Contract No. 2019-074

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: Visus Engineering Construction, Inc., an Arizona corporation

THIS LICENSE AGREEMENT (this "Agreement") is entered into and effective April 1, 2019, 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 and depicted 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 Fountain Hills Shoulder Paving 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 April 1, 2019 until August 30, 2019 (the "Licensed Period"). This License shall be for the benefit and use of the Grantee, its employees, subcontractors, and assigns (including the employees, officers, and agents of each) and no others. This License shall automatically terminate and shall be of no force or effect after the Licensed 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 Licensed 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, ordinary wear and tear excepted,

or to any agents, employees, or invitees of the Town.. Additionally, Grantee, at its sole expense, without reimbursement from the Town, shall:

2.1 **Property Protection.** Ensure that all aspects of the Property, including asphalt and drainage channels or swales on the Property, are protected from damage by Grantee and its vehicles entering or exiting the Property. If Grantee or its vehicles damage any aspect of the Property, including the asphalt, drainage channels or swales, Grantee shall repair or replace such damage 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 the Property, including to perimeter pavement, drainage channels or swales, if any. Photographs must clearly show the location of existing damage on the Property.

2.2 **Dust Control.** Prior to use of the Property, clear and grub stabilize all areas of the Property to be accessed by vehicles with native type material in sufficient quantities to prevent the generation of dust. Grantee shall stabilize (crust over) such dust preventative materials at the end of the Project. 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 Licensed 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 Licensed 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 Licensed 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 and its successors and assigns, as the case may be, to indemnify, defend, and hold harmless the Town, its successors, and its assigns, for, from, and against any and all losses, claims, and liabilities that arise from or relate to Grantee's (or its employee's agent's, subcontractor's, or assign's): (i) breach of any covenant herein; (ii)failure to pay, or claim of a failure to pay, a third

party, including with regard to any mechanic's or materialmen's lien or claim of lien; or (iii) negligence or willful misconduct, including any injury to any person or property.

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 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 provided herein, no third party shall be deemed to be a beneficiary of any of the provisions contained herein.

9. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which counterparts, when executed, 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 Agreement as of the date and year first set forth above.

"**Town**"

TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation

CR
3/27/19

Grady E. Miller, Town Manager

ATTEST:

Elizabeth A. Burke, Town Clerk

APPROVED AS TO FORM:

Aaron D. Arnson, Town Attorney

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On April 1, 2019, 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.

RHONDA M. BRENNEMAN
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires June 30, 2019

Rhonda M. Brenneman
Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

"Contractor"

Visus Engineering Construction, Inc.,
An Arizona corporation

By: _____

Name: Jeffrey A Kerr

Title: CEO

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On March 26, 2019, before me personally appeared _____ Jeffrey A. Kerr, the CEO Visus Engineering Construction Inc., a(n) Arizona corporation 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 corporation.

OFFICIAL SEAL
SONYA DUNGY
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires March 26, 2019

Notary Public

(Affix notary seal here)

EXHIBIT 1
TO
LICENSE AGREEMENT
[Description of License Property]

A 100,000 SF area located at the northwest corner of Fountain Hills Blvd and Cholla