Wet sand shall not be used.

b. Material Specifications

Each bidder must submit with his bid a certified statement from the asphalt rejuvenator manufacturer showing that the asphalt rejuvenator emulsion conforms to the required physical and chemical requirements listed below:

Tests	Test Method ASTM	Test Method AASHTO	Requirements Min.	Requirements Max.
Tests on Emulsion:				
Viscosity @ 25°C, SFS	D-244	T-59 (Mod)	15	40
Residue, % W ₁	D-244 (Mod)	T-59 (Mod)	60	65
Miscibility Test ₂	D-244 (Mod)	T-59 (Mod)	No Coagulation	
Sieve Test, % W ₃	D-244 (Mod)	T-59 (Mod)	-	0.1
Particle Charge Test	D-244	T-59	Positive	
% Light Transmittance ₄	GB	GB	-	30
Test on Residue from Distillation:				
Flash Point, COC, °C	D-92	T-48	198	-
Viscosity @ 60°C, cSt	D-445	-	100	200
Asphaltenes, %w	D-2006-70	-	-	1.00
Maltene Dist. Ratio	D-2006-70	-	0.3	0.6
PC + A15				
S + A2				
PC/S Ratios	D-2006-70	-	0.5	-
Saturated Hydrocarbons, S ₅	D-2006-70	-	21	28

1. ASTM D-244 Modified Evaporation Test for percent of residue is made by heating 50 gram sample to 149°C (300°F) until foaming ceases, then cool immediately and calculate results.
2. Test procedure identical with ASTM D-244-60 except that 0.02 Normal Calcium Chloride solution shall be used on place of distilled water.
3. Test procedure identical with ASTM D-244 except that distilled water shall be used in place of two percent sodium oleate solution.
4. Test procedure is attached.
5. Chemical composition by ASTM Method D-2006-70:

PC = Polar Compounds
A1 = First Acidaffins
A2 = Second Acidaffins
S = Saturated Hydrocarbons

c. Material Performance

The bidder must submit with his bid records of the product documenting at least three years of satisfactory service as an asphalt rejuvenating agent. Satisfactory service shall be based on the capability of the material to decrease viscosity and increase the penetration value of the asphalt binder as follows: the viscosity shall be reduced by a minimum of 45 percent and the penetration value shall be increased by a minimum of 25 percent. Testing shall be performed on extracted asphalt cement from the pavement to a depth of three-eighths inch (3/8").

d. Product Alternates

RECLAMITE®, manufactured by Tricor Refining, LLC, is a product of known quality and accepted performance, and is the standard for these specifications. The prices offered on the bid sheet shall be for this standard.

Bidders may offer an alternate for the standard under the following procedures:

1. List the proposed alternate on the BID SHEET form, including the product name and price. *May bid the preferred and/or alternate.* The Project Manager for the Town project will determine if the alternate is an acceptable alternative.
2. Furnish complete specifications and descriptive literature for the alternate and a one-gallon sample of the material proposed for use.
3. Submit a current Material Safety Data Sheet for the alternative materials.

Should the alternate offered be found unacceptable by the Town based on the material submitted with the bid, then the bid will be considered non-responsive. If no alternative is indicated on the bid sheet, the Contractor shall furnish the standard specified in this proposal.

e. Application Equipment

The distributor for spreading emulsion shall be self-propelled, and shall have pneumatic tires. The distributor shall be designed and equipped to distribute the asphalt rejuvenating agent uniformly on variable widths of surface, and with allowable variation from any specified rate not to exceed 5 percent of the specified rate.

Distributor equipment shall include full circulation spray bars, pump tachometer, volume measuring device and a hand hose attachment suitable for application of the emulsion manually to cover areas inaccessible to the distributor. The distributor shall be equipped to circulate and agitate the emulsion within the tank.

A check of distributor equipment, as well as application rate accuracy and uniformity of distribution shall be made when directed by the Town's project manager.

The truck used for sanding shall be equipped with a spreader that allows sand to be uniformly distributed on the pavement. The spreader shall be able to apply ¼ pound to 3 pounds of sand per square yard in a single pass. The spreader shall be adjustable so as to not broadcast sand onto driveways or lawns. Used sand may be disposed of at the Municipal Corp Yard, located at 22700 E. Queen Creek Road.

f. Testing

The Contractor shall furnish a quality inspection report showing the source, manufacturer, and date shipped, for each load of asphalt rejuvenating agent. When directed by the Town's Project Manager, the Contractor shall take a representative sample of material for testing.

g. Street Sweeping

The contractor shall be responsible for sweeping and cleaning the streets prior to, and after treatment. All sweepers must be PM-10 compliant and certified. Prior to treatment, the street will be cleared of all standing water, dirt, leaves, rocks, etc.

All blotting sand must be removed no later than 48 hours after application. This may be accomplished by means of both hand and mechanical sweeping. Street sweeping is included in the price offered per square yard for asphalt rejuvenating agent.

After the sand is swept, the street will be evaluated by the Town's project manager. If it is determined a hazardous condition exists as a result of inadequate surface friction, the contractor must immediately apply additional sand. Sweeping shall occur within 24 hours. No additional compensation will be allowed for reapplication and removal of sand.

h. Traffic Control

The Contractor shall be responsible for all traffic control and signing needed as indicated by the Town's traffic requirements and regulations. A traffic control plan (TCP) shall be submitted and approved prior to beginning project. The Town will notify the Sheriff and Fire Department of closures as needed.

The Contractor shall schedule his operations between the hours of 6:00am and 6:00pm. The actual application of the rejuvenating agent shall be after 8:30am and before 3:30pm. Treated portions of the pavement surfaces shall be kept closed and free from traffic until rejuvenator penetration is complete and the area is suitable for traffic. If a street must be kept open to facilitate traffic access to homes, the Contractor shall treat one lane at a time.

i. Resident Notification

The contractor shall distribute at each household a door hanger to all residences and businesses on the streets receiving an application. The notice will be delivered no more than 72 hours and no less than 24 hours prior to beginning work on that street. The notice shall contain the Contractor's contact information, explanation of the treatment, and the date of the work.

j. Method of Measurement

Asphalt rejuvenating agent will be measured by the square yard.

3. **Project Location(s):** Refer to Exhibit B for a complete map of the areas to be serviced.

4. **Bid Unit Cost:** Bid unit cost shall be inclusive of incidentals including the following, upon submission of the Vendor's bid document:

- a. Sweeping
- b. Sand
- c. Residential Traffic Control
- d. Residential Notification
- e. On-site Superintendent
- f. Ring testing

5. **Payment:**

Asphalt rejuvenating agent shall be paid for per square yard. Compensation shall include incidentals, listed above.

EXHIBIT A

INSURANCE REQUIREMENTS

A. Contractor shall obtain and submit to Town before any Work is performed, certificates from the Contractor's insurance carriers indicating the presence of coverages and limits of liability as set forth in the Contract Documents, but in no event shall the coverages and limits be less than those specified as follows:

1. Workers' Compensation:

Coverage A. Statutory Benefits.
Coverage B. Employer's Liability.

Bodily Injury by accident	\$1,000,000 each accident
Bodily Injury by disease	\$1,000,000 policy limit
Bodily Injury by disease	\$1,000,000 each employee

Coverage must include a Waiver of Subrogation endorsement.

Where applicable, U.S. Longshore and Harbor Workers Compensation Act Endorsement shall be attached to the policy.

2. Commercial Auto Coverage:

Auto Liability limits of not less than \$1,000,000 each accident, combined Bodily Injury and Property Damage Liability Insurance. Certificate to reflect coverage for "Any Auto" or "All Owned, Scheduled, Hired and Non-Owned".

If the Contract Documents require Contractor to remove and haul hazardous waste from the Project site, or if the Project involves such similar environmental exposure, pollution liability coverage equivalent to that provided under the ISO Pollution Liability-Broadened Coverage for Covered Autos Endorsement shall be provided, and the Motor Carrier Act Endorsement (MCS 90) shall be attached.

3. Commercial General Liability:

Each Occurrence Limit	\$1,000,000
Personal Injury/Advertising Injury Limit	\$1,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
General Aggregate Limit (other than Products/Completed Operations)	\$2,000,000

Coverage must include a Waiver of Subrogation endorsement.

Both policy forms must include:

1) Premises and Operations coverage with no explosion, collapse or underground damage (XCU) exclusions.

2) Products and Completed Operations coverage. Contractor agrees to maintain this coverage for a minimum of 10 years following completion of the Contractor Work and to continue to name Town as an Additional Insured for the entire 10-year period.

3) Blanket contractual coverage for the indemnity/hold harmless agreements assumed in this Subcontract and in the Prime Contract. Any Employee Exclusion will be deleted.

4) Broad Form Property Damage coverage, including completed operations or its equivalent.

5) An endorsement naming Town, any other party required to be named as an additional insured under the Contract Documents, and any other parties in interest as Additional Insured(s) under the coverage specified under Comprehensive General Liability or Commercial General Liability. The endorsement shall be on ISO forms CG2010B 11/85 or CG2026 11/85, or equivalent. Additional Insured Endorsements on both ISO forms CG2010 10/01 and CG2037 10/01 are acceptable. ISO forms CG2010A or CG2010B 10/93 and/or 3/97, or their equivalent, ARE NOT ACCEPTABLE. Any form that does not grant additional insured status for both the ongoing operations and products/completed operations coverages IS NOT ACCEPTABLE.

6) An endorsement stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) is primary and any other coverage maintained by such additional insured(s) shall be non-contributing with the coverage provided under this policy."

7) Coverage on an "Occurrence" form. "Claims Made" and "Modified Occurrence" forms are not acceptable.

8) Coverage to include general aggregate limits on a "per project" basis.

4. **Excess Liability:**

Umbrella Liability to extend the above liability coverages and limits to reach a total combined limit of:

Each Occurrence	\$1,000,000
Aggregate	\$2,000,000

5. **Errors & Omissions Liability** \$1,000,000

(Applicable any design/engineering services are part of Work)

Coverage provided must have no exclusion for design-build projects. Contractor must provide evidence of coverage for nine (9) years beyond completion of the Project.

Coverage Amount: \$1,000,000 per occurrence/aggregate, unless higher coverage limits are required under the Contract Documents, in which case such higher limits shall apply.

6. **Pollution Legal Liability** \$

(Applicable as to any pollutants or hazardous waste exposures as part of Work)

Contractor shall maintain insurance covering losses caused by pollution conditions (including mold) that arise from the Work.

7. **Other Requirements**

A. All policies must contain an endorsement affording an unqualified thirty (30) days notice of cancellation to the additional insured(s) in the event of cancellation, non-renewal or material reduction in coverage.

B. All policies must be written by insurance companies whose rating, in the most recent Best's Rating Guide, is not less than A. All coverage forms must be acceptable to Town.

C. Certificates of Insurance with the required endorsements evidencing the required coverages must be delivered to the Town prior to commencement of any Work. Failure of Town to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Town to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance. Town shall have the right, but not the obligation, to prohibit Contractor or any of its subcontractors from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Town.

D. Contractor shall be responsible to satisfy any deductible or self insured retention with respect to any of the coverages required by the Contract Documents.

E. Town reserves the right, in its sole discretion, to require higher limits of liability coverage if, in Town's opinion, operations by or on behalf of Contractor create higher than normal hazards and, to require Contractor to name additional parties in interest to be Additional Insureds.

F. In the event that rental of equipment is undertaken to complete and/or perform the Work, Contractor agrees that it shall be solely responsible for such rental equipment. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized persons.

G. In the event that materials or any other type of personal property ("personal property") is acquired for the Project or delivered to the Project site, Contractor agrees that it shall be solely responsible for such property until it becomes a fixture on the Project, or otherwise is installed and incorporated as a final part of the Project. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized persons.

H. Contractor shall maintain "all risk" insurance, on a replacement cost basis, covering loss or damage to personal property (for which it has title and/or risk of loss) which is to become a final part of the Project, during any time such personal property is in transit and while stored or worked upon away from the Project site. Town shall be named as additional insured under such insurance.

B. Town and Contractor waive all rights against each other and against Town, Architect/Contractor, and separate contractors for damages caused by fire or other perils covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance. Such insurance may be subject to an amount deductible from the sums otherwise payable thereunder and the burden of such deduction shall be borne by the party receiving the direct benefit of such insurance.

C. Unless otherwise provided, the Town shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builders risk "all-risk" or equivalent policy form in the amount of the initial contract sum, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. This insurance shall include interests of the Town, Contractor and its subcontractors in the Project, and shall include, without limitation, insurance against the perils of fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements. Contractor shall bear the responsibility for the deductible for such coverage when a loss affects the Work.

Such property insurance maintained by Town does not cover any tools or equipment owned or rented by Contractor including trailers, excavators, scaffoldings, or forms. Contractor is responsible for providing insurance coverage for such items

D. If the Contract Documents provide for an Town Controlled Insurance Program ("OCIP") which provides coverage for the Work, the Contractor shall comply with all provisions of any such OCIP.

Any additional provisions specific to the Project are attached. In the event of any conflict between the attached terms and the terms of this Exhibit, the Contractor shall comply with the more stringent provisions.

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
PAVEMENT RESTORATION, INC.**

**EXHIBIT B
Scope of Work**

PROJECT

SEE ATTACHED



PAVEMENT

RESTORATION INC.

August 12, 2016

OVERVIEW

PROJECT BACKGROUND

Pavement Restoration Inc. was contacted by Wade Ansell of Glendale, Arizona to provide a FORMAL QUOTATION FOR APPLICATION OF RECLAMITE ASPHALT REJUVENATOR and COS-50 HIGH DENSITY MATRIX COATING to provided maps (attached).

TURN-KEY PROJECT SCOPE

- A) PRI (Pavement Restoration, Inc.) will facilitate a pre-project meeting with all Glendale, Arizona personnel that would be associated with the project. PRI's on site project manager will discuss in detail, how the project will be completed.
- B) PRI will provide all needed traffic control. This will include flagman at intersections where work is being completed, all traffic cones, and all traffic signage needed to complete a timely and safe operation*.
- C) PRI will provide RECLAMITE ASPHALT REJUVENATOR. Reclamite will be applied at a field determined application rate. The rate of application will be determined by PRI's project manager, after an absorption ring test of RECLAMITE is performed on the street. The typical application rate is normally 0.06 to 0.10 per square yard.
- D) PRI will provide all needed equipment (i.e. Distributor, Sand Truck Spreader, Sweeper) to complete project.
- E) PRI will provide and apply wash concrete sand to roadway after the RECLAMITE has been absorbed into the existing asphalt binder. Sand will be applied by our sand truck spreader.
- F) PRI will sweep residual sand off roadway within 24 hours of application.
- G) PRI will have before and after street core samples taken 10 weeks after application, and submit the samples to an independent lab for analysis. PRI will deliver the results of the lab test to Glendale, Arizona personnel.

SPECIFIC EXCLUSIONS FROM SCOPE

1. No Exclusions for RECLAMITE project
2. COS-50 project does not require sanding or coring, so items E, F and G from scope are excluded

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
PAVEMENT RESTORATION, INC.**

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

Compensation per terms of Contract No. 2013-014.

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$126,296 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

See attached

RECLAMITE PROJECT COST (SEE PHOTO'S)

The above TURN KEY Project will be completed for a cost of \$ 1.10 per square yard. All items listed in Turn-Key Project Scope minus any specific exclusions are included in the square yard price.

- Area #1 89th Ave & Northern Ave. (see below)
 - all blue areas will be treated
 - all red areas will not be treated (comparison roads)
 - Private gated areas will not be treated

Estimated square yards 53,173

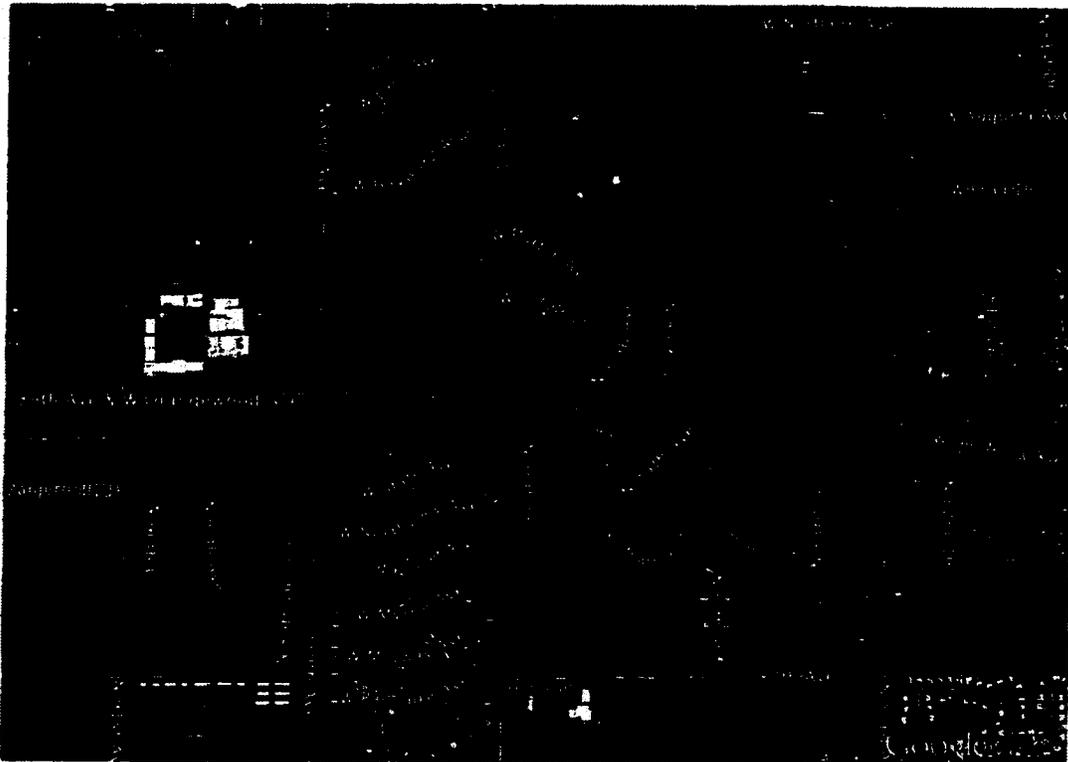
- Area #2 53rd Ave & Northern Ave. (see next page)
 - all blue areas will be treated
 - all red areas will not be treated (comparison roads)
 - Private gated areas will not be treated

Estimated square yards 53,009

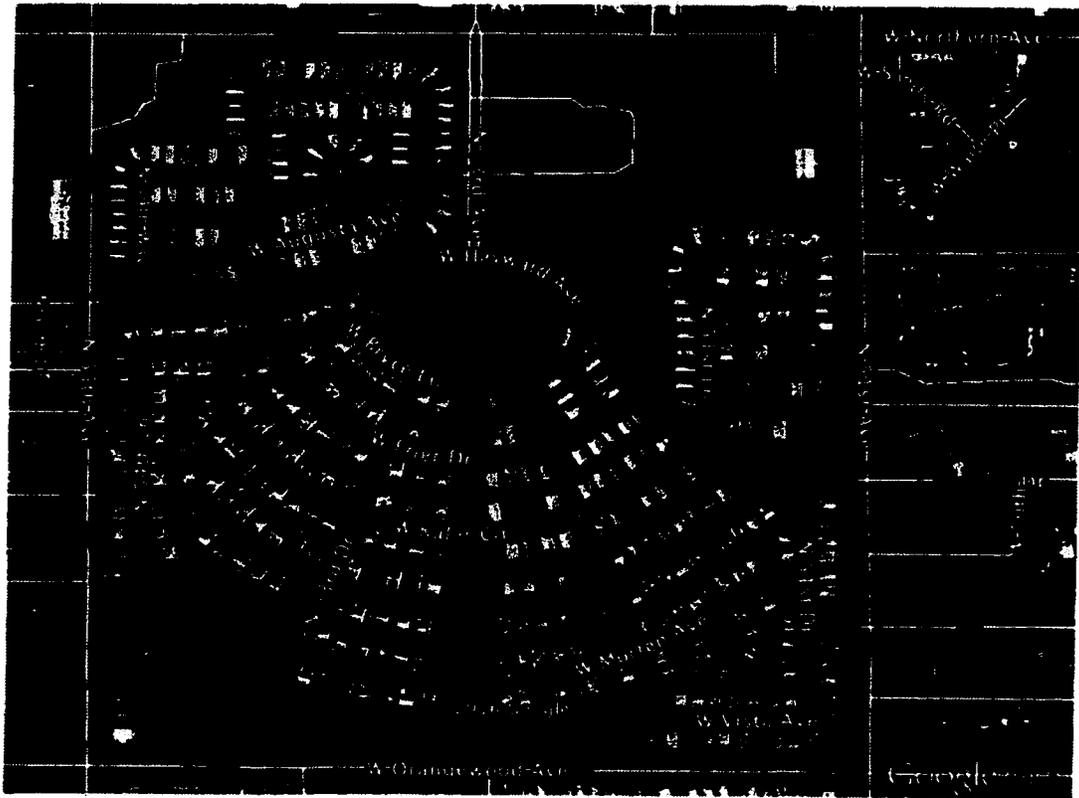
Total Estimated Square Yards: 106,182

Reclamite Total Estimated Cost @ \$1.10/yard: \$116,800

RECLAMITE AREA #1



RECLAMITE AREA #2



CONT. NEXT PAGE

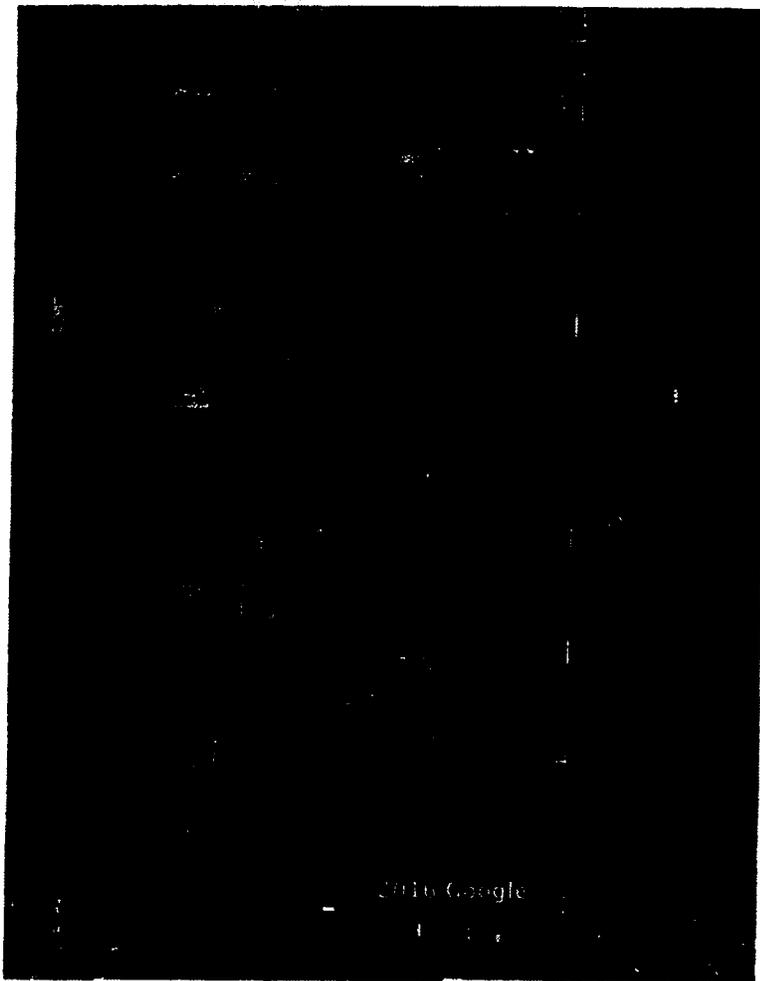
COS-50 PROJECT COST (SEE PHOTO)

The above TURN KEY Pilot will be completed for a cost of \$1.10 per square yard. All items listed in Turn-Key Project Scope minus any specific exclusions are included in the square yard price.*

- 87* Ave & Glendale (see below)
 - all blue areas will be treated

Estimated square yards 8,633

COS-50 Total Estimated Cost @ \$1.10/yard*: \$9,496



Total Project Estimated Cost \$126,296

NOTES

- All square yard estimates are approx.
- *Traffic control required beyond what is included in the turn-key project scope above, will be paid by Glendale, Arizona
- *COS-60 is priced at discounted pilot rate of \$1.10/yard. Future projects will be priced at \$1.30/yard.

Prepared By

Jonathan Kreibich

Pavement Restoration Inc.

602-526-2110

jon.paverestore@outlook.com



August 12, 2016
Date

Authorized Signature

Date

City of Glendale, Arizona

Project Approval

Please Write Name