

**COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
VINCON ENGINEERING CONSTRUCTION, LLC**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of September 14, 2015, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and Vincon Engineering Construction, LLC, an Arizona limited liability company (the "Contractor").

RECITALS

A. After a competitive procurement process, the City of Chandler ("Chandler") entered into Contract No. ST5-745-3433, dated October 24, 2014 (the "Chandler Contract"), for the Contractor to provide asphalt rubber crack sealing. A copy of the Chandler Contract is attached hereto as Exhibit A and incorporated herein by reference, to the extent not inconsistent with this Agreement.

B. The Town is permitted, pursuant to Section 3-3-27 of the Town Code, to make purchases under the Chandler Contract, at its discretion and with the agreement of the awarded Contractor, and the Chandler Contract permits its cooperative use by other public entities, including the Town.

C. The Town and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the Chandler Contract and this Agreement, (ii) establishing the terms and conditions by which the Contractor may provide the Town with asphalt rubber crack sealing, as more particularly set forth in Section 2 below on an "as-required" basis (the "Materials and Services") and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Materials and Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until November 30, 2015, unless terminated as otherwise provided in this Agreement or the Chandler Contract.

2. Scope of Work. This is an indefinite quantity and indefinite delivery Agreement for Materials and Services under the terms and conditions of the Chandler Contract. The Town does not guarantee any minimum or maximum number of purchases will be made pursuant to this Agreement. Purchases will only be made when the Town identifies a need and proper

authorization and documentation have been approved. For purchase(s) determined by the Town to be appropriate for this Agreement, the Contractor shall provide the Materials and Services to the Town in such quantities and configurations as may be agreed upon between the parties, in the form of a written invoice, quote, work order or other form of written agreement describing the work to be completed (each, a "Work Order"). Each Work Order approved and accepted by the parties pursuant to this Agreement shall (i) contain a reference to this Agreement and the Chandler Contract and (ii) be attached hereto as Exhibit B and incorporated herein by reference. Work Orders submitted without referencing this Agreement and the Chandler Contract will be subject to rejection.

2.1 Inspection; Acceptance. All Materials and Services are subject to final inspection and acceptance by the Town. Materials failing to conform to the requirements of this Agreement and/or the Chandler Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Upon discovery of non-conforming Materials or Services, the Town may elect to do any or all of the following by written notice to the Contractor: (A) waive the non-conformance; (B) stop the work immediately; or (C) bring Materials or Service into compliance and withhold the cost of same from any payments due to the Contractor.

2.2 Cancellation. The Town reserves the right to cancel Work Orders within a reasonable period of time after issuance. Should a Work Order be canceled, the Town agrees to reimburse the Contractor, but only for actual and documentable costs incurred by the Contractor due to and after issuance of the Work Order. The Town will not reimburse the Contractor for any costs incurred after receipt of Town notice of cancellation, or for lost profits, shipment of product prior to issuance of Work Order or for anything not expressly permitted pursuant to this Agreement.

3. Compensation. The Town shall pay Contractor an amount not to exceed \$15,000.00 for the Materials and Services at the unit rates set forth in the Chandler Contract.

4. Payments. The Town shall pay the Contractor monthly, based upon acceptance and delivery of Materials and/or Services performed and completed to date, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and the Chandler Contract and (ii) document and itemize all work completed to date. The invoice statement shall include a record of materials delivered, time expended and work performed in sufficient detail to justify payment. Additionally, invoices submitted without referencing this Agreement and the Chandler Contract will be subject to rejection and may be returned.

5. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 6 below, Contractor's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (i) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead

allocations) incurred, or units expended directly in the performance of work under this Agreement and (ii) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 6 below. To the extent necessary for the Town to audit Records as set forth in this Section, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this Section. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

6. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

7. Conflict of Interest. This Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

8. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and a suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

9. Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town's then current fiscal year. The Town's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep Contractor informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. Contractor hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town's termination of this Agreement pursuant to this section.

10. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any Town-approved work orders, the Chandler Contract and invoices, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the Chandler Contract (collectively, the “Unauthorized Conditions”), other than the Town’s project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the Town of any work order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the Chandler Contract shall not alter such terms and conditions or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

11. Rights and Privileges. To the extent provided under the Chandler Contract, the Town shall be afforded all of the rights and privileges afforded to Chandler and shall be the “City” (as defined in the Chandler Contract) for the purposes of the portions of the Chandler Contract that are incorporated herein by reference.

12. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 11 above, the Town shall be afforded all of the insurance coverage and indemnifications afforded to Chandler to the extent provided under the Chandler Contract, and such insurance coverage and indemnifications shall inure and apply with equal effect to the Town under this Agreement including, but not limited to, the Contractor’s obligation to provide the indemnification and insurance. In any event, the Contractor shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an “Indemnified Party”), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

13. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town:                   Town of Fountain Hills  
  16705 East Avenue of the Fountains  
  Fountain Hills, Arizona 85268  
  Attn: Grady E. Miller, Town Manager

With copy to: GUST ROSENFELD P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
Attn: Andrew J. McGuire, Esq.

If to Contractor: Vincon Engineering Construction, LLC  
1831 North Rochester  
Mesa, Arizona 85205  
Attn: Jeff Kerr

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

[SIGNATURES ON FOLLOWING PAGES]

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

**"Town"**

TOWN OF FOUNTAIN HILLS,  
an Arizona municipal corporation

  
Grady E. Miller, Town Manager

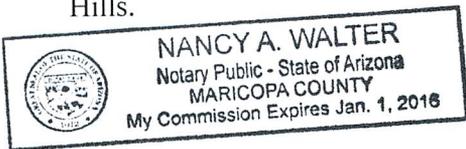
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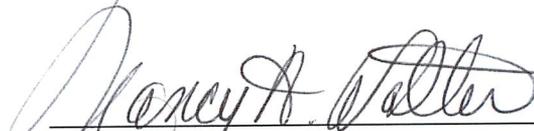
  
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On September 16, 2015, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.



  
Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“Contractor”

VINCON ENGINEERING CONSTRUCTION, LLC,  
an Arizona limited liability company

By: [Signature]

Name: Troy Casey

Title: Member

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On September 14, 2015, before me personally appeared Troy Casey, the member of VINCON ENGINEERING CONSTRUCTION, LLC, an Arizona limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the limited liability company.

[Signature]  
Notary Public

(Affix notary seal here)



EXHIBIT A  
TO  
COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
VINCON ENGINEERING CONSTRUCTION, LLC

[Chandler Contract]

See following pages.

CITY OF CHANDLER SERVICES AGREEMENT  
ASPHALT RUBBER CRACK SEALING  
AGREEMENT NO.: ST5-745-3433

18-0367

THIS AGREEMENT is made and entered into this 24 day of October, 2014, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and VINCON ENGINEERING CONSTRUCTION, LLC, hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Agreement.

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

1. **CONTRACT ADMINISTRATOR:**
  - 1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Sr. Streets Maintenance Coordinator/designee (Contract Administrator), to provide the services required by this Agreement.
  - 1.2. **Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
  - 1.3. **Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.
  - 1.4. **Subcontracts.** CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.
2. **SCOPE OF WORK:** CONTRACTOR shall provide Asphalt Rubber Crack Sealing services all as more specifically set forth in the Scope of Work, labeled Exhibit B, Price List, labeled Exhibit C, Subcontractor List, labeled Exhibit D, Performance and Payment Bonds, labeled Exhibit E1-E2, Construction Sign Detail, Exhibit F1-F3. Attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein.
  - 2.1. **Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
  - 2.2. **Licenses.** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.
  - 2.3. **Advertising, Publishing and Promotion of Contract.** The CONTRACTOR shall not use, advertise or promote information for benefit concerning this Contract without the prior written approval of the CITY.
  - 2.4. **Compliance With Applicable Laws.** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.

CC 10-23-14

- 2.4.1 Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").
- 2.4.2 A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 2.4.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.4.4 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.
- 2.4.5 The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 2.4.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.4.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.5. **Warranties.** Each Bid must provide a one (1) year warranty/guarantee against defects in materials, workmanship and/or performance for all items.
3. **ACCEPTANCE AND DOCUMENTATION;** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
  - 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
  - 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
  - 3.3. **New/Current Products.** All materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
  - 3.4. **Property of CITY.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.

4. **PRICE:** CITY shall pay to CONTRACTOR the unit price per lineal foot for arterial as well as residential streets as shown on Exhibit C (attached hereto and made a part hereof by reference), in an aggregate amount not to exceed **THREE HUNDRED THOUSAND DOLLARS (\$300,000)** for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.
- 4.1. **Taxes.** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.
- 4.2. **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.
- 4.3. **Estimated Quantities.** The quantities shown on Exhibit C (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by Contract Administrator. City reserves the right to increase or decrease the quantities actually required.
- 4.4. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.
- 4.5. **Price Adjustment (Annual—CPI).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a request for price adjustments in accordance with the current Consumer Price Index. CONTRACTOR must request all price adjustments in writing at least sixty (60) days prior to the renewal date.
- 4.6. **Acceptance by City.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
- 4.7. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its services concurrent with a published price reduction made to other customers.
5. **TERM:** The term of the Contract is one (1) year, commencing on **December 1<sup>st</sup>, 2014** and terminating on **November 30<sup>th</sup>, 2015** unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to **four (4)** additional terms of one year each. CITY reserves the right, at its sole discretion, to extend the Contract for up to **60** days.
6. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONTRACTOR.

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

If required to provide services on a school district property at least five (5) times during a month, CONTRACTOR shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all CONTRACTORS, sub-CONTRACTORS or vendors and their employees for which fingerprints are submitted to the District. Additionally, the CONTRACTOR shall comply with the governing body fingerprinting policies of each individual school district/public entity. CONTRACTOR, sub-contractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The CITY shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

- 6.2. **Emergency Purchases:** CITY reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

7. **CITY'S CONTRACTUAL REMEDIES:**

- 7.1. **Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.
- 7.2. **Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 7.3. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 7.4. **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 7.5. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.6. **Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

**8. TERMINATION:**

- 8.1. Termination for Convenience:** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.
- 8.2. Termination for Cause:** City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:
- 1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement
  - 2) If CONTRACTOR is adjudged a bankrupt or insolvent
  - 3) If CONTRACTOR makes a general assignment for the benefit of creditors.
  - 4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR'S property.
  - 5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws.
  - 6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction.
  - 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.
- 8.3. Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 36-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation, unless the notice specifies a later time.
- 8.4. Gratuities.** CITY may by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONTRACTOR or a representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONTRACTOR.
- 8.5. Suspension or Debarment.** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a SUBCONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.
- 8.6. Continuation of Performance Through Termination.** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it
- 8.8. **Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
9. **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.
10. **DISPUTE RESOLUTION:**
- 10.1. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 10.2. **Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 10.3. **Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.
- 10.4. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by CONTRACTOR, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to, any injury or damages claimed by any of CONTRACTOR's and subcontractor's employees.

The amount and type of insurance coverage requirements set forth in the Agreement will in no way be construed as limiting the scope of indemnity in this paragraph.

11. INSURANCE:

1. General

- A. At the same time as execution of this Agreement, the CONTRACTOR shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- B. The CONTRACTOR and any of its subcontractors, subconsultants or sublicensees shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect CONTRACTOR from liabilities that might arise out of the performance of the Agreement; services under this Agreement; by CONTRACTOR, its agents, representatives, employees, subcontractors, sublicensees or subconsultants and the CONTRACTOR is free to purchase any additional insurance as may be determined necessary.
- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement; or failure to identify any insurance deficiency will not relieve the CONTRACTOR; from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
- F. Use of SubContractors: If any work is subcontracted in any way, the CONTRACTOR shall execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the CONTRACTOR in this Agreement. The CONTRACTOR is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

2. Minimum Scope And Limits Of Insurance The CONTRACTOR shall provide coverage with limits of liability not less than those stated below.

- A. *Commercial General Liability-Occurrence Form.* CONTRACTOR must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability.* CONTRACTOR must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on CONTRACTOR owned, hired, and non-owned vehicles assigned to or used in the performance of the CONTRACTOR's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- C. *Workers Compensation and Employers Liability Insurance:* CONTRACTOR must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONTRACTOR employees engaged in the performance of work or services under this Agreement

and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.

- D. *Builders' Risk Insurance (Course of Construction)*. The CONTRACTOR bears all responsibility for loss to all Work being performed and to buildings under construction. Unless waived in writing by the City of Chandler, the CONTRACTOR will purchase and maintain in force Builders' Risk-Installation insurance on the entire Work until completed and accepted by the City. This insurance will be Special Causes of Loss policy form, (minimally including perils of fire, flood, lightning, explosion, windstorm and hail, smoke, aircraft and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, and collapse), completed value, replacement cost policy form equal to the GMP and all subsequent modifications. The CONTRACTOR's Builders' Risk-Installation insurance must be primary and not contributory.
1. Builders' Risk-Installation insurance must name the City of Chandler, the CONTRACTOR and all tiers of Sub Contractors as Additional Insured's and must contain a provision that this insurance will not be canceled or materially altered without at least 30 days advance notice to the City. The City must also be named as a Loss Payee under Builders' Risk-Installation coverage.
  2. Builders' Risk-Installation insurance must cover the entire Work including reasonable compensation for architects and engineers' services and expenses and other "soft costs" made necessary by an insured loss. Builders' Risk-Installation insurance must provide coverage from the time any covered property comes under the CONTRACTOR's control and or responsibility, and continue without interruption during course of construction, renovation and or installation, including any time during which any project property or equipment is in transit, off site, or while on site for future use or installation. Insured property must include, but not be limited to, scaffolding, false work, and temporary buildings at the site. This insurance must also cover the cost of removing debris, including demolition as may be legally required by operation of any law, ordinance, regulation or code.
  3. The CONTRACTOR must also purchase and maintain Boiler and Machinery insurance with the same requirements as Builders' Risk-Installation insurance cited above if the Work to be performed involves any exposures or insurable property normally covered under a Boiler and Machinery insurance policy or made necessary as required by law or testing requirements in the performance of this Agreement. The CONTRACTOR will be responsible for any and all deductibles under these policies and the CONTRACTOR waives all rights of recovery and subrogation against the City under the CONTRACTOR-provided Builders' Risk-Installation insurance described above.
  4. Builders' Risk Insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or, (ii) until no person or entity, other than the City, has an insurable interest in the property required to be covered.
    - a. The Builders' Risk insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by the City.
    - b. This insurance must include as named insureds, the City, the CONTRACTOR, SubContractors, Subconsultants and others with an insurable interest in the Work who will be named as additional insureds unless they are able to provide some level of coverage with the City and CONTRACTOR named as additional insureds. Certificates must contain a provision that the insurance will not be canceled or materially altered without at least 30 days advance notice to the City. The City must also be named as a Loss Payee under the Builders' Risk-Installation coverage.
    - c. This insurance must be written using the Special Causes of Loss policy form, replacement cost basis.
    - d. All rights of subrogation are, by this Agreement, waived against the City of Chandler, its officers, officials, agents and employees.
    - e. The CONTRACTOR is responsible for payment of all deductibles under the Builders' Risk policy.

3. Additional Policy Provisions Required.

- A. *Self-Insured Retentions Or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
- B. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:
1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the CONTRACTOR including the City's general supervision of the CONTRACTOR, Products and Completed operations of the CONTRACTOR, and automobiles owned, leased, hired, or borrowed by the CONTRACTOR.
  2. The CONTRACTOR's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.
  3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the CONTRACTOR, even if those limits of liability are in excess of those required by this Agreement.
  4. The CONTRACTOR's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the CONTRACTOR and must not contribute to it.
  5. The CONTRACTOR's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  6. Coverage provided by the CONTRACTOR must not be limited to the liability assumed under the indemnification provisions of this Agreement.
  7. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the CONTRACTOR for the City.
  8. The CONTRACTOR, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. The CONTRACTOR must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
  9. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, the CONTRACTOR must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

12. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement 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 the CITY

Contract: Sr. Street Maint. Coord.  
 Administrator: \_\_\_\_\_  
 Contact: Al Fausto  
 Mailing Address: \_\_\_\_\_  
 Physical Address: 975 E. Armstrong Way  
 City, State, Zip: Chandler, AZ 85225  
 Phone: 480-762-3505  
 E-Mail: Alberto.fausto@chandleraz.gov

In the case of the CONTRACTOR

Firm Name: Vincon Engineering Construction, LLC  
 Contact: Troy Colby  
 Address: 1831 N Rochester  
 City, State, Zip: Mesa, AZ 85205  
 Phone: 480-833-8527  
 FAX: 480-833-8617  
tcolby@vinconllc.com

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

13. **CONFLICT OF INTEREST:**

- 13.1. **No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 36-501. Any such interests were disclosed in CONTRACTOR'S proposal to the CITY
- 13.2. **Kickback Termination.** CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §36-511).
- 13.3. **No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project

14. **GENERAL TERMS:**

- 14.1 **Ownership.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.

**14.2 Performance and Payment Bonds.**

Within fifteen (15) days from the time a Contract is awarded, CONTRACTOR shall furnish fully executed Performance and Payment Bond (Labor and Materials) in such form and context as determined by CITY from a surety approved by CITY. Said bonds shall be in a sum no less than one hundred (100%) of the Contract price.

CITY has the option to forfeit said bonds if the Contract is terminated by the default of CONTRACTOR or if CITY determines that CONTRACTOR is unable or unwilling to complete the work as specified in the Contract Documents.

If the Contract schedule is not adhered to, and CITY determines that the work is unlikely to be completed within a reasonable time after the original target date, then CITY may terminate the Contract and collect the Performance Bond.

The Performance Bond will be reviewed annually and any increases in the contract amount will require bond to be increased and reissued.

**14.3 Entire Agreement.** This Agreement, including all Exhibits attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives of each party.

**14.4 Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

**14.5 Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.

**14.6 Amendments.** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.

**14.7 Independent CONTRACTOR.** The CONTRACTOR under this Contract is an independent CONTRACTOR. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

**14.8 No Parole Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

14.9 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 has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 24  
day of October, 2014.

FOR THE CITY OF CHANDLER

Mayor

ATTEST:

M. P. ...  
City Clerk

FOR THE CONTRACTOR

By:

Signature

ATTEST: If Corporation

SEAL

...  
Secretary

Approved as to form:

Cynthia Haglin  
City Attorney



EXHIBIT A

**Contractor Immigration Warranty**  
To Be Completed by Contractor Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract: verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form, the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number: ST5-745-3433		
Name (as listed in the contract): Vincon Engineering Construction, LLC		
Street Name and Number: 1831 N. Rochester		
City: Mesa	State: AZ	Zip Code: 85205

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:

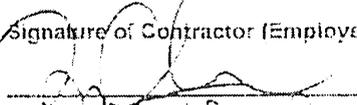
  
\_\_\_\_\_  
Printed Name: Ray Cassi  
Title: MEMBER  
Date (month/day/year): 9/24/14

EXHIBIT B  
TECHNICAL SPECIFICATIONS

GENERAL INFORMATION

Contractor shall provide Asphalt Rubber Crack Sealing services as specified herein.

GENERAL VENDOR QUALIFICATIONS

The Contractor shall be in compliance with all applicable Federal, State, Local, ANSI and OSHA laws, rules and regulations and all other applicable regulations for the term of this contract.

The Contractor, without additional expense to the City, shall be responsible for obtaining and maintaining any necessary licenses and permits required in connection with the completion of the required services herein.

The Bidder must hold a valid license issued by the State of Arizona Registrar of Contractors prior to submission of a proposal/bid and must maintain same throughout the duration of the contract term and any subsequent contract extensions. Failure to maintain said license may be grounds for default of the contract and subsequent termination.

The Contractor may not subcontract any segment or services covered herein, without prior approval of the Contract Administrator. All subcontractors used under the scope of this contract shall meet all requirements, terms and conditions set forth herein. All subcontracted services shall be warranted by and be the responsibility of the Contractor.

All products supplied by the Contractor shall meet all applicable Federal, State, Local, ANSI, and OSHA laws, rules, and regulations pertaining to the products covered under the scope of this contract.

1. DESCRIPTION

Work under this agreement consists of compressed air routing and cleaning cracks in the existing bituminous pavement and applying a premixed asphalt-rubber sealant. The work does not include the patching of potholes or alligator cracks. CONTRACTOR shall provide any traffic control required to accomplish the work. The work shall be accomplished in accordance with the requirements of this scope of work. The City uses Polyflex Type 3.

CONTRACTOR shall provide sufficient work crews to complete the assigned work on schedule. CONTRACTOR's crews shall work approximately eight (8) hours per day, five (5) days per week, Monday through Friday, excluding official City holidays. Work shall be performed on CITY streets between the hours of 8:30 a.m. and 4:30 p.m. Any exception to the normal working hours must be approved by the Contract Administrator/designee. CONTRACTOR shall not pull off a CITY job to do other jobs.

CITY will provide the rubberized asphalt sealant, furnished in 50-pound blocks. Material will be picked up by CONTRACTOR at the Public Works Yard, 975 E Armstrong Way, as needed. CONTRACTOR shall be accountable for all material usage, which will be audited by the Contract Administrator/designee.

The asphalt-rubber mixture shall not be applied during wet weather or under conditions which will adversely affect the operations. The sealant shall not be placed in cracks that are wet. The sealant shall be placed at the material manufacturers recommended application temperature.

CONTRACTOR shall appoint a Supervisor to oversee the crew and coordinate required work with the Contract Administrator/designee. The Contract Administrator/designee shall be advised before 3:30 P.M. each day of the planned work location for the following day. The Supervisor shall advise the Contract Administrator/designee immediately of equipment breakdown or other delays affecting the progress of the work.

2. LOCATION OF WORK

CONTRACTOR shall be required to seal existing cracks on major, collector and local streets within the boundaries of the City of Chandler. The City will have an inspector assigned to this project to inspect work on a daily basis. The CITY AND CONTRACTOR shall agree upon a schedule of work to be completed prior to commencing work. Contract Administrator/designee will provide a detailed listing of the street locations to CONTRACTOR.

3. ESTIMATED REQUIREMENTS

It is estimated that asphalt-rubber sealant will be installed in approximately 2,100,000 linear feet of cracks. The CITY reserves the right to add or deduct quantities to this contract.

4. SCHEDULE

CONTRACTOR shall provide all necessary labor and equipment for cleaning cracks in the existing bituminous pavement and applying an asphalt-rubber sealant product supplied by city.

No work is to be scheduled on the streets during the time period of Christmas through New Year Holiday.

Should CONTRACTOR plan on stopping work before completion of this agreement, prior approval is required from the Contract Administrator/designee.

5. EQUIPMENT

The equipment used by CONTRACTOR in the application of the asphalt rubber material shall have a mixing system in the material vat in order to maintain a consistent, uniform, homogenous mixture throughout the crack sealing operation. The unit shall heat the asphalt rubber material by means of an indirect heat transfer median for adequate material temperature control. The equipment shall provide a continuous supply so that operations may proceed without delays. The material shall be applied under pressure with a hose and wand assembly. The equipment designated for use by CONTRACTOR shall be approved by the Contract Administrator/designee prior to commencing work.

6. WEATHER

The Contract Administrator/designee, together with the CONTRACTOR's Supervisor, shall determine if weather conditions are such as to adversely affect the operations, or whether or not the operations should cease.

7. COMPRESSED AIR ROUTING, CLEANING OF CRACKS, and APPLYING SEALANT

- A. CONTRACTOR shall seal all cracks having an average clear opening  $\frac{1}{4}$ " or greater. All cracks with an average clear opening of less than  $\frac{1}{4}$  inch shall not be sealed unless directed to do so by the Contract Administrator/designee. All cracks between asphalt and curb or gutter shall be sealed regardless of clear opening size unless directed by the Contract Administrator/designee. CONTRACTOR shall contact the Contract Administrator/designee for filling of cracks 2' or wider. The Contract Administrator/designee shall make final determination as to what work will be done under this agreement.

Immediately prior to applying the sealant, CONTRACTOR shall thoroughly clean cracks and remove any loose particles, grass, grass roots, weeds, dust and other deleterious substances by means of high velocity compressed air or other methods prior approved by the Contract Administrator/designee. The compressor used shall be capable of sustaining a minimum pressure of 90 psi. The crack cleaning equipment shall be capable of cleaning cracks to a minimum depth of  $\frac{1}{8}$ " and shall be capable of dust containment (typically by a vacuum apparatus) by filtering particulate matter 10 micrometers or less in diameter with no dust clouds visible to the naked eye as determined by the Contract Administrator/designee. The conventional method of openly blowing out cracks with compressed air with no dust containment shall not be an acceptable crack cleaning method used under this agreement.

Crack cleaning shall be inspected and approved by the Contract Administrator/designee prior to the application of crack sealant. The Contract Administrator/designee will be available twice per day to inspect and approve the sealing process, once in the morning and once in the afternoon.

- B. CONTRACTOR shall place sealant so as to completely fill the crack and form a lap of greater than 1" on each side. Immediately after the application, a rubber squeegee or other acceptable means shall be used to level the sealant flush with the existing pavement surface. After cooling, the sealant shall not shrink more than  $\frac{1}{8}$ " below the pavement surface.

Sealant shall be heated to between 325°F and 400°F (163°C and 204°C) for at least  $\frac{1}{2}$  hour prior to application. Sealant shall only be applied to clean, dry cracks that have been approved by the Contract Administrator/designee from the bottom up to the surface level. CONTRACTOR shall provide certificates on all temperature gauges. The dates of the certificates shall be within the previous three (3) month period.

- C. The sealant shall be intended to be placed entirely within the crack. Blotter material may be required to prevent asphalt-rubber bleed and/or pickup of sealant by vehicular traffic. CONTRACTOR shall install blotter material of a type acceptable to CITY and at the direction of the Contract Administrator/designee at no additional cost to the City. Typical blotter material shall be made up of sand/silica sand and cannot include powdered cement. Any blotter material must be pre-approved by the Contract Administrator/designee.
- D. CONTRACTOR shall clean all sidewalks and driveways on a daily basis within the work area to the satisfaction of the Contract Administrator/designee. Within two (2) days after the work has been completed as shown on the plans, the area shall be cleaned of any excess material, debris, etc. The Contract Administrator/designee may require additional cleaning to be done, at no additional cost to the CITY, if an unsafe condition exists or excessive complaints are received from local residents. CONTRACTOR shall clean the streets, gutters, sidewalks and driveways before the job is considered complete. Cleaning of the streets shall be by mechanical pickup sweeper. CONTRACTOR shall clean streets to the satisfaction of the Contract Administrator/designee. CONTRACTOR shall be responsible for the disposal of all debris.

- E. Contract Administrator/designee shall inspect all work daily for quality of workmanship, width of cracks filled, cleanliness of cracks and lapping. CONTRACTOR shall correct all unacceptable work at no additional cost to the CITY, within five (5) working days after notification from the Contract Administrator/designee. CONTRACTOR shall not progress to a new street segment, residential area or parking lot until the unacceptable work is corrected to the satisfaction of the Contract Administrator/designee.
- F. While completing work CONTRACTOR shall protect against damage to vehicles, people and any other property that may be in the work area. During and after the placement of sealant, CONTRACTOR shall protect any persons or animals that may come in contact with the hot material against any harm.

#### 8. TRAFFIC CONTROL

- A. CONTRACTOR shall control all traffic through the work area in accordance with the requirements of the latest City of Chandler Traffic Barricade Manual. The CITY must approve the type of traffic control to be used.
- B. CONTRACTOR shall furnish all signs, cones, equipment and other traffic control device necessary for the control of traffic and costs for these devices shall be included in the price per lineal feet bid under this agreement.
- C. Traffic Control will be discussed and specific items reviewed with CONTRACTOR prior to commencing work.

#### 9. ADDITIONAL REQUIREMENTS - NOTIFICATIONS

CONTRACTOR shall notify all businesses and residences abutting those streets where crack sealing will occur 48-hours in advance of any work being completed. Notifications shall be via written message on a form approved by CITY. Notices shall be placed on, or attached to, the front door of each structure adjacent to the project. CONTRACTOR shall schedule work so that there are adjacent streets available for residents to park while work is being done in front of their homes.

#### 10. MEASUREMENT

Pre-mixed asphalt-rubber sealant shall be measured by the number of linear feet of cracks sealed in the accepted work. CONTRACTOR shall measure and record all completed areas and shall provide this information to the Contract Administrator/designee on a weekly basis. This list shall include the following information for CITY use in spot checking quantities and determining accuracy for payment:

- Name of street on which work was completed;
- Street numbers, beginning and ending;
- Number of lineal feet of cracks sealed in the listed street.

#### 11. BASIS OF PAYMENT

Payment shall be made at the agreed upon price per linear foot of crack sealed with premixed asphalt-rubber sealant. Price shall be full compensation for furnishing all preparation, mixing, and placing of this material as well as all labor, equipment tools, and incidentals including taxes, necessary to complete the work. Also included as incidental items are routing, cleaning of cracks, application of blotter material, traffic control and notification to property owners as noted in the specifications.

EXHIBIT C  
PRICING

QUANTITY AND UNIT	UNIT BID PRICE PER L.F.
Approximately 700,000 L.F. on arterial roads.	\$ .15 per L.F.
Approximately 1,400,000 L.F. on collectors & residential streets.	\$ .105 per L.F.

TOTAL NOT TO EXCEED \$ 300,000.00

(includes all taxes, costs required to perform the specified work)

EXHIBIT B  
TO  
COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
VINCON ENGINEERING CONSTRUCTION, LLC

[Work Orders]

See following pages (to be attached subsequent to execution).