



AGREEMENT PURSUANT TO SOLICITATION

**CITY OF MESA AGREEMENT 2020007
PAVEMENT PRESERVATION SERVICES (HIGH DENSITY MINERAL BOND)**

CITY OF MESA, Arizona (“City”)

Department Name	City of Mesa – Purchasing Division
Mailing Address	P.O. Box 1466 Mesa, AZ 85211-1466
Delivery Address	20 East Main St, Suite 400 Mesa, AZ 85201
Attention	Brandy Andersen, CPPB, MPA Procurement Officer
E-Mail	brandy.andersen@mesaaz.gov
Telephone	(480) 644-6426
Facsimile	(480) 644-2655

AND

HOLBROOK ASPHALT, LLC., (“Contractor”)

Mailing Address	3806 S. 16 th Street Phoenix, AZ 85040
Delivery Address	3806 S. 16 th Street Phoenix, AZ 85040
Attention	Aaron Eppley, Asset Preservation Consultant
E-Mail	aaron@holbrookasphalt.com
Telephone	435-703-0023
Facsimile	435-656-3943

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This agreement pursuant to solicitation ("Agreement") is entered into this 9th day of September 2019, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and Holbrook Asphalt LLC., a Utah company ("Contractor"). The City and Contractor are each a "Party" to the Agreement or together are "Parties" to the Agreement.

RECITALS

- A. The City issued solicitation number **2020007** ("Solicitation") for **PAVEMENT PRESERVATION SERVICES (HIGH DENSITY MINERAL BOND)**, to which Contractor provided a response ("Response"); and
- B. The City Selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/materials described in the Solicitation and Response.

In consideration of the reciprocal promises contained in the Agreement, and for other valuable and good consideration, which the Parties acknowledge the receipt and sufficiency of, the Parties agree to the following Terms & Conditions.

TERMS & CONDITIONS

- 1. **Term.** This Agreement is for a term beginning on **September 9, 2019** and ending on **June 30, 2022**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
 - 1.1 **Renewals.** On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) years. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.2 **Extension for Procurement Processes.** Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.3 **Delivery.** Delivery shall be made to the location(s) contained in the Scope of Work within **twenty-four (24) hours** after receipt of an order.
- 2. **Scope of Work.** The Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.

The Agreement is based on the Solicitation and Response which are hereby incorporated by reference into the Agreement as if written out and included herein. In addition to the requirements specifically set forth in the Scope of Work, the Parties acknowledge and agree that the Contractor

shall perform in accordance with all terms, conditions, specifications and other requirements set forth within the Solicitation and Response unless modified herein.

3. **Orders.** Orders be placed with the Contractor by either a: (i) Purchase Order when for a one-time purchase; (ii) Notice to Proceed, or (iii) Delivery Order off of a Master Agreement for Requirement Contract where multiple as-needed orders will be placed with the Contractor. The City may use the Internet to communicate with Contractor and to place orders as permitted under this Agreement
4. **Document Order of Precedence.** In the event of any inconsistency between the terms of the body of the Agreement, the Exhibits, the Solicitation, and Response, the language of the documents will control in the following order.
 - a. Agreement
 - b. Exhibits
 1. Mesa Standard Terms & Conditions
 2. Scope of Work
 3. Other Exhibits not listed above
 - c. Solicitation including any addenda
 - d. Contractor Response

5. **Payment.**

5.1 **General.** Subject to the provisions of the Agreement, the City will pay Contractor the sum(s) described in **Exhibit B** (“Pricing”) in consideration of Contractor’s performance of the Scope of Work during the Term.

5.2 **Prices.** All pricing shall be firm for the Term and all extensions or renewals of the Term except where otherwise provided in this Agreement, and include all costs of the Contractor providing the materials/service including transportation, insurance and warranty costs. No fuel surcharges will be accepted unless allowed in this Agreement. The City shall not be invoiced at prices higher than those stated in the Agreement.

The Contractor further agrees that any reductions in the price of the materials or services covered by this Agreement will apply to the undelivered balance. The Contractor shall promptly notify the City of such price reductions.

No price modifications will be accepted without proper request by the Contractor and response by the City’s Purchasing Division.

5.3 **Price Adjustment.** Any requests for reasonable price adjustments must be submitted in accordance with this Section 5.3. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. There is no guarantee the City will accept a price adjustment therefore Contractor should be prepared for the Pricing to be firm over the Term of the Agreement. The City is only willing to entertain price adjustments based on an increase to Contractor’s actual expenses or other reasonable adjustment in providing the services/materials under the Agreement. If the City agrees to the adjusted price terms, the City shall issue written approval of the change.

Price adjustments for line items that do not contain bituminous material, must go through the Purchasing Department. During the sixty (60) day period prior to the term Contract expiration, the Contractor may submit a written request to the City to allow an increase to the prices in an amount not to exceed the twelve (12) month change in the **Consumer Price Index for All Urban Consumers** (CPI-U), US City Average, All Items, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>). The City shall review the request for

adjustment and respond in writing; such response and approval shall not be unreasonably withheld.

If the price adjustment pertains to a line items that contains bituminous material The BMI will be monitored and adjusted by the City of Mesa's Financial Team per each invoice with a price adjustment as follows:

The term "bituminous material" as used herein shall include asphalt cement, liquid asphalt and emulsified asphalt.

The term "Initial cost" of bituminous materials as used herein shall mean the cost as determined by the ADOT Price Adjustment for Bituminous Material for the month bids are opened. See: <http://www.azdot.gov/highways/cns/bitmat.asp>.

The contract unit price for each item that contains bituminous material will be considered to include all costs of materials as required, including the "initial cost" of bituminous material. The initial cost of bituminous material will be based on the ADOT Monthly Index as follows:

The adjustment in compensation, either increase or decrease, for bituminous material will be based on the dollar amount change in the ADOT Monthly Index from the month in which the contract was bid compared to the month in which the material is used, on a calendar month basis. This adjustment will apply only to the amount of bituminous material used in the bid item and not to the overall unit cost. The amount of bituminous material in each bid item will be as follows:

MC's and liquid asphalt	100%
Terminal blend asphalt rubber	93%
Emulsions, Concentrate	60%
Diluted 2:1	40%
Diluted 1:1	30%

Additionally, the adjustment for compensation for bituminous materials will be based on the tons of bituminous material prior to dilution. This adjustment will apply to bituminous material only.

A sample of the formula is as follows:

$$(\$ \text{ amount change in ADOT index}) \times (\% \text{ of bituminous material}) + (\text{amount bid})$$

The bidder certifies in signing this bid that the price will be no higher than the lowest price the bidder charges other buyers for similar quantities under similar conditions.

No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response from the City's Purchasing division.

5.4 **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 1, pricing may be adjusted for amounts other than inflation that represent actual costs to the Contractor based on the mutual agreement of the parties. The Contractor may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the renewal period and may be adjusted thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

5.5 **Invoices.** Payment will be made to Contractor following the City's receipt of a properly completed invoice. No terms set forth in any invoice, purchase order or similar document issued by Contractor will be deemed accepted by the City; the terms of the contractual relationship between the Parties are as set forth in this Agreement. Any issues regarding billing or invoicing must be directed to the City Department/Division requesting the service

or material from the Contractor. A properly completed invoice should contain, at a minimum, all of the following:

- a. Contractor name, address, and contact information;
- b. City billing information;
- c. City contract number as listed on the first page of the Agreement;
- d. Invoice number and date;
- e. Payment terms;
- f. Date of service or delivery;
- g. Description of materials or services provided;
- h. If materials provided, the quantity delivered and pricing of each unit;
- i. Applicable Taxes; and
- j. Total amount due.

5.6 **Payment of Funds.** Contractor acknowledges the City may, at its option and where available use a Procurement Card/e-Payables to make payment for orders under the Agreement. Otherwise, payment will be through a traditional method of a check or Electronic Funds Transfer (EFT) as available.

5.7 **Disallowed Costs, Overpayment.** If at any time the City determines that a cost for which payment was made to Contractor is a disallowed cost, such as an overpayment or a charge for materials/service not in accordance with the Agreement, the City will notify Contractor in writing of the disallowance; such notice will state the means of correction which may be, but is not limited to, adjustment of any future claim/invoice submitted by Contractor in the amount of the disallowance, or to require repayment of the disallowed amount by Contractor. Contractor will be provided with the opportunity to respond to the notice.

6. **Insurance.**

6.1 Contractor must obtain and maintain at its expense throughout the term of Contractor's agreement, at a minimum, the types and amounts of insurance set forth in this Section 6 from insurance companies authorized to do business in the State of Arizona; the insurance must cover the materials/service to be provided by Contractor under the Agreement. For any insurance required under the Agreement, Contractor will name the City of Mesa, its agents, representatives, officials, volunteers, officers, elected officials, and employees as additional insured, as evidenced by providing either an additional insured endorsement or proper insurance policy excerpts.

6.2 Nothing in this Section 6 limits Contractor's responsibility to the City. The insurance requirements herein are minimum requirements for the Agreement and in no way limit any indemnity promise(s) contained in the Agreement.

6.3 The City does not warrant the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of performance under the Agreement by Contractor, its agents, representatives, employees, or subcontractor(s). Contractor is encouraged to purchase additional insurance as Contractor determines may be necessary.

6.4 Each insurance policy required under the Agreement must be in effect at or prior to the execution of the Agreement and remain in effect for the term of the Agreement.

6.5 Prior to the execution of the Agreement, Contractor will provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under the Agreement.

- 6.6 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder and/or an additional insured, Contractor agrees no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.
- 6.7 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.
- 6.8 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Management Division.
- 6.9 **Types and Amounts of Insurance.** Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:
- 6.9.1 Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.
 - 6.9.2 The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence/\$2 million aggregate Commercial General Liability insurance, including Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials or employees shall be named as additional insured, as evidenced by providing an additional insured endorsement.
 - 6.9.3 Automobile liability, bodily injury and property damage with a limit of \$1 million per occurrence including owned, hired and non-owned autos.
7. **Requirements Contract.** Contractor acknowledges and agrees the Agreement is a requirements contract; the Agreement does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the City identifies a need and issues a purchase order or a written notice to proceed. The City reserves the right to cancel purchase orders or a notice to proceed within a reasonable period of time of issuance; any such cancellation will be in writing. Should a purchase order or notice to proceed be canceled, the City agrees to reimburse Contractor for any actual and documented costs incurred by Contractor. The City will not reimburse Contractor for any avoidable costs incurred after receipt of cancellation including, but not limited to, lost profits, shipment of product, or performance of services.
8. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the Contractor as listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth the Mesa Standard Terms and Conditions that is attached to the Agreement as **Exhibit C**.
9. **Representations of Contractor.** To the best of Contractor's knowledge, Contractor agrees that:
- a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;
 - b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;

- c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and
 - d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.
10. **Mesa Standard Terms and Conditions.** Exhibit C to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.
11. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.
12. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.
- Exhibits to this Agreement are the following:
- o (A) Scope of Work / Technical Specifications
 - o (B) Pricing
 - o (C) Mesa Standard Terms and Conditions
 - o (D) Other
13. **Attorneys' Fees.** The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.
14. **Additional Acts.** The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.
15. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

RESPONDENT CERTIFICATION

By submitting the Response and signing this Certification, the Respondent understands and certifies to all of the following:

- a) The information provided in Respondent's Response is true and accurate to the best of Respondent's knowledge.
- b) Respondent is under no legal prohibition that would prevent Respondent from contracting with the City of Mesa.
- c) Respondent has read and understands the Solicitation packet as a whole (including attachments, exhibits, and referenced documents) and: (i) can attest that Respondent is in compliance with the requirements of the Solicitation packet; and (ii) is capable of fully carrying out the requirements of the Solicitation as set forth in Respondent's Response.
- d) To Respondent's knowledge, Respondent and Respondent's employees have no known, undisclosed conflicts of interest as defined by applicable law or City of Mesa Procurement Rules. If Respondent or Respondent employees have a known conflict of interest, Respondent has disclosed the conflict in its Response.
- e) Respondent did not engage in any anti-competitive practices related to its Response or the Solicitation. The prices offered by Respondent were independently developed without consultation or collusion with any other Respondents or potential Respondents.
- f) No gifts, payments or other consideration were made to any City employee, officer, elected official, agent, or consultant who has or may have a role in the procurement process for the services/materials covered by the Solicitation.
- g) Respondent grants the City of Mesa permission to copy all parts of its Response including, without limitation, any documents and materials copyrighted by Respondent: (i) for the City's use in evaluating the Response; and (ii) to be disclosed in response to a public records request under Arizona's public records law (A.R.S. § 39-121 et. seq.) or other applicable law, subpoena, or other judicial process provided such disclosure is in accordance with City of Mesa Procurement Rule 6.13.
- h) If a contract is awarded to Respondent as a result of the Response submitted to the Solicitation Respondent will:
 - i. Provide the materials or services specified in the Response in compliance with all applicable federal, state, and local statutes, rules and policies;
 - ii. Honor all elements of the Response submitted by Respondent to the City including, but not limited to, the price and the materials/services to be provided; and
 - iii. Enter into an agreement with the City based on the terms and conditions of the Solicitation and the Response, subject to any negotiated exceptions and terms.
- i) Respondent is current in all obligations due to the City including any amounts owed the City and any licenses/permits required for the general lawful conduct of business. Respondent shall acquire all licenses/permits necessary to lawfully conduct business specific to the Solicitation prior to the execution of a contract with the City pertaining to the Solicitation.
- j) The signatory of this Certification is an officer or duly authorized agent of Respondent with full power and authority to submit binding offers for the goods/services specified herein. Respondent intends by the submission of this Certification to be bound by the terms of the Certification, Solicitation, and Response, subject to any negotiated terms/exceptions.

ACCEPTED AND AGREED TO BY RESPONDENT:

Company Name: Holbrook Asphalt, LLC

Signature:  _____

Printed Name: CJDavis

Title: Vice President

Date: 7/30/2019

City Acceptance of Offer

The below document will be executed when Agreement is finalized and awarded.

ACCEPTANCE OF OFFER:

The offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract, including all terms and conditions, specifications, addenda, etc. This contract shall henceforth be referred to as Contract Number 2020007.

Awarded this ____ day of _____, 2019.

Edward Quedens, CPPO, C.P.M.
As Business Services Director

REVIEWED BY:  8/21/19

By: _____
Brandy Andersen, CPPB, MPA
Procurement Officer

**EXHIBIT A
SCOPE OF WORK**

1. **SCOPE OF WORK:** Contractor will provide Pavement Preservation (High Density Mineral Bond) services as identified in the Technical Specifications of this contract.

The estimated quantities listed herein are the minimum quantities for the first twelve (12) months. The quantities presented herein are an estimate of forecasted Pavement Preservation treatments and in no way are to be used as guaranteed amounts. It is to be understood that these amounts may change as the City determines the best means for its pavement preservation strategy.

This contract will be utilized by multiple agencies.

Contractor(s) must submit current test results with ninety (90) days of contract award. Test results shall be from an independent laboratory.

2. **ORDERING AND INVOICING INSTRUCTIONS:** Contractor will issue and deliver invoices and monthly statements separately for each agency. All invoices for the City of Mesa will include the following information to ensure prompt payment:

- a) Department Name (Transportation)
- b) Department Number (F350)
- c) A valid Purchasing Authorization Number (Master Agreement – MA, Delivery Order – DO, Purchase Order – PO, Service Contract – SC or Contract – CT)

All three (3) items above should be obtained from City Representative when the order is placed.

A City employee signature accompanied by the Employee ID number is required on all delivery tickets/slips at City yards to ensure proper receipt of goods.

Failure to comply with the above may result in delayed payment or non-payment of deliveries if City staff cannot figure out if or where the delivery was made.

Contractor will follow invoicing procedures unique to each agency that utilizes this contract.

TECHNICAL SPECIFICATIONS

1. **GENERAL CONSTRUCTION REQUIREMENTS:** The City will utilize the most current version of Maricopa Association of Governments (MAG): <http://azmag.gov/Programs/Public-Works/Specifications-and-Details> and/or City of Mesa Standards and Specifications <http://www.mesaaz.gov/business/engineering> for inspection and quality assurance of any work being done under this service agreement. In case of conflict between MAG and the specifications in this document, the specifications in this document will rule. It will be the responsibility of the Contractor to ensure that workmanship, materials, equipment, site preparation and all criteria included in this document meet or exceed these requirements. A City Representative will inspect all phases of work and any unsatisfactory work or preparation will be redone at no additional cost to the City. City Representative must give approval prior to continuing on to next work site.
2. **BUSINESS ACCESS REQUIREMENTS:** For all arterial and collector streets, Contractor will keep open access to adjacent businesses and residences at all times, unless otherwise approved in writing by a City Representative. Contractor will provide sand or lime water (per MAG Section 309) to prevent tracking. After stabilization of slurry material, all sanded areas will be swept thoroughly.
3. **LOCAL (RESIDENTIAL) ACCESS REQUIREMENTS:** For all residential streets, Contractor will maintain access to all areas receiving a pavement preservation treatment throughout the duration of the project. Access to homes and convenient parking must be considered when scheduling work in all residential areas. Under no circumstances will residents be denied reasonable access to their home and convenient exit/entrance to the area.
4. **ADVANCED WARNING SIGNS:** Advanced warning signs (48" x 48") will be placed on all arterial and collector streets or neighborhood entries receiving a surface seal coat, a minimum of one (1) week prior to application. Locations of the signs will be one-half (1/2) mile and one-quarter (1/4) mile prior to the last intersection of arterial streets and at **all residential entrances** preceding the limits of the surface seal project.

The sign can be temporary and movable and must read as follows:

**PAVEMENT PRESERVATION PROJECT
BY (COMPANY NAME)
COMPANY CONTACT INFORMATION
FROM (Date) TO (Date)
CONTRACTED BY THE CITY OF MESA**

When pavement preservation service is requested in residential areas the above advance warning signs must be placed at all entrances of affected neighborhoods. The dates will reflect the dates the application will take place in that area. A minimum of four (4) inch high letters will be used to make the sign. Letters will be black and placed on a construction orange background. Sign material will be reflectorized.

At the City's request, the Contractor will provide self-contained changeable message boards to announce that work in the roadway ahead is scheduled or is taking place. Contractor will be compensated for each unit at the daily rate in the bid schedule. See Paragraph 13.

5. **STOP WORK:** The City reserves the right to stop work under this service agreement at any time if, in their opinion:
 - a. Weather conditions become adverse for doing requested work;
 - b. Work quality is not acceptable;
 - c. Other conflicts in Contractor equipment or personnel cause delays in getting work completed;
 - d. Work schedule/location conflicts with other City activities.

6. **SCHEDULING OF WORK:** Work under this agreement is to be phased and quantities and areas are subject to change. All work under this agreement will be done solely at the discretion of the City. The Contractor will submit a proposed work schedule for City approval, prior to beginning any work on this service agreement.

All work schedules will be coordinated with, and approved by, a designated City Representative. After the work schedule is submitted, the Contractor must begin work and all work must be completed by the Contractor and accepted by the City within ten (10) working days, unless otherwise approved by a City Representative. The City understands that scheduling conflicts or unforeseen site conditions may require work schedule changes; however, **in all cases, schedule changes must be approved by City Representative.**

Typical sequence of work scheduling:

1. Contractor delivers work schedule to City Representative for approval. Residential area work schedules must be delivered at least one (1) week in advance of any work and must provide detail about all required permits, traffic control plan and parking for residents.
2. Contractor obtains tests and lays down (at a location determined by City Representative) sample application of materials. Approval of City Representative is required before any work begins in the work area.
3. Contractor completes notification process in accordance with Paragraph 11, Citizen Notification.
4. Contractor ensures all materials are available.
5. Contractor completes work in the area in accordance with the approved work schedule in Step 1 above. All material tickets must be delivered to City Representative on a daily basis.
6. Contractor completes sweeping/clean-up of the area and asks City Representative for inspection and approval of work.
7. Within twenty-four (24) hours, Contractor corrects all items noted by City Representative.
8. Based on the work area completed and agreed upon by the Contractor and City Representative, the City will send an invoice authorization.
9. Contractor sends an invoice to the City using the information provided in the invoice authorization in step 8 above.

Contractor will not work on any streets during any weekend or other non-workday unless approved by a City Representative.

7. **SITE CLEAN-UP:** Work site cleaning will be required daily to remove any debris caused by the pavement preservation operation or related activities. All unit bid prices will include clean-up within the pavement preservation application. No additional compensation will be allowed for the satisfactory completion of this item.

8. **WORK AREA:** The City may provide a yard or location for Contractor material staging under this agreement.

NOW, THEREFORE, in consideration of the mutual promises and conditions hereinafter contained, the parties to this Agreement agree as follows:

- 8.1 **Use:** The City hereby grants Contractor the permission to use the Premises as a construction staging area for the storage of equipment and/or supplies, and for no other use, for the purpose of completing pavement preservation projects assigned by the City of Mesa.

WHEREAS, Contractor desires to use the Premises for a staging area, and City agrees to permit such use, as long as said contractor provides and maintains the surface of the Premises in a manner that will prevent measurable dust emissions and track out.

- 8.2 **Nuisance Prohibited:** Contractor will not use the Premises in any way which would create, or cause to be created, nuisances or hazards to the public health or safety and also not to use or permit any use of the Premises for any illegal or immoral purposes and to comply with all State laws or local ordinances concerning the Premises or use thereof. Contractor agrees that the use of the Premises will be conducted in such a manner so as to ensure the quiet enjoyment of the neighboring properties.

- 8.3 **Maintenance:** Contractor will, at their own expense, maintain the Premises in a neat, clean and orderly condition, and not permit debris to accumulate at any time. Contractor will, at their own expense, repair any damage to the Premises. Contractor will, at their own expense, provide for weed control within the Premises.

- 8.4 **Improvements:** Contractor will have the Premises fenced with temporary fence and screening prior to occupation of the Premises. Contractor will not make any additional temporary or permanent improvements, additions or alterations to the Premises, unless prior approved in writing by City. Contractor will, at their own expense, remove any such improvements, additions or alterations after termination of this Agreement. Any improvements installed on the Premises will in no way encroach, hinder, or impede traffic, vehicular or pedestrian, on the public right of way.

- 8.5 **Compliance with Laws:** Contractor will comply with all applicable laws, ordinances and regulations, which in any manner affect their use of the Premises or their performance under this Agreement.

- 8.6 **Independent Contractor:** Contractor will not, at any time, purport to act as an agent for the City or any of its officers or agents.

- 8.7 **City Right to Enter:** City will have the right, at all times, to enter upon the Premises. City will have the right, at all times, to inspect the Premises to see if the terms of this Agreement are being complied with.

9. **LOCATION OF WORK:** During the term of this contract, Contractor will be required to apply a pavement preservation seal on streets within the boundaries of the City of Mesa.

The order in which the Contractor will complete the work will be at his discretion and as shown on the Contractor's approved schedule of work. The Contractor will complete all work in each individual area prior to moving to the next area, including final inspection and completing all punch list items as approved by City Representative.

Note: The City reserves the right to change locations, size of area, and order of work or total area square yardage.

10. **SAFETY:** Safety vests or high visibility clothing must be worn by Contractor employees at all times while performing work under this contract.

Contractor will adhere to all regulations, rules, ordinances, and standards set forth by Federal, State, County, and City of Mesa governments when providing these services. Contractor will be responsible for the training and instruction of all workers, employees and subcontractors on all required job safety standards and traffic safety. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures and other activities used to ensure compliance.

Contractor will be responsible for providing and for the placement of barricades, tarps, plastic, flag tape and any other safety/traffic control equipment, within their work sites, required to protect its employees, the public, surrounding areas, equipment and vehicles. The flow of vehicular traffic will not be impeded at any times during this project without the prior approval of the City. Contractor will notify the City, in writing, whenever any violation, citation or warning is received for noncompliance in any safety or health related issue while providing these services.

11. **CITIZEN NOTIFICATION:** Contractor will notify the property owners, tenants, post office, mass transit authorities and any other parties which may be affected, in writing and distribute the notice at least forty eight (48) hours prior, and no earlier than seventy two (72) hours prior, to doing any work on or in front of any driveway or for any street restrictions that will affect access to their property. Contractor will provide copies to City Representative for notification of City departments, such as Environmental Management and Sustainability, Police, and Fire Departments. The notification will be for the purpose of allowing the referenced parties to remove any vehicles, reschedule routes, etc. as required, prior to construction and should specify the length of time the driveway and/or street will be out of service. For residential streets, the notification will include where temporary parking is available and will not be permitted during the affected time. Alternate access will be provided as directed by City Representative at no additional cost to the City.

If there are any delays in the construction, property owners and other affected entities will be notified of the delays and then re-notified of the new schedule. Re-notification will also be done in writing and at least forty-eight (48) hours prior, and no earlier than seventy-two (72) hours prior, to doing any construction work in the notification area. All costs incurred for notification will be provided at no additional cost to the City.

Contractor will respond to all customer/citizen calls or complains resulting directly or indirectly from this project within two (2) hours of receipt and will resolve any issue within forty-eight (48) hours. This will be done at no additional cost to the City.

Contractor will resolve all complaints regarding sealant tracking on driveways and is responsible for cleaning all driveways to the satisfaction of the resident and City Representative. This will be done at no additional cost to the City. During resolution of these complaints, City Representative will be present. City Representative will be notified within twenty- four (24) hours of all complaints received.

The City of Mesa will furnish a notification template that will be used to notify residents and businesses.

It is the Contractor's responsibility, at no additional cost to the City, to assure that property owners are notified, de-notified and re-notified in writing, if changes in work schedule become necessary.

12. **TEMPORARY TRAFFIC CONTROL (TTC) PERMIT:** All persons, Contractors, utilities, and other agencies including City departments must obtain a TTC permit if they are to restrict access (partial or complete closures) on public streets, sidewalks, bike lanes, alleys or other public facility except as noted in the City of mesa Temporary Traffic Control Rules and Procedures. The permit authorizes restrictions to be in place as specified on the permit but does not guarantee the

requester exclusive rights to occupy a particular portion of the public right-of-way. Weather, emergencies, incidents, or other projects and special events might require rescheduling of activities. The City will attempt to identify all known potential conflicts so they can be resolved cooperatively among those involved.

Unless otherwise exempted by the TTC Rules and Procedures, TTC permits are required for restrictions on local streets as well as on collector and arterial streets. In the case of unplanned restrictions due to emergencies, notify Transportation as soon as practical at 480-644-4TTC (4882).

Applications may be submitted in person, via fax, or email (email submittal button at the end of application form).

In Person: Mesa Transportation, 300 E. 6th Street, Monday-Thursday 7:00 AM to 6:00 PM

By Fax: 480-644-3130 Attention: Traffic Barricade Coordinator

By Email: Email completed application form to barricade@mesaaz.gov

Please refer to the City of Mesa web site for complete details:

<https://www.mesaaz.gov/residents/transportation>

13. **CHANGEABLE MESSAGE BOARD:** At the request of City Representative, Contractor will supply changeable message boards. Prices will include transport to and from job site and all required maintenance during the requested time period. The board will meet or exceed the following specifications:
- Will be a complete and operational portable unit which will consist of a wheeled trailer with an adjustable, changeable message board, board message controller and a self-contained power supply.
 - The power supply for the changeable message board will be a fully independent self-contained trailer-mounted system. The power supply will be batteries which are recharged from a solar panel mounted above the changeable message board.
 - The changeable message board will have three (3) lines of copy with a minimum of eight (8) characters per line.
 - The programmable message board will be capable of displaying moving arrow patterns as one of the operator-selected programs. The programmable message board will be capable of displaying a minimum of three (3) lines of message copy.
 - The message board will be clearly visible and legible from a distance of eight hundred (800) feet under both day and night conditions.
14. **ADOT INTERSECTION PROCEDURES:** All work for intersecting ADOT street segments require special work phasing, permits and traffic control. **All additional costs associated with these areas will be included in the contract price and no additional compensation will be approved by the City.**
15. **TRAFFIC CONTROL AND BARRICADES:** All costs for traffic control and barricades for all activities/repairs **will be included in the bid price for those items.**

Contractor will comply at all times with the City of Mesa Traffic Barricade Manual for those portions of this project that are inside the City limits. The cost for any damage to traffic signal equipment (loop detectors, pull boxes, conduit, etc.) is the Contractor's responsibility. All repair work will be done by Contractor at his own expense to the satisfaction of the City of Mesa Traffic Signal Group. Copy of standards may be obtained from the Building Safety Division.

Contractor will furnish or arrange for the rental of all signs, cones, and other traffic control devices and all equipment necessary for the control of traffic. No additional payment will be made to the Contractor other than what is provided for in this contract. Sidewalks and other pedestrian walkways will not be restricted unless otherwise approved by City Representative.

During non-peak hours, one (1) traffic lane in each direction on arterial or collector streets and left turn lanes at major intersections will remain open. **Left turns may be prohibited only as directed by City of Mesa Representative.**

During the peak hours of 6:30 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m. there will be no work on arterial streets and all existing traffic lanes will remain open. During the peak hours, collector streets will remain open as described below:

- At intersections, a minimum of one (1) through-lane will be open to traffic on both the approach and departure sides, and a minimum of one (1) left turn lane will remain open on each approach to the intersection. Left turns may be prohibited as directed by City Representative.
- On collector and residential streets, a minimum of one (1) traffic lane will be open to traffic in each direction.

The Contractor will arrange his schedule so that the work complies with the time restrictions outlines above, unless otherwise approved in writing by City Representative. Any barricades or signs restricting flow in the open traffic lanes of arterial and collector streets will be removed by 4:00 p.m.

The following requirement applies to all streets (residential, collector, arterial and intersections):

The Contractor will submit a certification statement signed by the Contractor and the barricade subcontractor stating that they certify and warrant that the barricades will be erected and maintained in compliance with the barricade manual.

The Contractor will employ a "designated" person who will be responsible for ensuring that all barricades, signs, barricade lights, signals, and other traffic control devices are established and maintained in strict compliance with the City of Mesa Traffic Barricade Manual and the contract requirements. The designated person will:

- Inspect all barricading and traffic control devices on a regular, recurring basis and submit a daily (including weekends and holidays) report, in writing, to Representative of such inspections the next workday;
- Ensure that existing City-owned traffic signals do not conflict with barricades and signs or give misleading signals to pedestrians and motorists. They will immediately bring conflicting conditions to the attention of City Representative. Representative will coordinate with the City's Traffic Signals Group for any required changes to traffic signal sequencing, timing, or outages;
- Ensure that flagmen, when employed, are trained in accordance with the O.S.H.A. regulations (29 CFR 2926.201 Signaling) and;
- Immediately respond to call-outs by City Representative or Base Operations; cooperate with Police or Fire Department Investigators; and, on their own responsibility, re-establish barricades and traffic control devices, as necessary.

Contractor will certify, by letter, that the designated person has read and will comply with the requirements of the City of Mesa Traffic Barricade Manual. The Safety Certification letter will be

provided to the City at the pre-construction conference. The Safety Certification should include the name of the “designated” person, the name of the “competent” person (if different from the designated person), telephone numbers where they can be reached twenty-four (24) hours a day, and any restrictions or limitations on their duties and authorities.

Costs incurred by the requirements of this section will be included in the bid items listed on the Pricing Sheet (**listed as Attachment A**). No additional payment will be made for barricades, other traffic control devices, salaries, or other work or materials required by this section.

16. **POLICE OFFICER:** In accordance with the City of Mesa Barricade Manual, a uniformed, off-duty, City of Mesa Law Enforcement Officer is required at major intersections and other locations where restrictions are present. In these cases, City of Mesa Officers will be given the first opportunity to fulfill this requirement. If City of Mesa Officers are not available, other jurisdiction’s officers may be used. The Contractor is responsible for making all arrangements with the City for these services if required. **No reimbursements will be made for this service and costs shall be included in the unit bid price(s).**
17. **TEMPORARY PAVEMENT MARKINGS:** Temporary pavement markers must be installed when existing pavement markings are to be eradicated. The temporary pavement markers must be installed on the existing surface and exposed after the new pavement preservation seal has been applied. Makers will comply with ADOT Standard Specifications 701-2.05 and ADOT Standard Drawing M-20, “L” Design.

<https://www.azdot.gov/business/ContractsandSpecifications/Specifications>.

Unless otherwise specified by City Representative, spacing will be forty (40) feet. Temporary pavement markings must be included in the bid price(s).

18. **RESTRIPING:** Restriping of the pavement may be requested by the City after the roadway has been sealed.
- 18.1. **Mainline (Longitudinal) Pavement Markings:** Markings or striping which are typically installed or at a fairly rapid speed using a mainline truck that has a driver and operator(s). The types of markings to be installed or removed will include lane lines, center lines, edge lines, gore lines and storage lines. All mainline waterborne paint installation shall be fifteen (15) wet mils with eight (8) pounds per gallon of glass bead.
- 18.2. **Shortline (Transverse) Pavement Markings:** Markings or striping that is typically installed using a walk behind hand cart, a handheld sprayer, or torched onto the pavement. The types of markings installed include crosswalks, intersection Page 11 of 33 MRM Construction Services, Inc. Contract #2018194 guide lines, stop bars, bike markings, legends, arrows, raised curb painting and railroad markings. Pavement letters or numbers will include up to four (4) letters or numbers per unit (ONLY, 202N, etc.). All Shortline waterborne paint installation of line, symbol or curb will be installed at fifteen (15) wet mils with eight (8) pounds per gallon of glass bead. It will be the responsibility of the Contractor to provide shortline symbols.
- 18.3. **Approved Product List:** The following materials are approved for use for mainline and shortline markings and reflect the minimum standard to be used:
- Paint: EF series High Build Fast Dry Waterborne 985221 (White) 985222 (Yellow) or approved equal.
 - Glass Beads: Type 1, ADOT standard specification section 708 glass bead
- 18.4. **Appearance, Width and Placement of Markings:** The finished mainline pavement marking will have well defined edges and be free from waviness that is noticeable to users of the

roadway as judged by the City. Lateral deviation of the line will not exceed one (1) inch in one hundred (100) feet. Painted lines will be four (4) or eight (8) inches wide as directed by City specifications, with a tolerance of plus/or/minus one eighth (1/8) inch and will be placed at a minimum rate of sixteen (16) gallons per mile for a solid four (4) inch line and four (4) gallons per mile for a broken four (4) inch line based on a ten (10) foot stripe and a thirty (30) foot gap (40 foot cycle aggregate). The length of a painted segment and gap will not vary more than six (6) inches in a forty (40) foot cycle. When are placed over existing pavement markings, unless otherwise directed by the City, the new pavement marking will accurately overlay the existing pavement markings. The finished Shortline pavement marking line will have well defined edges and be free from waviness that is noticeable to users of the roadway as judged by the City. After application and sufficient drying time, the markings will show no appreciable deformation or discoloration under local traffic conditions in an air and/or road temperature ranging from - 10° to + 180°F. When markings are placed over existing pavement markings, unless otherwise directed by the City, the new pavement markings will accurately overlay the existing pavement markings. Overlaying of existing legend and symbols will match the existing markings within one-half (1/2) inch.

- 18.5. Inspection and Quality Assurance: The City will be using the most current version of the Maricopa Association of Governments (MAG) Uniform Standard Specifications and Details for Public Works and/or City of Mesa Standards and Specifications for inspection and quality assurance of all work. Contractor will be responsible for ensuring all workmanship, materials, equipment, and site preparation meets or exceeds these requirements. The City Representative will inspect all phases of work and any unsatisfactory work or preparation will be redone at no additional cost to the City.
- 18.6. Method of Measurement: All work will be based on actual linear feet of pavement marking and rounded to the nearest whole foot using conventional rounding methods. The installation of pavement marking lines will be measured by the linear foot along the center line of the pavement marking line (or stripe). No measurement will be made of gaps (e.g. area of no marking) between the dashed lines. Contractor will submit a detailed account for each road segment. Account will provide detailed information on the amount of pavement marking material (by type) that was applied.
19. **INSPECTION/QUALITY ASSURANCE:** The City will designate a Representative assigned to this project that will inspect and make final approval of all completed work. Upon request by the City, Contractor shall furnish City Representative with material samples for testing.
20. **PROTECTION OF EXISTING SERVICES:** Contractor will take all necessary precautions to prevent slurry seal or other material used on the work from entering or adhering to all storm sewer gratings, valve boxes, manhole, etc. A squeegee method will not be permitted. Immediately after surfacing, Contractor will clean off any such material and leave any such grating, manholes, etc. in a satisfactory condition.
21. **WORK CREW SUPERVISION:** Contractor will provide qualified supervision of each crew at all times while performing work under this contract. Each supervisor must be able to converse in the English language and shall be authorized by the Contractor to accept and act upon all directives issued by the City. Failure for the supervisor to act on said directives shall be sufficient cause to give notice that the Contractor is in default of the contract unless such directives would create potential personal injury or safety hazards or are contrary to the intent of these specifications.

Contractor will provide a cellular telephone for the Contractor's on-site supervisor and/or foreman. Contractor will be responsible for payment of all phone charges. All communication equipment shall be maintained in proper working condition at all times.

22. **MEASUREMENTS:** All work by Contractor will be inspected and approved by City Representative prior to processing any pay request. Payment will be based on unit bid price and the total quantity of each bid item satisfactorily and completed and measured jointly by City Representative and Contractor (to the nearest whole square yard using conventional rounding methods). Any questions relating to measurements will be resolved prior to invoice submittal. The City will endeavor to make payment for approved work within thirty (30) business days of being submitted.

23. **CONTRACTOR PERFORMANCE:** The City's Representative or other authorized representative will decide all questions arising as to the quality and acceptability of any work performed under this contract. If, in the opinion of the City's Representative, performance becomes unsatisfactory, the City will notify the Contractor. In the even the unsatisfactory performance is not corrected within the time specified by the City Representative, the City will have the immediate right to complete the work to its satisfaction and will deduct the cost to cover any balances due or to become due the Contractor. Repeated incidents of unsatisfactory performance may result in cancellation of the agreement for default.

For example, if the Contractor fails to complete the Citizen Notification in the required time frame, the City may choose to notify the Contractor of the violation by email or verbally. Additional violations of the same requirement may result in a formal notice to cure the unsatisfactory performance. Continued violations of the same or similar contract requirement may result in additional formal actions up to and including contract termination.

24. **PERMITS:** Contractor is advised that a variety of permits may be needed to perform this work, including but not limited to dust control permit as required by the Maricopa County Environmental Service Department and/or City, County and ADOT barricade and traffic control permits. It will be Contractor's sole responsibility to obtain these permits and all other permits and approvals needed to complete the work and comply with its requirements. If any permit is required for the work, Contractor will provide a copy of a dust or traffic control plan for work under this agreement to City Representative prior to the start of work.

TECHNICAL SPECIFICATIONS (HIGH DENSITY MINERAL BOND)

SEAL COATS

- HIGH DENSITY MINERAL BOND

1. HIGH DENSITY MINERAL BOND:

1.1 Material Specifications:

A. Asphalt Binder:

Emulsified Asphalt: inorganic, non-ionic, thixotropic mineral colloid at twenty-five (25) degrees C that meet the following requirements:

Table 1 – Emulsion Properties			
Criteria	Standard	Min	Max
Brookfield Viscosity @ 77Deg F (spindle 5,20 rpm) cPs	ASTM D 2196	11,000	20,000
pH	ASTM E 70	5.0	7.5
Density, lbs/gal	AASHTO T 59	8.5	9.0
Asphalt Cement Content, % by weight	ASTM D 2172	45	50
Solids Content, % by weight	AASHTO T 59	50	54
Ash Content, % by weight	AASHTO T 111	4.0	6.0

B. Aggregate:

Clean and free from organic matter and other detrimental substances. Composed of sand, clay, slate and conundrum. Properties of slate and corundum as follows:

Table 2 – Slate			
Physical Properties			
Criteria	Standard	Min	Max
Specific Gravity	ASTM C 128	--	2.7
Compression, psi	ASTM C 170	11,000	--

Table 3 - Corundum			
Physical Properties			
Criteria	Standard	Min	Max
Specific Gravity	ASTM C 128	3.9	--
Knoop 100 Hardness	ASTM D 1326	2,000	--
Ball Mill Friability (14 grit)	ASTM B 74.8	--	50

C. Additives:

1. Water is Clean, non-detrimental, and free from salts and contaminant.
2. Polymers and other additives are necessary to achieve mix design performance.

D. Mix Design:

Completed high density mineral bond materials, prior to being loaded for install, must meet the following requirements:

Table 4- Mix Properties			
Criteria	Standard	Min	Max
Asphalt Content, % by weight	D 2172	17	20
Solids Content, % by weight	D 1644	55	63
Initial Brookfield Viscosity @ 77 deg F (Spindle 4, 20 rm), cPs	D 2196	5,500	9,000
Ash Content, % by weight	T 111	38	--
Ash Content of Solids, % by weight (a)	T 111	65	--
Density, lbs/gal	T 59	11	--
pH	E 70	6.0	8.0
Total Inorganic Aggregate Content, % by weight (b)	T 111	37	--
Total Sand Content, % by weight		1.0	6.0
Maximum VOC, g/L	D 3960	0	5
Resistance to Re-emulsification	D 2939	No Re-emulsification	
Wear Resistance, % loss by weight (c)	D 2486	--	4
Notes:			
(a) Ash content as a percentage of solids content.			
(b) Ash content of completed mix minus ash content of base non-ionic emulsion. Total inorganic aggregate content is defined as slate, refined corundum, and sand.			
(c) ASTM D 2486 (Modified): Prepare sample at 48 wet mills on glass panel. Dry at 77 deg F for three (3) days. Immerse in water for 34 hours at 77 deg F. Test scrub resistance with 1,000 gram brush for 12,000 cycles. Report percent of dry film lost.			

1.2 Construction Equipment:

A. Use a continuous flow mixing unit:

1. Capable of applying at least fifteen thousand (15,000) square yards of material per day.
2. Equipped with full sweep agitation system to assure proper suspension of fine aggregates.
3. Equipped with an operator control station that adjust material spread rate in accordance with project calibration process.
4. Equipped with a filtering system to catch particles that plug nozzles.
5. Equipped with a retractable spray bar capable of applying mixture without drilling. The bar should be positioned to meet the calibration requirements.

B. Storage Tanks

1. When delivering mix from the central mixing plant to a job site storage tank, use only storage tanks with a capacity to contain entire transport load.
2. Ensure that all site storage tanks have internal full sweep mixing mechanisms and mixing capability that can provide at any given point in the tank homogenous mix.

1.3 Preparation:

- ### A. Calibration:
- On a test strip at least three hundred (300) feet long, determine the correct pump settings, spray bar height, and ground speed for the application equipment.

Apply material with pump settings at eighty (80) percent of maximum output (plus or minus five (5) percent) and at a ground speed of three hundred (300) to four (400) hundred feet per minute.

1. Do not begin or continue application without the City's knowledge of the calibration process and settings.
2. Do not deviate from calibration settings without the City's knowledge.

B. Surface repairs: to be determined on an as needed basis.

B. Masking: Mask-off street fixtures, end of streets and intersections.

C. Traffic Control:

1. Implement traffic control plan requirements in association with the City's traffic control protocols. Provide safe passages for pedestrians and vehicles.
2. If existing markings and stripes are to be reestablished, use reflective tabs to mark existing locations before applying surface treatment materials, cost to be included in the unit bid price(s).

D. Cleaning:

1. Remove loose material, mud spots, sand, dust, oil, vegetation, and other objectionable materials.
2. Do not flush water or apply pressurized water over cracked pavement unless the City allows its use and there is sufficient time to allow to dry.

1.4 Protection:

A. Trees, plants, and ground cover:

1. Protect trees, plants and other ground cover from damage
2. Prune trees to allow equipment passage underneath. Repair tree damage at no additional cost to the City.

B. Protect structures, curb, gutter, sidewalks, guardrails, guide posts, etc. from physical damage.

1.5 Application:

A. This contract will be bid by a per coat basis

B. Two separate application coats are required. The first application must be thoroughly set and free from damp areas before the second application begins.

C. Spreading:

1. Keep material delivery at constant rate even if forward speed of lay-down machine varies.
2. Do not reduce application rate along edges or around manhole covers.
3. Apply both applications right to the edge of pavement. Do not leave uncovered areas near curbs, street fixtures, or edges on either application.

4. Make straight lines at all locations.
 5. Place product out of right-of-way line on side streets and intersections.
 6. Use hand squeegees to spread mix in areas that cannot be reached with distribution spray bar.
 - a. Provide complete and uniform coverage.
 - b. Avoid unsightly appearance from hand work.
- D. Joints:
1. Make transvers joints straight-cut butt type, not overlap type.
 2. Place longitudinal joints on lane lines. Limit overlap to three (3) inches maximum.
 3. Stop and correct operation of longitudinal or transvers joints that have uncovered areas or unsightly appearance.
- E. Tolerances:
1. First application: **0.20 gallons per square yard minimum.**
 2. Second application: **0.16 gallons per square yard minimum.**
- F. Field Quality Control:
1. Emulsion density testing, AASHTO T 59. If testing shows material non-compliant, remove installed product and halt operations until new material is delivered and is known to be in compliance.
 2. Measure the total amounts of material installed and verify if it meets the application rate.

1.6 After Application:

- A. Raise reflective tabs that were covered over by application
- B. Clean street fixtures
- C. Do not apply permanent pavement markings or striping until at least ten (10) days after application of material. Layout must be approved by the City.
- D. Repair
 1. Remove delaminated or non-compliant product found after installation and apply acceptable product.
 2. Remove spatter, marks and overcoat from curb, gutter, sidewalk, guardrails, guide posts, etc.
 3. Remove overcoat from street fixtures.
 4. Make edge and end lines straight.
 5. Leave no streaks, holes, bare spots, or cracks through which liquids or foreign matter could penetrate to the underlying pavement.
 6. Repair collateral damage caused by construction.
- H. Opening to Traffic
 1. Cure time depends on type of asphalt, mixture characteristics and weather. Keep traffic off surface until material does not track.

Exhibit B

PRICING

Pursuant to all the contract specifications enumerated and described in this Solicitation; Respondent agrees to furnish **Pavement Preservation Services (High Density Mineral Bond)** to the City of Mesa at the price(s) stated below.

High Density Mineral Bond					
Item No.	Description	Unit of Measure	Unit Price	Estimated Annual Quantity	Total Price
1	High Density Mineral Bond (Standard 2 Coat Process per Technical Specifications) - material, application, traffic control and mobilization (Maricopa County)	Square Yard	\$ 1.80	250,000	\$ 450,000.00
2	High Density Mineral Bond (Maintenance Coat - Only 1 application) - material, application, traffic control and mobilization (Maricopa County)	Square Yard	\$ 1.26	250,000	\$ 315,000.00
Total Bid Price:					\$ 765,000.00
3	Additional mobilization charge for Northern Arizona (North of Maricopa County) *This is the price per mobilization. Actual mobilization may vary throughout the term of the contract.	Per	\$ 9,500.00	1	\$ 9,500.00
4	Additional mobilization charge for Southern Arizona (South of Maricopa County) *This is the price per mobilization. Actual mobilization may vary throughout the term of the contract.	Per	\$ 9,500.00	1	\$ 9,500.00

Additional items the City of Mesa May require during this contract for traffic control and pavement markings.

Changeable Message Board	Week	\$ 504.38
Temporary Pavement Markers	Each	\$ 2.00
Four (4) inch wide striping, traffic paint white or yellow	LF	\$ 0.42
Eight (8) inch wide striping, traffic paint white or yellow	LF	\$ 0.84
Stop bar eighteen (18) inch wide striping, traffic paint white	LF	\$ 3.13
Crosswalk, twelve (12) inch wide striping, traffic paint white or yellow.	LF	\$ 2.19
Cross hashing, chevron striping, eight (8) inch wide, traffic paint white	LF	\$ 1.56
Arrows and bike markings striping, traffic paint white	Each	\$ 218.75

The City will add any applicable sales tax or use tax. Sales/Use taxes should not be included in the bid prices. Vendors who will be charging a Mesa Transaction Privilege Tax (TPT) will have a 2.00% removed from the taxable item(s) for the purpose of award evaluation (i.25).

DELIVERY: See Mesa Standard Terms and Conditions.

Vendor Name: HOLBROOK ASPHALT CO.
7/15/19

Date: JULY 30, 2019

RFB # 2020007

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees, not City employees. Accordingly, Contractor and Contractor's employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.
2. **SUBCONTRACTING.** Contractor may not subcontract work under this Agreement without the express written permission of the City. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of this Agreement be incorporated therein.
3. **ASSIGNMENT.** This Agreement may not be assigned, either in whole or in part, without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right, at its option, to terminate the Agreement. No granting of consent to any assignment will relieve Contractor from any of its obligations and liabilities under the Agreement.
4. **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
5. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or will create, any benefits, rights, or responsibilities in any third parties.
6. **NON-EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.
7. **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Contractor.
8. **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.
9. **COMPLIANCE WITH APPLICABLE LAWS.**
 - a. **General.** Contractor must procure all permits/licenses and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve compliance throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.
 - b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified

in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- i. As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter collectively the "Contractor Immigration Warranty").
 - ii. A breach of the Contractor Immigration Warranty will constitute a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - iii. To ensure Contractor and its subcontractors are complying with the Contractor Immigration Warranty, the City retains the legal right to conduct random verification of the employment records of any Contractor or subcontractor employee who works on this Agreement, including the inspection of the papers of such employees. Contractor agrees to assist the City in regard to any random verification performed.
 - v. Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274a and 274b of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).
- d. **Nondiscrimination.** Contractor understands and acknowledges that it is the policy of the City of Mesa to promote non-discrimination. As such, Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, national origin, age, disability, religion, sex, sexual orientation, gender identity and expression, veterans' status, marital status, or genetic information, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. In performance under this Agreement, Contractor and Contractor's personnel will comply with applicable provisions of the following laws (as amended): Title VII of the U.S. Civil Rights Act of 1964, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*), and any other applicable non-discrimination laws and rules.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. § 35-392, Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods or services to the City.
- f. **Israel Boycott Divestments.** In accordance with the requirements of A.R.S. § 35-393.01, if the Agreement requires Contractor to acquire or dispose of services, supplies, information technology or construction, then, by entering into this Agreement, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Agreement to not engage in, a boycott of Israel.

10. **SALES/USE TAX, OTHER TAXES.**
 - a. Contractor is responsible for the payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's services under this Agreement including, by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees, as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City, or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, then Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.
 - b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.
11. **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations, whether or not related to the Agreement, due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.
12. **PUBLIC RECORDS.** Contractor acknowledges that the City is a public body, subject to Arizona's public records laws (A.R.S. § 39-121 *et seq.*) and any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.
 - a. If Contractor believes documents related to the Agreement contain trade secrets or other proprietary data, Contractor must have notified the City pursuant to Mesa Procurement Rules Section 2.1 or notified the City with a notification statement specifically identifying the trade secrets or other proprietary data that Contractor believes should remain confidential.
 - b. In the event the City determines it is legally required to disclose pursuant to law any documents or information Contractor deems confidential trade secrets or proprietary data, the City, to the extent possible, will provide Contractor with prompt written notice by certified mail, fax, email or other method that tracks delivery status of the requirement to disclose the information so Contractor may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for Contractor to seek court ordered protection or other legal remedies as deemed appropriate by Contractor. If Contractor does not obtain such court ordered protection by the expiration of said time period, the City may release the information without further notice to Contractor.
13. **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for six (6) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.
14. **BACKGROUND CHECK.** In accordance with the City's current background check policies, the City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement who will have access to the City's information, data, or facilities. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.
15. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any

reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.

16. **DEFAULT.**

- a. A party will be in default of the Agreement if that party:
 - i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
 - ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
 - iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or
 - iv. Fails to carry out any term, promise, or condition of the Agreement.
- b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
- c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party will provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default, unless the default is of a nature that it is reasonably anticipated to affect the health, safety or welfare of the public and, in such an event, the non-defaulting party may require a minimum seven (7) days to cure the default from the date of receipt of the notice; the cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement. Failure of the defaulting party to cure the default will entitle the non-defaulting party to the election of remedies specific to the party as set forth in section 17 below.
- d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event demand is made and no written assurance is given within ten (10) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement entitling the City to terminate the Agreement in accordance with section 17(a) below.

17. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:

- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
- b. The City may purchase the services or materials required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price in the Agreement, the City may recover the excess cost by: (i) requiring immediate reimbursement by the Contractor to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as permitted by law. Costs in this Subsection (b) include any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement including, but not limited to, administrative expenses, attorneys' fees, and costs.
- c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.

- d. Neither party will be liable for incidental, special, or consequential damages.
18. **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.
19. **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement, in part or in whole, for its sole convenience upon thirty (30) calendar days' written notice. Contractor acknowledges that, as with any termination permitted under this Agreement, in the event of a termination for convenience, Contractor is only entitled to payment in accordance with section 22 (Payment to Contractor Upon Termination); Contractor will not be entitled to any anticipated lost profits had the Agreement been performed to completion.
20. **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.
21. **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.
22. **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement for any reason, Contractor will be entitled only to payments authorized under the Agreement for those services performed or materials provided in accordance with the Agreement up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.
23. **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this Agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
24. **INDEMNIFICATION; LIABILITY.**
- a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold harmless the City, its elected officials, agents, representatives and employees (collectively, including the City, "City Personnel") from and against any and all liabilities, demands, claims, suits, penalties, obligations, losses, damages, causes of action, fines or judgments of any kind, including costs, attorneys', witnesses' and expert witnesses' fees, and expenses incident thereto (all of the foregoing, collectively "Claims") imposed upon or asserted against City Personnel by a third party relating to, arising out of or resulting from, in whole or in part: (i) services or materials provided under this Agreement by Contractor or its officers', agents', or employees' (collectively, including Contractor, "Contractor Personnel"); (ii) negligent acts, errors, mistakes or omissions of Contractor Personnel; or (iii) failure of Contractor Personnel to comply with or fulfill the obligations established by this Agreement. Contractor's indemnification, duty to defend and hold harmless City Personnel in this Subsection (a) will apply to all Claims against City Personnel except Claims arising solely from the negligence or intentional acts of City Personnel.
- b. The City assumes no liability for the actions of Contractor Personnel and will not indemnify or hold Contractor Personnel or any third party harmless for Claims relating to, arising out of or

resulting from, in whole or in part, this Agreement or use of Contractor Personnel-provided services or materials.

25. **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workman-like and professional manner. The City's acceptance of services or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If the City reasonably determines any materials or services are of a substandard or unsatisfactory manner, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction.

Unless otherwise agreed, Contractor warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and will perform in accordance with manufacturer's published specifications.

26. **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property and will, at the City's request and expense, furnish to the City reasonable assistance and cooperation in obtaining recovery, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City.
27. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees: (i) it is not entitled to deliver any specific amount of materials or services, or any materials or services at all, under this Agreement; and (ii) the materials or services will be requested by the City on an as needed basis, at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.
28. **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.
29. **USE OF NAME.** Contractor will not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.
30. **PROHIBITED ACTS.** Contractor acknowledges the applicability of A.R.S. § 38-504 which prohibits a person who, within the preceding twelve (12) months, is or was a public officer or employee of the City from representing another person (including Contractor) before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment by a substantial and material exercise of administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such person in the course of his or her official duties at the City.
31. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
32. **RISK OF LOSS.** Contractor agrees to bear all risk of loss, injury, or destruction of Contractor's goods or equipment incidental to Contractor providing the services and materials under this Agreement and such loss, injury, or destruction will not release Contractor from any obligation hereunder.
33. **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage or loss to City real or personal property when such property is the responsibility of or in the custody of **Contractor or its personnel.**

34. **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided and that the City may use same without suit, trouble or hindrance from Contractor or third parties.
35. **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the warranty in section 34, Contractor will without limitation and at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five (5) years, plus any additional costs the City may incur to acquire substitute supplies or services.
36. **CONTRACT ADMINISTRATION.** The contract will be administered by the applicable Purchasing Officer and/or an authorized representative from the using department (collectively "Contractor Administrators"); all questions regarding the Agreement will be referred to the Contract Administrators. If authorized by the Contract Administrators, supplements or amendments may be written to the Agreement for the addition or deletion of services. Payment will be negotiated and determined by the Contract Administrators.
37. **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will, within five (5) calendar days of the unforeseeable circumstance, notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.
38. **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Under the SAVE Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

The City currently holds or may enter into Intergovernmental Governmental Agreements (IGA) with numerous governmental entities. These agreements allow the entities, with the approval of Contractor, to purchase their requirements under the terms and conditions of this Agreement.

A contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis at an individual school shall obtain a valid fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. A school district governing board shall adopt policies to exempt a person from the requirements of this subsection if the person's normal job duties are not likely to result in independent access to or unsupervised contact

with pupils. A school district, its governing board members, its school council members and its employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

Additionally, Contractor will comply with the governing body's fingerprinting policy of each individual school district and public entity. Contractor, subcontractors, vendors and their employees will not provide services on school district properties until authorized by the school district.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City is not responsible for any disputes arising out of transactions made by others.

39. **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.
40. **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be sent via personally delivery, certified or registered mail with postage prepaid, overnight courier, or facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier, or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.
41. **GOVERNING LAW, FORUM.** This Agreement is governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit, in law or equity, arising from or incident to this Agreement will be Maricopa County, Arizona.
42. **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.
43. **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a **part of this Agreement as if fully stated herein.**
44. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
45. **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.
46. **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to A.R.S §§ 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract or loan) must demonstrate his or her lawful presence in the United States. As this Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes if applicable.

47. **AUTHORITY.** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each is properly authorized and empowered to enter into the Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.
48. **UNIFORM ADMINISTRATIVE REQUIREMENTS.** By entering into this Agreement, the Contractor agrees to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. § 200 et seq.
49. **PCI DSS Compliance.** In the event any Contractor engages in payment card transactions as a part of the services provided to the City, Contractor shall comply with the Payment Card Industry Data Security Standards (“PCI DSS”) and any amendments or restatements of the PCI DSS during the Term of this Agreement. Contractor accepts responsibility for the security of the City’s and/or any customer’s credit card data in its possession, even if all or a portion of the services to City are subcontracted to third parties.