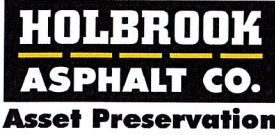


**Pavement Maintenance FY25 Summary  
Holbrook Asphalt Inc.**

<b>Project Material Application</b>	<b>Quote</b>
Residential Microseal Application	\$284,971.38
Residential Mill & Overlay	\$87,226.97
Residential HA5 Seal Coat Application	\$687,061.67
Collector Street HA5 Seal Coat Application	\$270,304.37
Contingency	\$20,435.61
<b>TOTAL</b>	<b>\$1,350,000.00</b>

\*Contract #PW23-RFQ-JOC01



**Project Location**  
 City of El Mirage  
 10355 N 121st Ave  
 El Mirage AZ 85335

**Proposal #** HAA244254  
**Date Issued** 5/9/2024  
**PO/LD #**

**Terms**  
 Due Upon Completion

**Adviser Information**  
 Justin Holbrook  
 P: 602-377-5406 | E: justin@holbrookasphalt.com

**Description**  
 2024 HA5 - Residential

**Bill To**  
 City of El Mirage  
 c/o: Public Works  
 Attn: Cason Chambers  
 10355 N 121st Ave  
 El Mirage AZ 85335

Item	Quantity	UM	Rate	Amount
<b>SECTION 1 (Montecito Estates)</b>				
<b>Microseal</b> Sweep and clean Surface. Supply and Place a Type II Slurry seal surface @ 15-18 lbs per SQ. YD. No guarantee pavement preservation materials will adhere to areas saturated with motor oil. Type I, II and III Slurry applications are useful tools for pavement maintenance when used on the right surface, at the right time. However, there are some noticeable side effects that accompany this application.	25,023	SqYd	5.462	136,675.63
<b>Paint/Stripe</b> All Stripes, Symbols and Painting to follow existing pattern on pavement. Pricing is based on work being completed in one day (one mobilization). *Restripe over the Microseal.	1	Ea	1,315.00	1,315.00
<b>SECTION 2 (Thompson Ranch Estates)</b>				
<b>Microseal (red areas on map)</b> Sweep and clean Surface. Supply and Place a Type II Slurry seal surface @ 15-18 lbs per SQ. YD. No guarantee pavement preservation materials will adhere to areas saturated with motor oil. Type I, II and III Slurry applications are useful tools for pavement maintenance when used on the right surface, at the right time. However, there are some noticeable side effects that accompany this application.	27,980.33	SqYd	5.30	148,295.75
<b>Paint/Stripe (Over Microseal - red areas on map only)</b> All Stripes, Symbols and Painting to follow existing pattern on pavement. Pricing is based on work being completed in one day (one mobilization).	1	Ea	1,210.00	1,210.00
<b>1.5" Mill &amp; Overlay (blue areas on map)</b> Asphalt profile 2 areas, totaling approx. 2,855.22 sqYds. Clean and prepare Surface. Apply one coat SS1-H Emulsion Tack Coat. Install and Compact 1.5 inches Hot Mix Fiber-Reinforced Asphalt. Adjust 3 man-hole asphalt to surface elevation and incase in concrete collars. *Locations: 2 cul-de-sacs (NB Cir & NA Ct)	2,855.22	SqYd	30.55	87,226.97
<b>HA5 (all of Section 2)</b> Clean & prepare surface using high pressure air & wire bristle brooms. Install "HA5" High Density Mineral Bond advanced performance pavement preservation treatment. No guarantee surface treatments will adhere to areas saturated with motor oil. HA5 meets demands of High Density Mineral Bond Specification established by agency engineers.	53,873	SqYd	2.50	134,682.50
<b>Paint/Stripe (Over HA5 - all of Section 2)</b> All Stripes, Symbols and Painting to follow existing pattern on pavement. Pricing is based on work being completed in one day (one mobilization).	1	Ea	1,845.00	1,845.00
<b>SECTION 16 (Sundial I)</b>				



**Project Location**

City of El Mirage  
10355 N 121st Ave  
El Mirage AZ 85335

**Proposal #**

HAA244254

**Date Issued**

5/9/2024

**PO/LD #**

**Terms**

Due Upon Completion

**Adviser Information**

Justin Holbrook  
P: 602-377-5406 | E: justin@holbrookasphalt.com

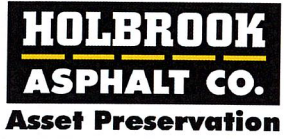
**Description**

2024 HA5 - Residential

**Bill To**

City of El Mirage  
c/o: Public Works  
Attn: Cason Chambers  
10355 N 121st Ave  
El Mirage AZ 85335

Item	Quantity	UM	Rate	Amount
<b>HA5</b> Clean & prepare surface using high pressure air & wire bristle brooms. Install "HA5" High Density Mineral Bond advanced performance pavement preservation treatment. No guarantee surface treatments will adhere to areas saturated with motor oil. HA5 meets demands of High Density Mineral Bond Specification established by agency engineers.	55,532	SqYd	2.50	138,830.00
<b>Paint/Stripe</b> All Stripes, Symbols and Painting to follow existing pattern on pavement. Pricing is based on work being completed in one day (one mobilization).	1	Ea	1,190.00	1,190.00
<b>SECTION 17 (Sundial II)</b>				
<b>HA5</b> Clean & prepare surface using high pressure air & wire bristle brooms. Install "HA5" High Density Mineral Bond advanced performance pavement preservation treatment. No guarantee surface treatments will adhere to areas saturated with motor oil. HA5 meets demands of High Density Mineral Bond Specification established by agency engineers.	43,860	SqYd	2.50	109,650.00
<b>Paint/Stripe</b> All Stripes, Symbols and Painting to follow existing pattern on pavement. Pricing is based on work being completed in one day (one mobilization).	1	Ea	1,190.00	1,190.00
<b>SECTION 21 (Sundial III)</b>				
<b>HA5</b> Clean & prepare surface using high pressure air & wire bristle brooms. Install "HA5" High Density Mineral Bond advanced performance pavement preservation treatment. No guarantee surface treatments will adhere to areas saturated with motor oil. HA5 meets demands of High Density Mineral Bond Specification established by agency engineers.	42,717	SqYd	2.50	106,792.50
<b>Paint/Stripe</b> All Stripes, Symbols and Painting to follow existing pattern on pavement. Pricing is based on work being completed in one day (one mobilization).	1	Ea	1,535.00	1,535.00
<b>SECTION 22 (Grande Mirage)</b>				
<b>HA5</b> Clean & prepare surface using high pressure air & wire bristle brooms. Install "HA5" High Density Mineral Bond advanced performance pavement preservation treatment. No guarantee surface treatments will adhere to areas saturated with motor oil. HA5 meets demands of High Density Mineral Bond Specification established by agency engineers.	38,863	SqYd	2.50	97,157.50
<b>Paint/Stripe</b> All Stripes, Symbols and Painting to follow existing pattern on pavement. Pricing is based on work being completed in one day (one mobilization).	1	Ea	1,535.00	1,535.00



**Project Location**

City of El Mirage  
10355 N 121st Ave  
El Mirage AZ 85335

**Proposal #**

HAA244254

**Date Issued**

5/9/2024

**PO/LD #**

**Terms**

Due Upon Completion

**Adviser Information**

Justin Holbrook  
P: 602-377-5406 | E: justin@holbrookasphalt.com

**Description**

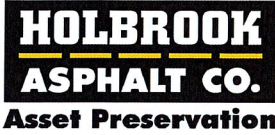
2024 HA5 - Residential

**Bill To**

City of El Mirage  
c/o: Public Works  
Attn: Cason Chambers  
10355 N 121st Ave  
El Mirage AZ 85335

<b>Subtotal</b>	969,130.85
<b>Tax</b>	90,129.17
<b>Total</b>	\$1,059,260.02

Please sign for proposal acceptance: Do not sign this page, see final page for signing



Project Location  
City of El Mirage  
10355 N 121st Ave  
El Mirage AZ 85335

Proposal # HAA244253  
Date Issued 5/6/2024  
PO/LD #

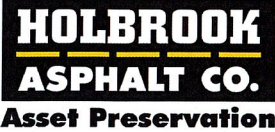
Terms  
Due Upon Completion

Adviser Information  
Justin Holbrook  
P: 602-377-5406 | E: justin@holbrookasphalt.com

Description  
2024 HA5 - Collector Roads

Bill To  
City of El Mirage  
c/o: Public Works  
Attn: Cason Chambers  
10355 N 121st Ave  
El Mirage AZ 85335

Item	Quantity	UM	Rate	Amount
<b>ACOMA (Dysart to Grand)</b>				
<b>HA5</b> Clean & prepare surface using high pressure air & wire bristle brooms. Install "HA5" High Density Mineral Bond advanced performance pavement preservation treatment. No guarantee surface treatments will adhere to areas saturated with motor oil. HA5 meets demands of High Density Mineral Bond Specification established by agency engineers.	20,661	SqYd	2.50	51,652.50
<b>Paint/Stripe</b> All Stripes, Symbols and Painting to follow existing pattern on pavement. Pricing is based on work being completed in one day (one mobilization).	1	Ea	5,640.00	5,640.00
<b>MORENO (El Mirage to Main St)</b>				
<b>HA5</b> Clean & prepare surface using high pressure air & wire bristle brooms. Install "HA5" High Density Mineral Bond advanced performance pavement preservation treatment. No guarantee surface treatments will adhere to areas saturated with motor oil. HA5 meets demands of High Density Mineral Bond Specification established by agency engineers.	15,387	SqYd	2.50	38,467.50
<b>Paint/Stripe</b> All Stripes, Symbols and Painting to follow existing pattern on pavement. Pricing is based on work being completed in one day (one mobilization).	1	Ea	3,565.00	3,565.00
<b>129TH (Cactus to Thunderbird)</b>				
<b>HA5</b> Clean & prepare surface using high pressure air & wire bristle brooms. Install "HA5" High Density Mineral Bond advanced performance pavement preservation treatment. No guarantee surface treatments will adhere to areas saturated with motor oil. HA5 meets demands of High Density Mineral Bond Specification established by agency engineers.	22,959	SqYd	2.50	57,397.50
<b>Paint/Stripe</b> All Stripes, Symbols and Painting to follow existing pattern on pavement. Pricing is based on work being completed in one day (one mobilization).	1	Ea	13,125.00	13,125.00
<b>127TH (Cactus to Varney)</b>				
<b>HA5</b> Clean & prepare surface using high pressure air & wire bristle brooms. Install "HA5" High Density Mineral Bond advanced performance pavement preservation treatment. No guarantee surface treatments will adhere to areas saturated with motor oil. HA5 meets demands of High Density Mineral Bond Specification established by agency engineers.	10,571	SqYd	2.50	26,427.50



Project Location  
City of El Mirage  
10355 N 121st Ave  
El Mirage AZ 85335

Proposal #      Date Issued      PO/LD #  
HAA244253      5/6/2024

Terms  
Due Upon Completion

Adviser Information  
Justin Holbrook  
P: 602-377-5406 | E: justin@holbrookasphalt.com

Description  
**2024 HA5 - Collector Roads**

Bill To  
City of El Mirage  
c/o: Public Works  
Attn: Cason Chambers  
10355 N 121st Ave  
El Mirage AZ 85335

Item	Quantity	UM	Rate	Amount
<b>Paint/Stripe</b> All Stripes, Symbols and Painting to follow existing pattern on pavement. Pricing is based on work being completed in one day (one mobilization).	1	Ea	7,510.00	7,510.00
<b>MAIN &amp; MYER (Main - Cactus to Myer &amp; Myer - 119th to Main)</b>				
<b>HA5</b> Clean & prepare surface using high pressure air & wire bristle brooms. Install "HA5" High Density Mineral Bond advanced performance pavement preservation treatment. No guarantee surface treatments will adhere to areas saturated with motor oil. HA5 meets demands of High Density Mineral Bond Specification established by agency engineers.	16,578	SqYd	2.50	41,445.00
<b>Paint/Stripe</b> All Stripes, Symbols and Painting to follow existing pattern on pavement. Pricing is based on work being completed in one day (one mobilization).	1	Ea	2,075.00	2,075.00

<b>Subtotal</b>	247,305.00
<b>Tax</b>	22,999.37
<b>Total</b>	\$270,304.37

Please sign for proposal acceptance: **Do not sign this page, see final page for signing**



Date	Number
5/9/2024	HAAB15014

## Terms and Conditions

**TERMS AND CONDITIONS:** Any proposals returned to Holbrook Asphalt Company ("Contractor") more than 14 days after the proposal is submitted to the Client is subject to revision, updated pricing, or may be voided by Contractor. Engineering, tests, permits, inspection fees and bonding fees are not included in price unless stated otherwise. Pricing based on no more than area and depth dimensions listed. Upon construction, if it is determined that concrete or asphalt area or depth is greater than the estimation, client agrees to pricing adjustment as a result of project overrun. Client specifically represents and warrants that either the Client is the owner of the premises where the work is to be performed, or, in the alternative, Client has authority from the owner of the premises authorizing the Work to be performed on the said premises.

**GENERAL EXCLUSIONS:** Contractor is not liable for any ADA compliance, if needed, Client should consult with an ADA compliance professional prior to specific project approval. Contractor not responsible for claims related to pavement markings or lack thereof during or following project work. Contractor will not be responsible for its product failure if said failure is directly or indirectly caused by "Existing Surface Conditions," as defined below, and any written or implied warranty will become void. Existing Surface Conditions are defined as: water drainage issues or delamination or failure of existing paint, asphalt, surface sealer, wearing course or any other material that is in a failing or in an unstable state. If any portion of the project area has Existing Surface Conditions not caused or created by Contractor that impact Contractor's HA5 product or any other product Contractor applies to project area, the warranty is void. Client is responsible for having entry gates open on day of work. Any damage to gates, sensors or loop sensors above or below asphalt are responsibility of Client. Any hot-applied sealants will not be exactly level with pavement surface as material settles to fill voids. There may also be excess material on pavement surface. Regarding asphalt, concrete and excavation work: Contractor is not responsible for subgrade scarification, re-compaction or concrete damage due to removal of asphalt. Contractor is not responsible for existing condition of subgrade, drainage in areas of less than 1% grade, adjustments of utilities, manholes and valve covers. Contractor is not responsible for any damage to underground utilities and cost to repair the same.

**PAYMENT TERMS:** Payment is due upon completion of work (Completion by line item 'Progress Billing' and/or completion of project core). Payment is due upon Client receipt of invoice. Client understands and agrees that it will be billed for towing as incurred and will be due on receipt. If the Client has a discrepancy with the Contractor regarding the contracted work, a retention of 5% of invoice up to a maximum of \$750.00 may be retained by Client up to 45 days. Client agrees that it may be billed as each line item is completed and each item may become their own respective invoice and due upon receipt of the same. Contractor reserves the right to charge up to 50% of Proposal Total if client cancels project within 25 days of scheduled project commencement. Upon request, post-project walk-throughs may be scheduled to review concerns.

Client agrees that interest accrues on all past-due amounts at 24% per annum from invoice date, until paid in full; and may be billed collection fees of up to 40% and all fees incurred by collection efforts. Total Proposal price includes one mobilization unless stated otherwise. Additional mobilizations may be billed up to \$3,500 per additional mobilization. This agreement provides Client written Notice of Right to Lien. Pricing does not include bonding or prevailing wage/Davis Bacon Certification, unless stated otherwise. By signing this proposal (contract), Client agrees that Contractor may not be held liable for delays, conditions, or Acts of God beyond their control, which situations may delay or cause cancelation partially or entirely on any project. Delays include project demand and material supply.

**INSURANCE:** These insurance limits are listed by Contractor to inform Client of such. Any premiums above the following to be paid by Client. This disclosure overrules any other contract language wherein Contractor agrees to differing limits. Certificates available upon request. **GENERAL LIABILITY:** \$1m (inc.), \$2m (agg.) **AUTO:** \$1m **UMBRELLA:** \$2m (inc.), \$2m (agg.) **PERSONAL INJ:** \$1m **WORKERS COMP:** \$1m

**ADDITIONAL HA5 WARRANTY LIMITATIONS AND EXCLUSIONS:** No claim will be honored unless Holbrook Asphalt has been notified in writing and is given the opportunity to inspect the claimed failure. Surface treatments applied previous to HA5 being installed are not covered under this warranty. (For example, if a previously applied preservation treatment is peeling or delaminating from the pavement surface—even if the surface was cleaned and prepped prior to HA5 being installed on top of it—this warranty does not cover HA5 in these circumstances.) Any attempt to repair the surface prior to Holbrook Asphalt's inspection will render this warranty invalid. Areas where HA5 was installed over pavements with motor oil, brake fluid, hydraulic fluid, or other substances that disturb the adhesion of HA5 and that lead to delamination are not covered under warranty. This warranty does not cover structural defects in the asphalt (e.g. base failure or damage caused by faulty construction and or design), cracks, exposure to fuel, oil, or other chemicals determined to be harmful to the HA5 treatment, areas exposed to frequent sprinkler water run-off, or standing and/or ponding water, damage caused by heavy truck or equipment traffic, damage caused by equipment inflicting excessive stress or scraping to the pavement surface, damage caused by landscaping installation, or damage caused by earthquakes or other acts of God. Mechanical disturbances by snowplow chatter, studded tires, etc. are excluded from warranty. This warranty is not valid for areas located in elevations above 6500 feet. A valid Warranty Certificate must be signed with a copy returned to Holbrook Asphalt within 60 days of the HA5 installation for the warranty to be valid and executable.

Pre-mature wear of HA5 during the five-year period is defined as anything less than 70% residual inter-aggregate coverage of HA5 to the asphalt binder of the treated surface. If premature failure of HA5 is deemed by Holbrook Asphalt or an approved third-party expert within the five year period, reinstallation will take place at no charge or at the reduced rate identified on the Warranty Certificate for the project. Contractor reserves the right appoint the third-party expert should there be a dispute regarding the premature failure between the Client and Contractor. Client and Contractor agree to be bound by and abide by the decision of the third party expert regarding whether a premature failure has occurred.

I have read and agree with these terms and conditions. I elect to proceed with the signed option below.

**HAA244254 - 2024 HA5 - Residential** (Sign to accept this proposal)

Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_ Contractor \_\_\_\_\_

**HAA244253 - 2024 HA5 - Collector Roads** (Sign to accept this proposal)

Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_ Contractor \_\_\_\_\_

# Pavement Management Program

Project Number: 62052  
 Total Capital Cost: \$7,000,000.00

Department: Highways and Streets  
 Type: Capital Improvement  
 Request Groups: CIP  
 Timeline: 07/01/2024 to 06/30/2029

**Request description:**

The pavement management program is a 30-year plan to preserve and extend the life of city streets through a variety of maintenance practices. These include seal coating, preventative methods, and pavement striping.

The 2021 National Community Survey found that 67% of El Mirage residents rank the quality of city pavement highly, 76% consider it easy to travel by car in the city, and 67% feel it is important to focus on the overall quality of the transportation system in the next two years.

Modified: Add FY29

**Capital Costs**

	FY2025	FY2026	FY2027	FY2028	FY2029	Total
Planning						
Design						\$0.00
Engineering						\$0.00
Land/Right-of-way						\$0.00
Construction/Maintenance						\$0.00
Other	\$1,400,000.00	\$1,400,000.00	\$1,400,000.00	\$1,400,000.00	\$1,400,000.00	\$7,000,000.00
<b>Total</b>	<b>\$1,400,000.00</b>	<b>\$1,400,000.00</b>	<b>\$1,400,000.00</b>	<b>\$1,400,000.00</b>	<b>\$1,400,000.00</b>	<b>\$7,000,000.00</b>

**Funding Source**

	FY2025	FY2026	FY2027	FY2028	FY2029	Total
111 - General						\$0.00
114 - Court						\$0.00
121 - Court Enhancement						\$0.00
128 - Towing						\$0.00
131 - HURF	\$1,400,000.00	\$1,400,000.00	\$1,400,000.00	\$1,400,000.00	\$1,400,000.00	\$7,000,000.00
141 - LTAF						\$0.00
148 - CDBG						\$0.00
149 - Special Projects						\$0.00
156 - Capital Streets						\$0.00
511 - Water						\$0.00
516 - Ranchettes						\$0.00
541 - Sewer						\$0.00
591 - Sanitation						\$0.00
<b>Total</b>	<b>\$1,400,000.00</b>	<b>\$1,400,000.00</b>	<b>\$1,400,000.00</b>	<b>\$1,400,000.00</b>	<b>\$1,400,000.00</b>	<b>\$7,000,000.00</b>

**Additional Information**

Type of Project: Other  
 Strategic Priority: Superior Infrastructure  
 Division: Operations  
 Grant Funding: No  
 Bond Eligible: No  
 Project Status: Modified

PW23-RFQ-JOC01

JOB ORDER CONTRACT FOR ASPHALT, CONCRETE, AND  
GRADING PROJECTS

City of El Mirage  
10000 N El Mirage Rd  
El Mirage, AZ 85335



City of El Mirage  
REQUEST FOR PROPOSAL

Job Order Contract for Asphalt, Concrete, and Grading Projects

- I. PROFESSIONAL SERVICES CONTRACT .....
- II. AGREEMENT .....

## 1. PROFESSIONAL SERVICES CONTRACT

### CITY OF EL MIRAGE

THIS PROFESSIONAL SERVICES CONTRACT, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of El Mirage, an Arizona municipal corporation (“City”), and M. R. Tanner Development & Construction, LLC a(n)TBD(“Consultant”).

### RECITALS

- A. The City of El Mirage is authorized and empowered by provisions of the City Code to execute contracts for professional services by and through its City Manager;
- B. The City desires to contract for Consultant to provide Job Order Contract for Asphalt, Concrete, and Grading Projects (“Services”) as described in the attached scope of work (Exhibit “A”) in accordance with the terms of this Contract;
- C. Consultant is duly qualified to perform the requested Services.

## 2. AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and obligations set for herein, the parties hereto agree as follows:

### 2.1. DESCRIPTION, ACCEPTANCE, DOCUMENTATION

Consultant shall act under the authority and approval of the Contract Administrator for the City to provide the Services required by this Contract. The Contract Administrator for the City shall be Cason Chambers, (Title) Operations Superintendent, or designee. The Contract Administrator shall oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, and approve payments. The Consultant shall channel reports and special requests through the Contract Administrator. City reserves the right to change the Contract Administrator for the City without prior approval of the Consultant.

### 2.2. SERVICE DESCRIPTION

Consultant shall provide the Services described in Exhibit "A." All work will be reviewed, evaluated, approved, and monitored by the Contract Administrator to determine acceptable completion. Review and approval by the Contract Administrator shall not relieve Consultant of any liability for improper, negligent or inadequate services rendered pursuant to this Contract. Consultant shall provide all work necessary to assure the Services are completed in a timely and efficient manner consistent with service requirements, including, but not limited to, working in close interaction with, and interfacing with, City and its designated employees, and working closely with others, including other consultants or contractors retained by City.

### 2.3. DOCUMENTATION AND DATA

All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be, and remain the property of, the City and are to be delivered to the Contract Administrator before final payment is made to the Consultant.

### 2.4. FEE SCHEDULE, RECORDS, AUDIT RIGHTS

The fee Consultant shall be paid for all Services provided pursuant to the terms of this Contract, inclusive of all expenses under this Contract, shall not exceed TBD.

The Contract Administrator reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall maintain all books, paper documents, accounting records and other evidence pertaining to such monthly billings and shall make such materials available at all reasonable times to the Contract Administrator. Monthly billings shall be accompanied by such documentation as the Contract Administrator may require to make a determination of work performed and payment due.

Consultant's records (hard copy, as well as computer readable data) and any other supporting evidence deemed necessary by the City to substantiate charges and claims related to this Contract shall be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent

necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of its payees pursuant to the execution of the Contract. The City's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

Consultant shall require all subconsultants, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between Consultant and payee. Such requirements will also apply to any and all subconsultants.

If any audit in accordance with this article discloses overcharges of any nature by the Consultant to the City in excess of one percent (1%) of the total contract billings, the actual cost of the City's audit shall be reimbursed to the City by the Consultant. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Consultant's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Consultant.

## 2.5. ADDITIONAL SERVICES; PRICE ADJUSTMENT

The total Scope of Work to be performed by Consultant in accordance with this Contract is set forth herein and in Exhibit "A." Services not included in this Contract, including Exhibit "A," will be considered Additional Services. Consultant shall not perform any Additional Services without written authorization from the City. It shall be presumed that all Services performed/provided by Consultant were included in the Contract and contemplated by Consultant as being part of the original Scope of Work and the fees set forth herein, unless such Services have been separately approved by the City, in writing, as Additional Services. Consultant shall not be paid for any Additional Services that are not authorized by the City in writing.

## 2.6. OWNERSHIP

Upon receipt of payment for Services, Consultant grants to City, and shall cause its subconsultants to grant to City, the exclusive ownership of any and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, and other intellectual work product as may be applicable ("Work Product"). This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form. Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests. City may reuse the Work Product at its sole discretion. In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product. In such case, City will also remove any title block from the Work Product.

## 2.7. TERM AND EXTENSION

- This Contract shall be in full force and effect only when approved and signed by City's City Manager as attested by the City Clerk. This Contract begins on the Effective Date and continues for TBD to TBD, with an option to extend for an additional TBD.

## 2.8. TERMINATION

### 1 Termination for Cause

The City has the right to terminate this Contract for cause in the event Consultant materially breaches any provision of this Contract or portion of the Services and fails to remedy the breach within five (5) business days of notification of the breach, if the breach is remedial. If Consultant fails to remedy the breach or if the breach is not remedial, City may terminate this Contract for cause immediately upon written notice to Consultant. In the event the City terminates this Contract or any part of the Services as herein provided pursuant to this Section 1, the City shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all work under this Contract.

Upon termination for cause, Consultant shall immediately deliver to the City all drawings, research, data, studies, reports, estimates and any and all other documents or work product generated by the Consultant under the Contract, together with all unused material supplied by the City. Consultant shall be responsible only for such portion of the work which has been completed and accepted by the City. Use of incomplete data by the City shall be the City's sole responsibility.

In the event of termination for cause, Consultant shall only be compensated a portion of the agreed upon fee for such portion of the work that City agrees, in its sole discretion to accept. City shall have no obligation to accept any portion of Consultant's work if the contract is terminated for cause, and shall have no obligation to pay Consultant for any portion of the work, if any, not accepted by City.

If the Consultant materially fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the City may withhold from payment due to the Consultant such amounts as are necessary to protect the City's position for the purpose of set-off until such time as the exact amount of damages can be determined.

### 2. Termination for Convenience

The City has the right to terminate this Contract for convenience or to abandon any portion of the work for which Services have not been performed by the Consultant. In the event the City terminates this Contract or any part of the Services as herein provided pursuant to this Section 3.2.2, the City shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all work under this Contract.

Upon such termination for convenience or abandonment, the Consultant shall immediately deliver to the City all drawings, research, data, studies, reports, estimates and any and all other documents or work product generated by the Consultant under the Contract, together with all unused material supplied by the City. Consultant shall be responsible only for such portion of the work which has been completed and accepted by the City. Use of incomplete data by the City shall be the City's sole responsibility.

The Consultant shall receive as compensation in full for Services performed to the date of such

termination or abandonment, a fee for the percentage of Services actually completed and accepted by the City. This fee shall be in an amount to be mutually agreed upon by the Consultant and the City, based upon the scope of work set forth in Exhibit "A" and the payment schedule set forth in Article 2, hereof. If mutual agreement cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the scope of work contained in Exhibit "A" and the amount of compensation Consultant is entitled to for such work and the Contract Administrator's determination in this regard shall be final. The City shall make such final payment within sixty (60) days after the Consultant has delivered the last of the partially completed items.

## 2.9. ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the Services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

## 2.10. ARIZONA LAW

This Contract shall be governed and interpreted according to the laws of the State of Arizona. Any action brought to interpret or enforce any provision of this Contract that cannot be administratively resolved, or otherwise related to or arising from this Contract, shall be commenced and maintained in the state or federal courts of the State of Arizona, Maricopa County, and each of the parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

## 2.11. COMPLIANCE WITH LAWS

Consultant shall comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Contract. If a subsequently enacted law imposes substantial additional costs on Consultant, a request for an amendment may be submitted pursuant to this Contract.

## 2.12. MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract.

## 2.13. ASSIGNMENT

Services covered under this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the Finance Director and Contract Administrator.

## 2.14. SUCCESSORS AND ASSIGNS

This Contract shall extend to and be binding upon Consultant, its successors and assigns, including any individual, company, partnership or other entity with or into which Consultant shall merge, consolidate or be liquidated, or any person, corporation, partnership or other entity to which Consultant shall sell its assets.

### 2.15. ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party may be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses determined by the court sitting without a jury or arbitration board, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment or by arbitration award.

### 2.16. INDEPENDENT CONTRACTOR

The Services Consultant provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee or agent of the City. The City will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City shall not withhold income tax as a deduction from contractual payments. As a result of this, Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements. Consultant will not be entitled to any benefits provided by City to its employees, including, but not limited to, health benefits, workers' compensation, unemployment coverage, deferred compensation, and all other typical employee benefits.

### 2.17. CONFLICT OF INTEREST

The City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the Contract with respect to the subject matter of the Contract. The cancellation will be effective when written notice from the City is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. §38-511).

### 2.18. NOTICES

All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of Consultant: M. R. Tanner Development & Construction, LLC  
Attn: TBD

TBD

In the case of City City of El Mirage  
Attn: City Manager  
10000 North El Mirage Road

El Mirage, Arizona 85335

With a copy to: City of El Mirage  
City Attorney  
10000 North El Mirage Road  
El Mirage, Arizona 85335

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

#### 2.19. FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

#### 2.20. TAXES

Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this Contract. The City shall have no obligation to pay any amounts for taxes of any type incurred by the Consultant.

#### 2.21. ADVERTISING AND PROMOTION

Consultant shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party: (1) any information concerning this Contract, the Services, or any part thereof; or (2) any documentation or the contents thereof, without the prior written consent of the City, except as required by law or judicial or regulatory process. The name of any site on which Services are performed shall not be used in any advertising or other promotional context by Consultant without the prior written consent of the City.

#### 2.22. COUNTERPARTS

This Contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract shall be deemed to possess the full force and effect of the original.

#### 2.23. CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

#### 2.24. SUBCONSULTANTS

During the performance of the Contract, the Consultant may engage such additional subconsultants as may be required for the timely completion of this Contract. The addition of any subconsultants shall be subject to the prior approval of the City.

In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with the Consultant.

## 2.25. INDEMNIFICATION

The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the City, its officers, directors and employees (collectively, City) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultant's negligent performance of professional services under this Contract and that of its subcontractors or anyone for whom the Consultant is legally liable.

The City agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subcontractors (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, to the extent caused by the City's negligent acts in connection with the Services and the acts of its contractors, subcontractors or consultants or anyone for whom the City is legally liable.

Neither the City nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

## 2.26. INSURANCE

The Consultant shall secure and maintain at all times that this Contract is in effect, insurance coverage which shall include statutory workers' compensation, comprehensive general and automobile liability, owner's and Consultant's protective liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000) combined single limit. The owner's and Consultant's protective liability limits shall be no less than one million dollars (\$1,000,000) for each occurrence and one million dollars (\$1,000,000) policy aggregate naming the City as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1,000,000). In other than errors and omissions professional liability, City's and Consultant's protective liability and worker's compensation, the City of El Mirage shall be named as an additional insured.

All insurance coverage shall be written through a carrier licensed in Arizona, or an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A- or above with policies and forms satisfactory to the City.

The Consultant shall submit to the City a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph within ten (10) days of award of this Contract. City shall not issue a "Notice to Proceed" until after Consultant has submitted the certificate of insurance to City. Insurance evidenced by the certificate shall not expire or be canceled or materially changed without thirty (30) days prior written notice to the City, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer.

The insurance policies, except Workers' Compensation required by this Contract, shall name the City, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

### 2.27. FEDERAL AND STATE EMPLOYMENT IMMIGRATION LAWS


To the extent applicable under A.R.S. § 41-4401, Consultant warrants its and its subconsultants' compliance with all federal immigration laws and regulations that relate to their compliance with the E-verify requirements under A.R.S. § 23-214(A). Consultant's or its subconsultants' breach of the above-mentioned warranty shall be deemed a material breach of the Contract and may result in the termination of the Contract by the City. The City retains the legal right to randomly inspect the papers and records of Consultant and its subconsultants to ensure that the Consultant and its subconsultants are complying with the above-mentioned warranty.

The Consultant warrants to keep the papers and records open for random inspection during normal business hours by the City. The Consultant shall cooperate with the City's random inspections including granting the City entry rights to Consultant's property to perform the random inspections and waiving its right to keep such papers and records confidential. The failure of Consultant to comply with this warranty regarding the keeping of papers and records and cooperating with City's random inspections shall constitute a material breach of the Contract and the City will have the right to immediately terminate the Contract.

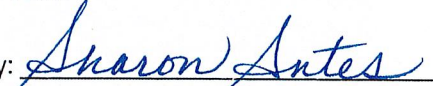
### 2.28. SEVERABILITY

If any term or provision of this Contract shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract shall remain in full force and effect and such term or provision shall be deemed to be deleted.


CITY OF EL MIRAGE CONSULTANT:

By:   
Crystal Dyches, City Manager

ATTEST:

By:   
Sharon Antes, City Clerk

APPROVED AS TO FORM:

By:   
Justin Rierce, City Attorney