

Town of Fountain Hills	I	LASWSlurry-7-1-1--
16705 E. Avenue of the Fountains	I	Hoyp
Fountain Hills, AZ 85268	I	
	I	
Development Services Department	I	
	I	

LICENSE AGREEMENT

BETWEEN

**SOUTHWEST SLURRY SEAL, INC., AN
ARIZONA CORPORATION**

&

THE TOWN OF FOUNTAIN HILLS

EFFECTIVE SEPTEMBER 23, 2013



DO NOT REMOVE
This is part of the official document.

When Recorded Mail To:

Town of Fountain Hills
Town Clerk
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268

LICENSE AGREEMENT

GRANTOR: Town of Fountain Hills, an Arizona municipal corporation (the "Town")

GRANTEE: Southwest Slurry Seal, Inc., an Arizona corporation

THIS LICENSE AGREEMENT (this "Agreement") is entered into and effective September 23, 2013, by and between the Town and Grantee for the purposes set forth below.

RECITALS

A. The Town is the record owner of certain real property at the location described on Exhibit 1, attached hereto and incorporated herein by this reference (the "Property").

B. The Grantee has requested, and Town has agreed to grant to the Grantee, a non-exclusive license upon, over, across and through the Property to use as a staging area for the Zone 7 Micro Surfacing Project (the "Permitted Use").

AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above, which are incorporated herein by reference, the mutual covenants set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Town and the Grantee agree as follows:

1. Grant of License and Term. The Town hereby grants to the Grantee a license (the "License") on, over, through and across the Property for the Permitted Use for the period from October 1, 2013 until June 30, 2014 (the "License Period"). This License shall be for the benefit and use of the Grantee, its employees, subcontractors and assigns (including without limitation employees, officers and agents) and no others. This License shall automatically terminate and shall be of no force or effect after the License Period.

2. Manner of Use of the Property. Grantee shall use due care and diligence in the use of the Property for the duration of the License Period and in the exercise of its rights hereunder, and it will at all times exercise its rights hereunder at such times and in such manner as approved by the Town and will not cause (i) any interference with the business operations (if any) on the Town's Property, (ii) any interference with the customary access to or from the Town's Property or (iii) any damage or injury to the Town's Property, or to any agents,

employees or invitees of the Town, ordinary wear and tear excepted. Additionally, Grantee, at its sole expense, without reimbursement from the Town, shall:

2.1 Property Protection. Ensure that all asphalt, curbing and sidewalks on the Property are protected from damage by Grantee's vehicles entering or exiting the Property. If Grantee's vehicles damage the asphalt, curbing or sidewalk, Grantee shall repair or replace such damages to the satisfaction of the Town, at no cost to the Town. Prior to first utilizing the Property, Grantee shall provide photographic evidence to the Town of all existing damage to perimeter curbs, gutter, sidewalk and pavement, if any. Photographs will clearly show the location of existing damage on the Property.

2.2 Dust Control. Prior to use of the Property, cover all areas of the Property to be accessed by vehicles with ABC type material in sufficient quantities to prevent the generation of dust. Grantee shall remove such dust preventative materials at the end of the License Period. The Grantee shall identify the Property in its dust control permit and provide the Town with a copy of such permit.

2.3 Property Restoration. Restore or cause to be restored the portions of the Property accessed or utilized by Grantee pursuant to this License to substantially its original condition prior to the completion of the License Period, ordinary wear and tear excepted.

2.4 No Hazardous Materials. Not release, discharge or deposit any toxic, hazardous or petroleum products onto the Property.

2.5 Limitations on Use; Security. Not use any portion of the Property for staging or storage of materials or equipment other than those to be used in connection with the Permitted Use. At the end of each day during the License Period, Grantee shall secure the Property to prevent access by unauthorized persons.

3. Permits; Compliance with Laws. The Grantee shall secure, maintain and comply with all required licenses, permits and certificates relating to, or otherwise necessary or appropriate for Grantee's use of the Property during the License Period. Grantee shall comply with all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances, including, but not limited to, those governing the prevention, abatement and elimination of pollution and/or protection of the environment, and the employment of workers. In exercising any rights and privileges under this License, the Grantee shall comply fully with all applicable permits, authorizations, approvals and other requirements.

4. Liens and Encumbrances. The Grantee represents and warrants that it will maintain the Property free and clear from any liens or encumbrances of any nature whatsoever in connection with the Grantee's use of the Property.

5. Indemnification. The Grantee covenants and agrees with the Town, on behalf of itself or its successors and assigns, as the case may be, to indemnify, defend and to hold harmless the Town, its successors and assigns, for, from and against any and all losses, claims, liabilities, costs and expenses which may be claimed or asserted against the Town, its successors or assigns,

or the Property to the extent arising from the negligence or willful misconduct of the Grantee, including, but without limitation, injury to any person or property, any mechanics' or materialmen's liens or claims of lien which may be asserted against the Town as a result of the Grantee's negligence or willful misconduct.

6. Insurance Coverage and Limits. Prior to making use of the Property, the Grantee shall obtain at its own expense, and provide the Town with evidence of, insurance sufficient to insure the Town's interests against claims for personal injury, bodily injury, death and property damage occurring on, in, or about the Property, with a "Combined Single Limit" covering personal injury liability, bodily injury liability and property damage liability of not less than \$2,000,000.00. The Town shall be endorsed as an additional insured on such policy.

7. Reservation of Rights. The Town hereby reserves all such rights and privileges in the Property as may be used and enjoyed by the Town without interfering with or abridging the rights conveyed to the Grantee.

8. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any Property or any portion of any Property to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any party hereto shall inure to the benefit of any third party person, nor shall any third party person be deemed to be a beneficiary of any of the provisions contained herein.

9. Counterparts. This Agreement may be executed in counterparts, all of which are identical, each of which shall be deemed an original, and all of which counterparts, when executed, taken together shall constitute one and the same instrument.

10. Cancellation by Town. This Agreement may be cancelled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

11. Early Termination. The Town reserves the right to terminate this License at any time due to the Grantee's failure to meet any of the conditions of this Agreement. The Grantee shall remove all fencing, equipment and non-native material, and return the Property to its original condition (as of the effective date of this License) within 48 hours of receipt of written notice that this License has been terminated.

[SIGNATURES ON FOLLOWING PAGES]

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

"Town"

TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation

By: Kenneth W. Buchanan
Kenneth W. Buchanan, Town Manager

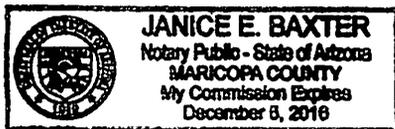
ATTEST:

Beverly J. Bender
Beverly J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on September 30, 2013, by Kenneth W. Buchanan, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, on behalf of the Town of Fountain Hills.



(affix notary seal here)

Janice E. Baxter
Notary Public in and for the State of Arizona

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

"Grantee"

SOUTHWEST SLURRY SEAL, INC.,
an Arizona corporation

By: [Signature]

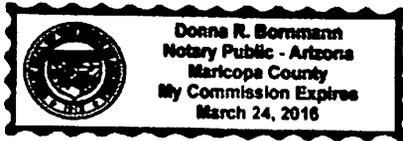
Name: Richard Francis

Title: President

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on September 19, 2013, by Richard Francis the President of SOUTHWEST SLURRY SEAL, INC., an Arizona corporation, on behalf of the corporation.



[Signature]
Notary Public in and for the State of Arizona

(affix notary seal here)

EXHIBIT 1
TO
LICENSE AGREEMENT

[Description of License Property]

A 40,000 SF area located at the northeast corner of Golden Eagle Boulevard and Bainbridge Avenue; APN #176-17-300Y.

Southwest Slurry Seal, Inc.

POLICY NUMBER: PBP2457734

COMMERCIAL GENERAL LIABILITY
CG 24 04 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization: As required by written contract

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV – COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS –
AUTOMATIC STATUS (INCLUDING COMPLETED OPERATIONS)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

- A.** The words "you" and "your" as used in this endorsement refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under the policy to which this endorsement is attached. "You" and "your" do not refer to an additional insured.
- B. The following is added to Section II – Who Is An Insured:**
1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in a written contract or written agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to:
 - a. Liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
 - (1) Your acts or omissions; or
 - (2) The acts or omissions of those acting on your behalf,in the performance of your ongoing operations for the additional insured.

A person or organization's status as an additional insured for ongoing operations ends when your operations for that additional insured are completed.
 - b. Liability for "bodily injury" or "property damage" caused in whole or in part, by "your work" at the location designated and described in the written contract or written agreement with that additional insured and included within the "products-completed operations hazard".
 2. With respect to the insurance afforded to the additional insured described above, the following additional exclusions or limitations apply::
 - a. This insurance does not apply to "bodily injury" or "property damage" caused by your ongoing operations, or "your work" included in the "products-completed operations hazard", unless you are required to provide such coverage for the additional insured by a written contract or agreement. The contract or agreement must be in effect during this policy period and signed and executed by you prior to the loss for which coverage is sought. Coverage for the additional insured is provided only for the lesser of: (i) the period of time required by such contract or agreement; or (ii) the end of the policy period. In no event will coverage for the additional insured extend beyond the expiration date of the policy.
 - b. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render any professional engineering, architectural or surveying services by you or others on your behalf, including:
 - (1) The preparing, approving, failing to prepare approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; or
 - (2) Supervisor or inspection activities performed as part of any related architectural or engineering activities.However, professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.

- c. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence or willful misconduct of, or defects in design provided by, the additional insured or its "employees".
 - d. This insurance does not apply to "bodily injury" or "property damage":
 - (1) Occurring after all work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance, or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - (2) Once the location designated and described in the written contract or written agreement has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project, except to the extent a written contract or written agreement requires coverage to be provided for "bodily injury" or "property damage" included within the "products-completed operations hazard".
 - e. With respect to any person or organization added as an additional insured by this endorsement, paragraph 9.f. of Section V – Definitions – Commercial General Liability policy does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard" unless such contractual assumption of liability is specifically required by a written contract or written agreement.
 - f. The insurance as provided in this endorsement does not apply to "bodily injury", "property damage" or "personal and advertising injury" caused by "your work" for which a consolidated (wrap-up) insurance program has been provided by the prime contractor, project manager or owner of a construction project in which you are involved.
3. The Limits of Insurance applicable to an additional insured are those specified in the written contract or written agreement or in the Declarations of this policy, whichever is less. These limits are inclusive of, and are not in addition to, the Limits of Insurance shown on the Declarations.
4. With respect to the coverage provided under this endorsement to an additional insured, the following is added to paragraph 4.a., Other Insurance, of Section IV – Commercial General Liability Conditions:

However, if a written contract or written agreement in effect during the policy period and signed and executed by you prior to the loss for which coverage is sought specifically requires this insurance to be either primary or primary and non-contributory, this insurance will comply with that requirement.

5. As a condition of coverage, each additional insured must:
- a. Give us prompt written notice of any "occurrence" or offense which may result in a claim and prompt written notice of "suit".
 - b. Immediately forward all legal papers to us, cooperate in the investigation or settlement of the claim or defense against the "suit," and otherwise comply with policy conditions.
 - c. Tender the defense and indemnity of any claim or "suit" to any other insurer which also insures against a loss we cover under this endorsement. This includes, but is not limited to, any insurer which has issued a policy of insurance in which the additional insured qualifies as an insured under any applicable policy definition. For purposes of this requirement, the term "insures against" refers to any self-insurance and to any insurer which issued a policy of insurance that may provide coverage for the loss, regardless of whether the additional insured has actually requested, demanded, or targeted tender that the insurer provide the additional insured with a defense and/or indemnity under that policy of insurance.
 - d. Agree to make available any other insurance that the additional insured has for a loss we cover under this endorsement.