



CITY OF GOODYEAR

Offer and Acceptance CONTRACT NO. CON-15-3203

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7879
Fax: 623-882-7890

DESCRIPTION OF SERVICES: Street Preservation

OFFER

To the City of Goodyear: The undersigned Contractor hereby offers and agrees to furnish the Services and/or material(s) in compliance with this Contract, as the term Contract is defined in this document.

By signing and submitting this Offer, Contractor certifies and warrants that Contractor: has read, understands and agrees to comply with the Contract as defined here; has no known, undisclosed conflict of interest; has not made an offer of any gift(s), payment(s) or other consideration to any City employee, elected official who has or may have had a role in the procurement process for this Contract; v) pursuant to A.R.S. § 41-4401, Contractor and its subcontractors will comply with all immigration laws and regulations that relate to its employees and A.R.S. § 23-214; and the signatory is an officer or duly authorized agent of the Contractor with full power and authority to submit binding offers for the goods and/or services as specified herein.

Arizona Transaction (Sales): 20813735-A
Arizona Contractor License Number: 278361
Privilege Tax License # 20813735-A
City of Goodyear Business Registration No.: None

For clarification of this offer contact:

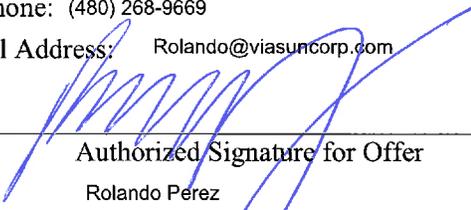
Name: Rolando Perez
Telephone: (480) 268-9669
E-Mail Address: Rolando@viasuncorp.com

Viasun Corporation

Company Name
731 N. 19th Ave

Address
Phoenix AZ 85009

City State Zip Code

Sign: 

Authorized Signature for Offer
Rolando Perez

Printed Name
President 2-18-15

Title Date

ACCEPTANCE OF OFFER AND CONTRACT AWARD (For City of Goodyear Use Only)

Contractor's Offer is hereby accepted and a Contract awarded by the City. Contractor is now bound to provide the materials and/or services as specified in Scope of Work of this Contract. Contractor shall not start any billable work or provide any material/services until the Contractor receives an executed purchase order or written notice to proceed.

City Manager, City of Goodyear (if applicable)

Attested by:

Maureen Scott, City Clerk
City Seal

Official File

City of Goodyear, Arizona. Eff. Date: _____

Awarded on _____

Approved as to form:

Roric Massey, City Attorney

Jacque Behrens, CPPB, Procurement Manager



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Instructions to Bidders

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1. PREPARATION OF OFFER

- a. It is the responsibility of all Bidders to examine the entire solicitation package and seek clarification from the responsible Procurement Specialist of any item or requirement that may not be clear, and to check all responses for accuracy before submitting a bid.
- b. All offers shall be on the forms provided in the solicitation package. It is permissible to copy these forms if required. Telegraphic (facsimile) or email bids will not be considered
- c. The Offer and Acceptance document shall be returned with the submittal with an original blue ink signature by a person authorized to sign the Offer. Pricing documents and other documents which require information to be filled in must be done in ink, typewritten or computer printed. No bids will be accepted if pencil is used. Erasures, interlineations, or other modifications in the bid shall be initialed in original blue ink by the authorized person signing the bid.
- d. It is the Bidder's responsibility to obtain a copy of any addenda relevant to this solicitation. Failure to submit addenda with the solicitation response may be grounds for deeming a bid non-responsive.
- e. Bids shall be submitted in a sealed envelope provided by the Bidder, and should include the Bidder's name, address and solicitation number on outside of the sealed envelope/package.
- f. Periods of time, stated as a number of days, shall be calendar days.
- g. It is the responsibility of the Bidder to submit the bid at the place and by the time provided in the solicitation.
- h. Negligence in preparing a bid confers no right of withdrawal after the due date and time of the bid. No bid shall be altered, amended, or withdrawn after the specified offer due date and time.
- i. Offers shall include all costs as described and indicated by the specifications. The City is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, if any, shall be indicated as a separate item.
- j. If price is a consideration, and in case of error in the extension of prices in the bid, the unit price shall govern.
- k. The City shall not reimburse the cost of developing, presenting, or providing any responses to this solicitation. Bids submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.
- l. Bidder shall submit one (1) original, marked "original" and three (3) copies of their bid with their submittal. Bid shall be submitted single-sided and one (1) CD-ROM of the proposal containing all original documents.



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2. SERIAL NUMBERS

Bids shall be for equipment on which the original manufacturer's serial number, if applicable, has not been altered in any way. Throughout the contract term, the City reserves the right to reject any altered equipment.

3. BRAND NAMES

Any manufacturer's names, trade names, brand names, or catalog numbers used in the specifications are for the purposes of describing and establishing the quality level, design and performance desired. Such references are not intended to limit or restrict bidding by other vendors, but are intended to establish the quality, design or performance which is desired. Any Bidder which proposes equal or greater quality, design or performance may be considered. The city has the sole authority to accept or reject any like items.

4. SUBSTITUTIONS OR EXCEPTIONS

The City reserves the option to not consider bids for award if the Bidder: i) takes any exception to the specifications and the City does not agree or accept the proposed changes; or ii) proposes a unit which does not meet the City's specifications exactly and the Bidder does not additionally propose the specified unit prior to bid opening, and the City rejects the alternative identified.

5. DESCRIPTIVE LITERATURE

All bidders shall include complete manufacturer's descriptive literature regarding the equipment and goods they propose to furnish. Literature shall be sufficient in detail in order to allow full and fair evaluation of the bid submitted. Failure to include this information may result may result in the bid being rejected.

6. PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL

All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.

7. INQUIRIES

Any questions related to the solicitation shall be directed to the responsible Procurement Specialist whose name appears on the front page **via email only**. The Bidder shall not contact or ask questions of other City staff or the City department for which the requirement is being procured. Any correspondence related to a solicitation should refer to the solicitation number, page, and paragraph number. All questions must be submitted no later than the close of business seven (7) calendar days prior to the opening date.

8. PRE-BID CONFERENCE

A Pre-Bid Conference may be held. Attendance at the scheduled Pre-Bid Conferences is not mandatory. The date, time and location of the conference are indicated on the cover page of this document. The purpose of this conference will be to clarify the contents of this solicitation in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this solicitation or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine if any action is necessary and may issue a written amendment to the solicitation. *Oral statements or instructions will not constitute an amendment to this solicitation.*



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9. LATE BIDS/MODIFICATIONS/WITHDRAWALS

Bids, modifications of bids, and withdrawals received *after* the due date and time specified for receipt will be rejected and returned to the Bidder unopened. A Bidder (or designated representative) may withdraw their bid via email to the responsible Procurement Specialist any time *prior* to the solicitation due date and time.

10. PUBLIC RECORD/CONFIDENTIAL INFORMATION

All bids submitted in response to this solicitation shall become the property of the City and shall become a matter of public record available for review, subsequent to the award. If the Bidder believes that any information provided throughout the procurement process should be withheld as confidential, it is the responsibility of the Bidder to submit to the Procurement Manager a statement when the confidential information is submitted which identifies those items the Bidder believes to be confidential and the legal reason(s) why they are confidential. The Procurement Manager shall review the request for confidentiality and advise the Bidder in writing if the information will be treated as confidential by the City. If the City receives a public records request for any of the information determined to be confidential by the Procurement Manager, the City will use reasonable efforts to give notice to the Bidder prior to the release of the information.

11. BID ACCEPTANCE PERIOD

In order to allow for an adequate evaluation, the City requires a bid in response to this Solicitation to be valid for one hundred twenty (120) days after the opening time and date.

12. DISCUSSIONS

The City reserves the right to conduct discussions with Bidders for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the submittal in order to clarify a bid and assure full understanding of, and responsiveness to, solicitation requirements.

13. PERSONNEL

It is essential that the Bidder provide adequate experienced personnel, capable of and devoted to the successful accomplishment of the work to be performed in this Solicitation. The Bidder agrees that those persons identified in their submittal shall not be removed or replaced without a written request to and approval from the City.

14. AWARD OF CONTRACT

- a. The contract will be awarded pursuant to the provisions of the City of Goodyear Procurement Code. Unless the Bidder states otherwise, or unless provided within this solicitation, the City reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City. Notwithstanding any other provision of this solicitation, the Procurement Manager further reserves the right to i) waive any immaterial defect or informality; ii) reject any or all bids, or portions thereof; iii) reissue the solicitation; or iv) modify or cancel this solicitation.
- b. A response to a solicitation is an offer to contract with the City based upon the terms, conditions and specifications contained in the City's solicitation and the written amendments thereto, if any. If City Council approval is necessary, bids do not become contracts unless and until they are accepted by the



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City Council. A contract is formed when written notice of award(s) is provided to the successful Bidder(s). The Contract has its inception in the award document, eliminating a formal signing of a separate contract.

- c. In the event the City should receive two or more identical bids, the awardee will be determined by lottery.

15. BUSINESS REGISTRATION PERMIT

All Bidders awarded contracts with the City shall be required to obtain a City of Goodyear Business Registration Permit through the Goodyear Business Registration Office. For further information call Building and Safety, Myra Russell at (623) 882-7928 or myra.russell@goodyearaz.gov.

16. PROTESTS

- a. Any interested party may protest a solicitation issued by the City or the proposed award or the award of a City Contract by submitting a request in writing with the Procurement Manager for the City of Goodyear, with a copy directed to the City Attorney for the City of Goodyear as follows:

Jacque Behrens, CPPB
Procurement Manager
City of Goodyear
P.O. Box 5100
190 North Litchfield Road
Goodyear, AZ 85338

Roric Massey
City Attorney
City of Goodyear
P.O. Box 5100
190 North Litchfield Road
Goodyear, AZ 85338

- b. Writing: All protests must be in writing and shall include the following information:
- The name, address and telephone number of the protester;
 - The signature of the protester or its representative;
 - The solicitation or contract number;
 - A detailed statement of the legal or factual grounds of the protest including copies of relevant documents; and
 - The form of relief requested. R3-4-16.01
- c. Time Frame: To be considered, protests must be filed during the time frame identified in the procurement code.
- *Protests of a solicitation* must be filed within five (5) days of the first advertising of the solicitation.
 - *Protests of an award* must be filed within ten (10) days of the issue date of the Notice of Award or Notice of Intent to Negotiate and Award.
- d. The Procurement Manager is required to notify all interested parties that a protest has been filed.

END OF INSTRUCTIONS TO OFFERORS



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SECTION 1. DEFINITIONS

- 1.1 “City” means the City of Goodyear.
- 1.2 “City Manager” means the manager of the City of Goodyear or designee.
- 1.3 “Contract” means this Goods/Services Contract and any attachments referenced herein, fully completed and executed between the City of Goodyear and the Contractor.
- 1.4 “Contractor” means the individual, partnership, entity or corporation who, as a result of the competitive process, is awarded a contract by the City of Goodyear to provide goods and/or services.
- 1.5 “Days” means calendar days unless otherwise specified herein.
- 1.6 “Litigation Expense” means any court filing fee and costs, arbitration fees or costs, witness fee, arbitration fees, and each other fee and cost of investigating and defending or asserting any claim for indemnification under this Contract, including, without limitation, in each case, attorneys’ fees, professional fees, disbursements and each other fee and cost of investigating and defending, appealing or asserting any claim for indemnification under this Contract.
- 1.7 “Loss” means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge, other than a litigation expense.
- 1.8 “Project” “Services” or “Work” means the subject matter of this Contract as more fully set forth in the attached Scope of Work, which may include delivery of goods and/or services.
- 1.9 “Subcontractor” means any individual, corporation, company, or other entity who contracts to perform work or render services or provide goods to a Contractor or to another subcontractor as part of this Contract with the City.

SECTION 2. TERM OF CONTRACT

- 2.1 The term of the contract may be automatically extended to include the warranty period.
- 2.2 Contractor shall not commence work until Contractor receives a Purchase Order signed by the City of Goodyear Procurement Manager or designee.

SECTION 3. COMPENSATION AND PAYMENTS

- 3.1 **COMPENSATION**: Total compensation to be paid under this Contract shall not exceed the purchase order amount.
- 3.2 Contractor shall invoice City on or before the 10th day of each month for goods and/or services provided under this contract during the prior month. All invoices shall contain itemized hourly fees, unit cost, extended cost of goods and supporting documentation for all invoiced amounts. All invoices to the City



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shall identify the specific item(s) being billed and the Purchase Order number. Items are to be identified by the name, model number, and/or serial number most applicable.

- 3.3 City shall make every effort to process payments to Contractor within thirty (30) calendar days after the receipt of a correct and approved invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the invoice or account.
- 3.4 **PRICE ADJUSTMENT/CONTRACT EXTENSION:** The City's Office of Procurement will review fully documented requests for price increase after any contract has been in effect for one (1) year. Any price increase adjustment will only be made at the time of contract extension and will be a factor in the extension review process. The Office of Procurement will determine whether the requested price increase or alternate option is in the best interest of the City. Any price adjustment will be effective upon the effective date of the contract extension.
- 3.5 **PRICE REDUCTION:** A price reduction may be offered at any time during the term of the contract and shall become effective upon notice.
- 3.6 **LATE SUBMISSION OF CLAIM BY CONTRACTOR:** The City will not honor any invoices or claims which are tendered one (1) year after the last item of the account accrued.
- 3.7 **ESTIMATED QUANTITIES:** Quantities identified in the Solicitation are the City's best estimate and do not obligate the City to order or accept more than the City's actual requirements during the period of this Contract as determined by actual needs and availability of appropriate funds. It is expressly understood and agreed that Contractor is to supply the City with its complete and actual requirements for the contract period.
- 3.8 **PRODUCT DISCONTINUANCE:** In the event that a product or model identified in the offer is subsequently discontinued by the manufacturer, the City at its sole discretion may allow the Contractor to provide a substitute for the discontinued item. The Contractor shall request permission to substitute a new product or model and provide all of the following:
1. A formal announcement from the manufacturer that the product or model has been discontinued;
 2. Documentation from the manufacturer that names the replacement product or model;
 3. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation;
 4. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model; and
 5. Documentation confirming that the price for the replacement is the same as or less than the discontinued product or model.
- 3.9 **USAGE REPORT:** The Contractor may be required to provide a usage report to the Procurement Manager.
- 3.10 **DISCOUNTS:** Payment discounts will be computed from the date receiving acceptable goods, materials and/or services or correct invoice, whichever is later to the date payment is mailed.
- 3.11 **NO ADVANCE PAYMENT:** Advance payments will not be authorized; payment will be made only for actual goods or services that have been received.



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- 3.12 **FUND APPROPRIATION CONTINGENCY:** The Parties recognize that the continuation of any contract after the close of any given fiscal year of the City of Goodyear, which fiscal year ends on June 30 of each year, shall be subject to appropriation and allocation of funds by the Goodyear City Council.
- 3.13 **F.O.B. POINT:** All prices are to be quoted F.O.B final destination, unless otherwise specified elsewhere in the solicitation.
- 3.14 **TAXES:** Contractor shall be solely responsible for any and all tax obligations that may result from Contractor's performance of this Contract.

SECTION 4. TERMINATION

- 4.1 **TERMINATION FOR CONVENIENCE:** City at any time and for any reason and without cause may terminate, suspend or abandon any portion, or all, of this Contract at City's convenience. In the event that the City terminates, suspends or abandons any part of the services, the City shall provide notice to the Contractor. Upon receipt of notice, the Contractor shall, unless the notice directs otherwise, immediately discontinue further services and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

The Contractor shall appraise the services completed prior to receiving notice of the termination, abandonment or suspension and deliver to the City all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by the Contractor under the contract, entirely or partially completed, together with all unused materials supplied by the City.

In the event of termination, abandonment or suspension, Contractor shall be paid for services satisfactorily performed prior to receipt of such notice including reimbursable expenses then incurred. However, in no event shall the fee exceed that set forth in Section 4 of this Contract. Contractor shall not be entitled to any claim or claim of lien against Owner for any additional compensation or damages in the event of such termination and payment.

The City shall make final payment within thirty (30) days after the Contractor has fully complied with the provisions of Section 5 and Contractor submits a correct and approved final invoice for the fee that has been agreed to by the Parties.

- 4.2 Any attempt to represent any material and/or service not specifically awarded as being under contract with the City of Goodyear is a violation of the contract and the City of Goodyear Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the Contractor.

SECTION 5. RISK OF LOSS AND LIABILITY

- 5.1 **INDEMNIFICATION:** Unless a federal and state statute that expressly prohibits such indemnification, Contractor shall defend, indemnify, save and hold harmless the City of Goodyear, its officials, directors, officers, employees, agents, and representatives (hereinafter referred to as "Indemnitee") at all times after the date of this Contract from and against any and all Claims, caused by, relating to, arising out of, or alleged to have resulted from, in whole or in part, any negligent, reckless or intentional acts, errors, fault, mistakes, omissions, work, goods or service of the Contractor, its directors, officers, employees, agents,



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representatives, or any tier of subcontractors or any other person for whose acts, errors, fault, mistakes omissions, work, goods or service the Contractor may be legally liable in the performance of this Contract. The Indemnification provided hereunder shall extend to Claims arising out of, or recovered under, Arizona's Workers' Compensation Law or the failure of Contractor to conform to any applicable and appropriate federal, state, or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that the Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

In consideration of the award of this contract, Contractor agrees to waive all rights of subrogation against Indemnitee for Claims arising from the work performed by Contractor, its directors, officers, employees, agents, representatives, or any tier of subcontractors pursuant to this Contract. This indemnification provision shall survive the expiration or earlier termination of this Contract.

For purposes of this Indemnification provision the term Claims shall mean claims, suits, actions, demands, proceedings, losses, settlement payments, disbursements, expenses, and damages of every kind and description (including but not limited to costs, interest, awards, judgments, diminution in value, fines, penalties or other charges, reasonable attorneys' fees, other professionals' fees, court filing fees and costs, arbitration fees, witness fees, and each other fee and cost of investigating and defending, negotiating, appealing or asserting any claim for indemnification under this Contract) (collectively referred to "Litigation Expenses").

- 5.2 **INDEMNIFICATION – PATENT, COPYRIGHT AND TRADEMARK:** The Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, copyright or trademark or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or Services performed under this Contract. The Contractor agrees upon receipt of notification to promptly assume full responsibility for the defense of any claim, suit or proceeding which is, has been, or may be brought against the City and its agents for alleged infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this Contract and the Contractor further agrees to indemnify the City against any and all expenses, losses, royalties, profits and damages including courts costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein. The City may be represented by and actively participate through its own counsel in such suit or proceedings, it is so desires. It is expressly agreed by the Contractor that these covenants are irrevocable and perpetual.
- 5.3 **TITLE AND RISK OF LOSS:** The title and risk of loss of material or services shall not pass to the City until the City actually receives and accepts the materials or services at the point of delivery; and such loss, injury or destruction shall not release the Contractor from any obligation hereunder.
- 5.4 **ACCEPTANCE:** All materials or services are subject to final inspection and acceptance by the City. Materials or services failing to conform to the specifications of this Contract shall be held at Contractor's risk and may be returned to the Contractor. If returned, all costs are the responsibility of the Contractor. The City may elect to do any or all of the following: a) Waive the non-conformance; b) Stop the work immediately; c) Bring materials into compliance; and/or d) Terminate the Contract and seek all remedies available in law and in equity. This shall be accomplished by a written determination by the City.



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- 5.5 **LOSS OF MATERIALS:** The City does not assume any responsibility, at any time, for the protection of or for the loss of materials, from the execution of this Contract until the final acceptance of the work by the City.
- 5.6 **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment of lot of this Contract and may not substitute nonconforming materials and/or services. Delivery of nonconforming materials or a default of any nature, at the option of the City, shall constitute a breach of the Contract as a whole.
- 5.7 **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship goods or perform services under reservation, and no tender of an invoice or bill of lading will operate as a tender of the goods or services.
- 5.8 **WORK PERFORMED AT CONTRACTOR'S RISK:** Contractor shall take all precautions reasonably necessary and shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall utilize all protections reasonably necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
- 5.9 **SAFETY STANDARDS:** All items supplied pursuant to this Contract shall comply with the current applicable Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.
- 5.10 **PROJECT STAFFING:** Prior to the start of any Services under this Contract, the Contractor shall submit to the City detailed resumes of key personnel that will be involved in performing Services prescribed in the Contract for review and approval. At any time hereafter that the Contractor desires to change key personnel while performing under the Scope, the Contractor shall submit the qualifications of the new personnel to the City for prior approval. Key personnel include but are not limited to the Contractor's principal-in-charge, project manager, project designer, project architect, system architect, system manager and system engineer.
- The Contractor will maintain an adequate and competent staff of qualified persons throughout the performance of this Contract as necessary for acceptable and timely completion of the services. If the City objects, with reasonable cause, to any of the Contractor's staff, the Contractor shall take prompt corrective action and, if required, remove such personnel from the Project and replace them with the new personnel agreed to by the City.
- 5.11 **SUBCONTRACTORS:** Prior to beginning the work, the Contractor shall furnish the City for approval the names of subcontractors to be used on this Project. Any subsequent changes are subject to the approval of the City.
- 5.12 **DAMAGE TO CITY PROPERTY:** Contractor shall perform all work so that no damage to any City buildings or property results. Contractor shall repair any damage caused to the satisfaction of the City at no cost to the City. Contractor shall take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor shall repair and finish in a manner which matches existing material as approved by the City at the Contractor's expense.



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- 5.13 **FORCE MAJEURE:** Neither Party shall be in default by reason of any failure in performance of this Contract if such failure arises out of causes beyond their reasonable control and without the fault or negligence of said Party including, unforeseeable Acts of God; terrorism or other acts of public enemy; war and epidemics or quarantine restrictions.

If either Party is delayed at any time in the progress of the Work by force majeure, the delayed Party shall notify the other Party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in the notice. The notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed Party from performing in accordance with this contract.

Section 6 INSURANCE

- 6.1 **CLAIM REPORTING:** Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.
- 6.2 **NOTICE OF CANCELLATION:** Each certificate for each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage by endorsement to limits lower than those required by this Contract, except after prior written consent from the City. Notice will be sent as required herein.
- 6.3 **ENDORSEMENTS/CERTIFICATES OF INSURANCE:** The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:
- 6.3.1 **ADDITIONAL INSURED:** “The City of Goodyear and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of, or related to, activities performed by or on behalf of the Contractor pursuant to its contract with the City; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor.”
- 6.3.2 **ADDITIONAL INSURED – GOODYEAR BALLPARK AND RECREATIONAL COMPLEX:** Any Contracts addressing, or related to, the Goodyear Ballpark and Recreational Complex shall also identify the Cleveland Indians Baseball Company, and the Cincinnati Reds, LLC as additional insured and endorse the same.
- 6.3.3 Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of insurer’s liability. Contractor’s policy shall be primary and non-contributory.
- 6.3.4 **CERTIFICATES OF INSURANCE:** Contractor shall provide the City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Contract. The insurance certificates shall be attached hereto and incorporated hereby by this reference.



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- 6.4 **NO REPRESENTATION OF COVERAGE ADEQUACY:** The insurance requirements herein are *minimum requirements* for this Contract and the City in no way warrants that the minimum requirements contained herein are sufficient to protect Contractor from liabilities that might arise out of the performance of the Work under this Contract by Contractor, its agents, representatives, employees or subcontractors and the Contractor is free to purchase additional insurance. Any insurance coverage carried by the City or its employees is excess coverage and not contributory coverage to that provided by the Contractor. The amount and type of insurance coverage requirements set forth herein shall in no way be construed as limiting the scope of the indemnification obligations under this Contract.
- 6.5 **NON-WAIVER:** The City reserves the right to review any and all of the insurance policies and/or an endorsement required by this Contract, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Contract or failure to identify any insurance deficiency shall not relieve the Contractor from, nor be construed or deemed a waiver of its obligation to maintain the required insurance at all times during the performance of the Contract. Any failure of Contractor to comply with the reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, agents, employees and volunteers.
- 6.6 **NOTICE OF CANCELLATION:** Each certificate for each insurance policy required by this Section shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage by endorsement to limits lower than those required by this Contract except after prior written consent from the City.
- 6.7 **CLAIM REPORTING:** Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.
- 6.8 **OTHER CONTRACTORS OR VENDORS:** Contractor shall ensure that its subcontractors and any vendors that may be contracted with in connection with the Project procure and maintain insurance coverage as is appropriate for their particular contract and properly endorse the City as required in this Section 9.
- 6.9 **PRIMACY OF COVERAGE:** Coverage required in this section shall be primary, any other insurance maintained by the City shall be excess and not contributing with the insurance provided by Contractor pursuant to this Contract.

SECTION 7. CONTRACT INTERPRETATION

- 7.1 **DISPUTES, GOVERNING LAW, ATTORNEY FEES:** Should any dispute, misunderstanding or conflict arise as to the terms or provisions contained in this Contract, the matter shall first be referred to the City, and the City shall determine the term or provision's true intent and meaning.

This Contract shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the laws of the State of Arizona, without regard to choice of law or conflicts of laws principles thereof. Any action arising out of this Contract shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa. The prevailing Party shall be reimbursed by the other Party for all attorney fees and all costs and expenses, including but not limited to all service of process, filing fees, court and court report costs, investigative costs, and expert witness fees which are incurred in any legal proceeding whatsoever arising out of this Contract, including, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearing.



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- 7.2 **PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by federal, state or local law to be in this Contract shall be read and enforced as though it were included herein and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party the Contract shall forthwith be physically amended to make such insertion or correction.
- 7.3 **PAROL EVIDENCE:** This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in trade shall be relevant to contradict, supplement or explain any term used in this Contract.
- 7.4 **SEVERABILITY:** If any provision in this Contract or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 7.5 **CONTRACT ORDER OF PRECEDENCE:** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following shall prevail in the order set forth below:
1. Special Terms and Conditions
 2. Standard Terms and Conditions
 3. Specifications
 4. Fee Schedule
 5. Attachments
 6. Exhibits
 7. Invitation to Bid, Instructions to Bidders and other documents referenced or included.
- 7.6 **INTEGRATION:** This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.
- 7.7 **INDEPENDENT CONTRACTOR:** Each Party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Contractor should make arrangements to directly pay such expenses, if any.
- 7.8 **NON-WAIVER MONIES DUE:** The City of Goodyear as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.
- 7.9 **AMBIGUITIES NOT HELD AGAINST DRAFTER:** This Contract having been freely and voluntarily negotiated by all parties and the rule of contract construction that ambiguities, if any, in any term or condition of an agreement are held against the drafter of the agreement is not applicable to this Contract.
- 7.10 **NON-WAIVER CONTRACT PROVISION:** The failure of either Party to enforce any of the provisions of this Contract or to require performance of the other Party of any of the provisions hereof shall not be



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construed to be a waiver of such provisions, nor shall it affect the validity of this Contract or any part thereof, or the right of either Party to thereafter enforce each and every provision.

- 7.11 COOPERATION AND FURTHER DOCUMENTATION: The Contractor agrees to provide the City all duly executed documents as shall be reasonably requested by the City to implement the intent of this Contract.

SECTION 8. CONTRACT ADMINISTRATION AND OPERATION

- 8.1 WORK PRODUCT, EQUIPMENT AND MATERIALS: All work product, equipment, or materials created or purchased under this Contract are considered the sole property of the City and must be delivered to the City upon termination, abandonment of the Contract or final payment to the Contractor and shall not be used or released by the Contractor without prior authorization from the City. Work product includes, but is not limited to, plans, specifications, cost estimates, tracings, studies, design analyses, original Mylar drawings, computer aided drafting and design (CADD) file, computer disks and/or other electronic records and media. Contractor agrees that all materials prepared under this Contract are “works for hire” within the meaning of the copyright laws of the United States and assigns to City all rights and interest Contractor may have in the materials it prepares under this Contract, including any right to derivative use of the materials. Contractor shall place the professional seal of Contractor on all plans and documents prepared in the performance of this Contract.

- 8.2 CONFIDENTIALITY AND ENCRYPTION: All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this Contract are confidential, proprietary information owned by the City. Except as specifically provided in this Contract, the Contractor shall not disclose data generated in the performance of the Service to any third person without the prior written consent of the City Manager.

Personal identifying information, financial account information or restricted City information, whether electronic format or hard copy, are considered confidential information and must be secured and protected at all times to avoid unauthorized access. At a minimum Contractor shall ensure that all electronic transmissions of confidential data are encrypted and any cryptographic algorithm implementations used must have been validated by the National Institute of Standards and Technology (NIST). The use of proprietary encryption algorithms will not be allowed for any purpose. The export of encryption technologies is restricted by the U.S. Government.

In the event that data collected or obtained by Contractor in connection with this Contract is believed to have been compromised, Contractor shall notify the City Attorney immediately. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

Contractor agrees that the requirements of this section shall be incorporated into all subcontractor agreements entered into by the Contractor. It is further agreed that a violation of this section shall be deemed to cause irreparable harm and justifies injunctive relief in court. A violation of this section may result in immediate termination of this Contract without further notice. The obligations of Contractor under this section shall survive the termination of this Contract.



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8.3 **CONFLICT OF INTEREST/THIRD PARTIES:** Contractor shall provide written notice to the City as set forth in this section, of any work or Services performed by the Contractor for third parties that, to the extent that the Contractor is aware, involves or is associated with any real property or personal property owned or leased by the City or which may be adverse to the City. Notice shall be given seven (7) days prior to commencement of the Services by the Contractor for a third party. Written notice and disclosure shall be sent to:

Roric Massey, City Attorney
City of Goodyear
190 N. Litchfield Rd
Goodyear, Arizona 85338

Actions that are considered to be adverse to the City include but are not limited to:

1. Using data acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City;
2. Testifying or providing evidence on behalf of any third party in connection with an administrative or judicial action against the City; and
3. Using data to produce income for the Contractor, its subcontractors or employees independently of performing the services under this Contract, without the prior written consent of the City.

The Contractor represents that except for those persons, entities and projects identified to the City, the Services to be performed by the Contractor under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City. The Contractor's failure to provide a written notice and disclosure of the information as set forth in this section shall constitute a material breach of Contract.

8.4 **CONFLICT AUDIT:** Within thirty (30) days of being requested to do so, Contractor agrees to provide the City an itemized summary of any and all gifts a Contractor, its directors, officers, managers, employees, agents and/or representatives have made to any City employee during the year prior to the date of the Contract through the date of the request. The summary shall include the date the gift was made, a description of the gift, the City employee(s) that received the gift, and the value of the gift. The summary shall be signed and its truthfulness certified by Contractor. For purposes of this section the terms "Gift" means anything of value that is provided to the employee and includes, by way of example, but not limitation, meals, free use of vacation homes, low interest or no interest loans, tickets to sporting events, tickets to charitable events, entertainment expenses, travel expenses, drinks, and the like. The failure to comply with any request made pursuant to this section and/or the submission of a summary that contains material misrepresentations constitutes grounds for debarment and the refusal to allow Contractor to participate in any future contracts with the City.

8.5 **AUDIT OF RECORDS:** Contractor shall retain, and shall contractually require each and every subcontractor that performs any Work under this Contract to retain all books, accounts, reports, files and any and all other records relating to the contract (hereinafter referred to as "Contract Documents") for six (6) years after completion of the Contract. City, upon written request and at reasonable times, shall have the right to review, inspect, audit and copy all Contract Documents of the Contractor and any subcontractors. Contractor shall produce the original Contract Documents at City Hall, currently located at 190 N. Litchfield Road, Goodyear, Arizona, or at such other City facility within the City as designated



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by the City in writing. If approved by City Attorney in writing, photographs, microphotographs, or other authentic reproductions may be maintained instead of original Contract Documents.

- 8.6 **AUDIT/BILLING AND EXPENSES:** The City reserves the right to request supporting documentation for all hourly amounts, cost of goods and reimbursable expenses charged to the City. Such records will be subject to audit at any time during the term of this Contract and for a period not to exceed two (2) years after any amount is billed. Within thirty (30) days of receiving a request, the Contractor will furnish to the City original invoices to support all charges and complete payroll records to support such hourly labor charges. The City reserves the right to audit any other supporting evidence necessary to substantiate charges related to this Contract, both direct and indirect costs, including overhead allocations if they apply to hourly costs associated with this Contract. If requested by the City, the Contractor will provide supporting records electronically in addition to a hard copy.

If the audit reveals overcharge, the Contractor will reimburse the City upon demand for the amount of such overcharges plus interest thereon from the date paid by the City through the date of reimbursement. If the overcharges exceed 5% of Contractor's compensation, then Contractor shall also reimburse the City for the cost of the audit.

The Contractor shall include a similar provision in all of its agreements with subcontractor providing goods and/or services under this Contract to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the subcontractor records to verify the accuracy of any similar amounts charged to the City.

- 8.7 **ADVERTISING:** Contractor and all subcontractors shall not advertise or publish new releases concerning this Contract, goods or services provided to the City without prior written consent of the City Attorney.
- 8.8 **CITY MARKS:** The Contractor and all subcontractors shall not use any trade name, trademark, service mark, or logo of the City (or any name, mark or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent.
- 8.9 **LICENSES AND PERMITS:** Contractor and all subcontractors shall keep current federal, state, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.
- 8.10 **E-VERIFY:** Contractor and all subcontractors warrant compliance with the e-verify statute, A.R.S. § 23-214(A). A breach of this warranty shall be deemed a material breach of this contract, and shall subject this contract to penalties up to and including termination of the contract. The City retains the right to inspect the papers and records of any of Contractor's employees or any subcontractor employees working on the contract to ensure compliance with this requirement. For this section, Contractor shall have the meaning of Contractor as found in A.R.S. § 41-4401, and subcontractor has the same meaning as found in A.R.S. § 41-4401.
- 8.11 **NON-DISCRIMINATION:** Contractor and all subcontractors will not discriminate against any person on the basis of race, color, religion, age, gender, or national origin in the performance of this Contract, and shall comply with the terms and intent of Title VI of the Civil Rights Act of 1964, P.L. 88-354.



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- 8.12 COMPLIANCE: The Contractor and all subcontractors understand and agree to comply with the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 as amended. The Contractor agrees to comply with these laws and Arizona Executive Order 2009-09 in performing this Contract and to permit the City to verify such compliance.
- 8.13 CONTINUATION DURING DISPUTES: Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor shall continue to perform the obligations required of the Contractor during the continuation of any such dispute unless enjoined or prohibited by the City or an Arizona Court of competent jurisdiction.
- 8.14 COOPERATIVE STATEMENT: This contract shall be for the use of the City of Goodyear. In addition, specific eligible specific political subdivisions and nonprofit educational or public health institutions may also participate at their discretion. Any eligible agency may elect to participate (piggyback) on this contract if the Contractor agrees to do so.
- 8.15 CAPTIONS: The captions used herein are for convenience only and are not a part of this Contract and do not in any way limit or amplify the terms and provisions hereof.
- 8.16 BANKRUPTCY: This Agreement, at the option of the City, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of the Contractor.

SECTION 9. CONTRACT CHANGES

- 9.1 MODIFICATION: No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the Parties with authority to do so. This section does not prohibit the City from unilaterally extending the contract term.
- 9.2 SUCCESSORS AND ASSIGNS: This Contract is binding on the parties' respective partners, successors, assigns, and legal representatives. Contractor will not assign, sublet, or transfer its right or interest in this Contract nor monies due, in whole or in part, or delegation any duty of Contractor without the prior written consent of the City. Any assignment or delegation made in violation of this section shall be void. In no event does this Contract create any contractual relationship between the City and any third party.
- 9.3 THIRD PARTY BENEFICIARY: Nothing under this Contract shall be construed to give any rights or benefits in the Contract to anyone other than the City and the Contractor, and all duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of City and the Contractor, and not for the benefit of any other Party.
- 9.4 AUTHORIZED CHANGES: The City reserves the right at any time to make changes in any one or more of the following: (i) specifications; (ii) methods of shipment or packing; (iii) place of delivery; (iv) time of delivery; and/or (v) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or deliver schedule, or both. Any claim for adjustment shall be deemed waived unless asserted in writing within thirty (30) days from the receipt of the change. Prior increases or extensions of delivery time shall not be binding on the City unless evidenced in writing and approved by the City.



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- 9.5 **SUBCONTRACTS:** No subcontract shall be entered into by the Contractor with any other party to furnish any of the goods, Service or Work specified herein without the advance written approval of the City.
- 9.6 **CONTINGENT FEES:** Contractor warrants that no person has been employed or retained to solicit or secure this Contract 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 of Goodyear has any interest, financially, or otherwise, in the Contractor's business/firm. For breach or violation of this warranty, the City of Goodyear shall have the right to annul this Contract without liability, or at its discretion to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
- 9.7 **LIENS:** Contractor shall hold the City harmless from claimants supplying labor or materials to the contractor or subcontractors in the performance of the work required under this Contract.

SECTION 10. WARRANTY

- 10.1 **GUARANTEE:** Unless otherwise specified, all items shall be guaranteed for a minimum period of one (1) year from the date of acceptance by the City against defects in material and workmanship. At any time during that period, if a defect should occur in any item that item shall be replaced or repaired by the Contractor at no obligation to the City except where it is shown that the defect was caused solely by misuse of the City.
- 10.2 **QUALITY:** Contractor expressly warrants that all goods and services furnished under this Contract shall conform to the specifications, appropriate standards, and will be new and free from defects in material or workmanship. Contractor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods and services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose which goods or services of that kind are normally used. If Contractor knows or has reason to know the particular purpose for which City intends to use the goods or services, Contractor warrants that goods and services furnished will conform in all respect to samples. Inspection, test, acceptance of use of the goods or services furnished hereunder shall not affect the Contractor's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Contractor's warranty shall run to City, its successors and assigns.
- 10.3 **RESPONSIBILITY FOR CORRECTION:** Any defects of design, workmanship, or materials that would result in non-compliance with the contract specification shall be fully corrected by the Contractor (including parts, labor, shipping or freight) without cost to the City. This includes any necessary labor to remove, repair, install, or to ship or transport any item to a point of repair and return. It is agreed that the Contractor shall be fully responsible for making any correction, replacement, or modification necessary for specification or legal compliance. Contractor agrees that if the product or service offered does not comply with the foregoing, the City has the right to cancel the purchase at any time with full refund within 30 calendar days after notice of non-compliance and Contractor further agrees to be fully responsible for any consequential damages suffered by the City.
- 10.4 **INVESTIGATION OF CONDITIONS:** The Contractor warrants and agrees familiarity of the work that is required, is satisfied as to the conditions under which it is to perform and enters into this Contract based upon the Contractor's own investigation.



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- 10.5 WORKMANSHIP: Where not more specifically described in any of the various sections of the specifications, workmanship shall conform to all of the methods and operations of best standards and accepted practices of the trade or trades involved and shall include all items of fabrication, construction or installation regularly furnished or required for completion of the services or goods. All goods and services shall be provided and executed by personnel skilled in their respective lines of work. Contractor warrants that all goods and services delivered under this contract shall conform to the specifications of this contract. Additional warranty requirements may be set forth in the Solicitation.
- 10.6 RIGHT TO INSPECT PLANT: The City may, at reasonable times, inspect the part of the plant or place of business of a Contractor or subcontractor which is related to the performance of any contract as awarded or to be awarded.
- 10.7 PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL: All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.
- 10.8 SURVIVAL: Sections 6, 7, 8, 9, 10 and 11 will survive the completion, termination and/or abandonment of this Contract.
- 10.9 COMPLIANCE WITH APPLICABLE LAW: Contractor shall comply with all applicable federal, state and local laws, codes and regulations; including all applicable building regulations, license and permits requirements.

SECTION 11. CITY CONTRACTUAL RIGHTS

- 11.1 RIGHT OF ASSURANCE: Whenever the City in good faith has a reason to question the Contractor's intent or ability to perform, the City may demand that the Contractor give written assurance of the intent and ability to perform. In the event that a demand is made and no written assurance is given within five (5) work days, the City may treat this failure as an anticipatory repudiation of this contract.
- 11.2 NON-EXCLUSIVE REMEDIES: The rights and remedies of the City under this Contract are non-exclusive.
- 11.3 DEFAULT IN ONE INSTALLMENT TO CONSTITUTE BREACH: Each installment or lot of this Contract is dependent on every other installment or lot and a delivery of non-conforming goods or services or a default of any nature under one installment or lot will impair the value of the whole Contract and constitutes a breach of the Contract as a whole.
- 11.4 TIME IS OF THE ESSENCE: Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence. The City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.
- 11.5 NON-EXCLUSIVE CONTRACT: The City reserves the right to purchase goods or services from another source only when necessary and determined appropriate by the City's Procurement Manager.



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- 11.6 **STRICT PERFORMANCE:** Failure of either Party to insist upon the strict performance of any item or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, obligations imposed by this Contract or by law shall not be deemed a waiver of any right of either Party to insist upon the strict performance of the Contract.
- 11.7 **CONFLICT OF INTEREST:** This Contract is subject to the provisions of A.R.S. § 38-511 and may be canceled by the City, 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, an employee, consultant, or agent of Contractor in any capacity with respect to the subject matter of the Contract while the Contract or any extension or amendment thereof, is in effect.
- 11.8 **DEFAULT:** In the case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (i) deduction from an unpaid balance due; (ii) collection against the bid and/or performance bond, or (iii) a combination of the aforementioned remedies or other remedies as provided by law.
- 11.9 **NOTICES:** Unless otherwise provided herein, demands under this Contract will be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally delivered to the Party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified postage prepaid and properly addressed as follows:

To City:
 Brian Harvel/Pavement Manager
 Engineering
 190 N. Litchfield Road
 Goodyear, AZ 85338

To Contractor:

Copy to:
 Roric Massey
 City of Goodyear, City Attorney
 190 N. Litchfield Road
 Goodyear, AZ 85338

- 11.10 This Contract shall be in full force and effect only when it has executed by duly authorized City officials and the duly authorized agent of the Contractor.

SECTION 12. CERTIFICATION

- 12.1 By signing on the offer and acceptance page, the individual certifies that they are authorized to sign on behalf of Contractor and further certifies that (a) No collusion or other anti-competitive practices were engaged in to arrive at the terms of this Contract, and that this Contract is subject to the provisions of A.R.S. Section 38-511; (b) The Contractor has not given, offered to give, nor intends to give at any time hereafter



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any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with this Contract. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resultant contract, and the Contractor may be debarred.

SECTION 13. LICENSING, DEBARMENT AND SUSPENSION

- 13.1 Licensing/Permits. Contractor warrants and certifies that Contractor and its Subcontractors will maintain valid licenses, registrations, permits, and other approvals necessary to perform the Services required under this Contract ("Approvals"). Contractor shall immediately advise the City in writing of any change in information provided by Contractor or its subcontractors as it relates to any Approvals. Noncompliance with this provision is a material breach of Contract.
- 13.2 Debarment/Suspension. Contractor warrants and certifies neither Contractor nor any of its subcontractor:
- Are presently debarred, suspended, proposed for debarment, declared ineligible or otherwise legally excluded from contracting with any federal, state or local government entity; and
 - Have not been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property within a three (3) year period preceding this Contract;
 - Are not, or have not been, indicted of or otherwise criminally charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing any public transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and
 - Have not had one or more public transaction (federal, state or local) terminated for cause or default.
- 13.3 City has no affirmative duty or obligation to confirm or deny the existence or issuance of any Approvals or Debarments, or to examine Contractor's contracting ability.

END OF STANDARD TERMS AND CONDITIONS



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SPECIAL TERMS AND CONDITIONS

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SECTION 1. TERM OF CONTRACT

1. The term of this Contract shall be one (1) year commencing on the effective date, which is the date last signed by both Parties, and may be extended or renewed for consecutive additional one (1) year periods, not to exceed a total of five (5) years, subject to appropriations and mutual agreement of the Parties. The City has no obligation to extend or renew this contract, and any decision to do so is at the sole discretion of the City.

2. **BONDING**
 - 2.1 A bid bond for ten (10%) of the bid price is required to be submitted with the bid.
 - 2.2 A performance bond for one hundred (100%) of the Contract price is required at the time of execution of the Contract and shall meet the requirements of A.R.S., Title 34, as amended, if applicable.
 - 2.3 A payment bond for one hundred (100%) of the Contract price is required at the time of execution of this Contract and shall meet the requirements of A.R.S., Title 34, as amended, if applicable.

3. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractors shall obtain, maintain and keep in full force and effect during the life of this Contract, and any warranty period, all of the following minimum scope of insurance coverages with an insurance company duly licensed by the State of Arizona with a current A.M. Best Company, Inc. rating of not less than A- or above and a category rating of not less than "8" with policies and forms satisfactory to the City. Use of alternative insurers requires prior written approval from City.
 - 3.1 **COMMERCIAL GENERAL LIABILITY:** Commercial General Liability insurance with a limit of not less than \$1,000,000, for each occurrence and \$2,000,000 in the aggregate. The policy shall include coverage for premises-operations, products/completed operations, contractual covering, personal injury/bodily injury, property damage, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office policy form CG 00 01 07 98 or any replacement thereof. The certificate of insurance for the Commercial General Liability insurance policy shall expressly cover the indemnification obligations of indemnification required by this agreement. A general liability insurance policy may not be written on a "claims made" basis. These limits may be met through a combination of primary and excess liability coverage.
 - 3.2 **AUTOMOBILE LIABILITY:** Commercial and Business Automobile Liability insurance for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than \$1,000,000, combined single limits, per occurrence for bodily injury and property damage. Coverage will be at least as broad as coverage Code 1 "any auto" under Insurance Service Office policy form CA 00 01 10 01 or any replacement thereof.
 - 3.3 **WORKERS' COMPENSATION:** Workers' Compensation as required by State and federal law statutes having jurisdiction over its employees engaged in the performance of any Services herein. Contractor agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its



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officers, agents, employees, and volunteers arising from work performed by Contractor for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

- 3.4 UMBRELLA/EXCESS LIABILITY: Contractor and Subcontractor shall maintain Umbrella and Excess Liability insurance with an limit of not less than \$2,000,000 per occurrence combined limit Bodily Injury and Property Damage, that "follows form" and applies in excess of the Commercial General Liability, Automobile Liability, and Employer's Liability, as required above. Primary per occurrence coverage may be used to fulfill this requirement.

END OF SPECIAL TERMS AND CONDITIONS



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ASPHALT RUBBER SLURRY SURFACING

Polymer modified slurry seal is used in the same applications as a standard slurry seal; however, polymer slurry seal has higher binder cohesion that leads to improvements in resistance to raveling, especially in cul-de-sacs. Polymer modified slurry seals are more abrasion resistant and can be laid at higher application rates without bleeding or deformation.

1.01 SCOPE

Slurry Seal shall consist of mixing asphalt emulsion, aggregate, and water and spreading the mixture on a surface or pavement where shown on the plans, as specified in these specifications and the special provisions, and as directed by the Engineer.

2.01 MATERIALS

The materials for slurry seal immediately prior to mixing shall conform to the following requirements:

2.02 (a) POLYMER MODIFIED ASPHALT EMULSION WITH CARBON BLACK DISPERSION AND DISPERSED ASPHALT RUBBER.

The base polymer emulsified asphalt shall be a quick traffic, quick cure (QT-QC) type, shall be a homogeneous brown color throughout and show no separation after thorough mixing, shall break and set on the aggregate within five (5) minutes and shall be ready for cross-traffic within fifteen (15) to forty five (45) minutes. The polymer asphalt emulsion, upon standing undisturbed for a period of twenty-four (24) hours, shall show no white or milky colored substance on its surface and conform to the requirements in Table I.

TABLE I		
Test on Emulsion	Method of Test	Requirement
Viscosity @ 35° C (77° F), sec.	ASTM D244	15 Min.-90 Max.
Distillation Residue, % by weight	ASTM D244	60 Min.
Sieve Test (% retained on 850 µm [No. 20])	ASTM D244	60.30 Max.
Particle Charge Test (Cationic)	ASTM D244	Positive
Storage Stability; 1-Day Settlement	ASTM D244	1% Max.
pH		1 to 3
Test on Residue from Distillation Test		
Penetration, 77° F., 100g, 5s	ASTM D5	40 Min.-80 Max.
Softening Point (Ring & Ball), ° F	ASTM D36	130 Min.
Ductility, 77° F (25° C, 5 cm/Min., cm	ASTM D113	25 Min.
Solubility in TCE*, %	ASTM D 2042	97.5 Min

* The solubility to be run on the base asphalt of the emulsion containing the tire rubber.

Carbon black dispersion compatible with the emulsion shall be added by suitable blending (in line or propeller mixing) to the emulsion at the plant before use. The carbon black at 30% solids by weight shall be added at 6-8% on emulsion total weight.



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A dispersion of asphalt rubber - RG-1 or equivalent - shall be blended in line with the emulsion at the plant and the emulsion remixed before use.

This shall be added at 5-8% based on emulsion total weight.

The emulsion shall be mixed by circulation or other method before pumping into the slurry truck.

2.02 (b) WATER

Water shall be potable, free of harmful soluble salts and shall be of such quality that the asphalt will not separate from the emulsion before the slurry seal is in place in the work.

2.02 (c) AGGREGATE

Aggregate shall consist of sound, durable, crushed stone or crushed gravel and approved mineral filler. The material shall be free from vegetable matter and other deleterious substances. Aggregates shall be 100% crushed with no rounded particles. The percentage composition by weight of the aggregate shall conform to the following grading in Table II:

TABLE II						
Class	Percentage Passing Sieves					
	Type I		Type II		Type III	
	Min.	Max.	Min.	Max.	Min.	Max.
Sieve Size						
3/8 in (9.5 mm)	100	---	100	---	100	---
No. 4 (4.74 mm)	100	---	90	100	70	90
No. 8 (2.36 mm)	90	100	65	90	45	70
No. 16 (1.18 mm)	65	90	45	70	28	50
No. 30 (600 µm)	40	60	30	50	19	34
No. 50 (300 µm)	25	42	18	36	12	25
No. 100 (150 µm)	15	30	10	24	7	18
No. 200 (75 µm)	10	20	5	15	5	15
Residual Asphalt % of Dry Aggregate Weight	10 min		7.5 min		6.5 min	
Emulsified asphalt % of dry aggregate weight must meet residual asphalt requirement.						

The aggregate shall also conform to the following quality requirements:

Test	ASTM Method of Test	Requirement
Sand Equivalent	C 2419	55% Min.
Percentage Wear 500 Revolutions ¹	C 131	40% Max.



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Soundness (5 Cycles) ¹	C 88	15% Max.
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¹. ASTM C 131 to be run on plus four graded material before final crushing.

2.02 (d) POLYMER

Styrene Butadiene Rubber latex polymer shall be added to the water/soap phase by injection prior to the mill manufacture of the asphalt emulsion by the emulsion producer. The polymer shall be BASF NX 1118 or approved equal. The amount of polymer solids shall be between 3 and 4 percent of the asphalt residual content and shall be certified by the emulsion producer on each load of emulsion delivered to the job site. No post or field addition of polymer will be allowed. Samples of polymer shall be provided and shall conform to the following requirements.

Test	Requirement
Total Solids, min %	60
Bound Styrene %	24 - 60
pH at 25 Degrees C	4.2 - 5.2
Brookfield Viscosity RVT	1000 - 4000
Residual Monomer %	0.08 max.

2.02 (e) MINERAL FILLER

The mineral filler shall be either Portland Cement or other approved mineral fillers, if required. Portland Cement if used, shall be commercially available Type I-II and shall be free of lumps and clods.

2.03 MIX DESIGN

At least 7 working day before slurry seal placement commences, the Contractor shall submit to the Engineer for approval a laboratory report of tests and proposed mix design covering the specific materials to be used on the project. The percentage of asphalt emulsion proposed in the mix design shall be within the percentage range specified in Section 2.04 "Proportioning."

2.04 PROPORTIONING

Asphalt emulsion shall be added at a rate determined by the mix design and in the range of the Table III below.



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TABLE III - Application Rate		
Slurry Seal	Minimum	Maximum
Type I	4.3 kg/m ² (8lbs/yd ²)	5.4 kg/m ² (10 lbs/yd ²)
Type II	6.5 kg/m ² (12 lbs/yd ²)	8.1 kg/m ² (15 lbs/yd ²)
Type III	8.7 kg/m ² (16lbs/yd ²)	10.8 kg/m ² (20 lbs/yd ²)

A job mix design shall be submitted by the Contractor for approval by the Engineer that conforms to the specification limits, and that is suitable for the traffic, climate conditions, curing conditions and final use. This will include recommended application rate of slurry to suit the job conditions.

The slurry seal mixture shall be proportioned by the operation of a single start/stop switch or lever which automatically sequences the introduction of aggregate, emulsified asphalt, admixtures, if used, and water to the pug mill.

Calibrated flow meters shall be provided to measure both the addition of water and liquid additives to the pug mill. If necessary for workability, a retarding agent, that will not adversely affect the seal, may be used.

Water, and retarder if used, shall be added to ensure proper workability and (a) permit uncontrolled traffic on the slurry seal no more than three (3) hours after placement without the occurrence of bleeding, ravelling, separation or other distress; and (b) prevent development of bleeding, ravelling, separation or other distress within fifteen (15) days after placing the slurry seal.

2.05 MIXING AND SPREADING EQUIPMENT

The slurry seal shall be mixed in a self-propelled mixing machine equipped with a continuous flow pug mill capable of accurately delivering and automatically proportioning the aggregate, emulsified asphalt, water and additives to a double shafted, multi-blade pug mill mixer capable of minimum speeds of 200 revolutions per minute.

A minimum of two operational mixing machines of 12 cubic yard capacity, or larger, shall be maintained on the project. The mixed slurry seal retention time in the pug mill shall be less than three (3) seconds. No retention of mixed slurry seal shall be allowed within the pug mill by gate shut-off or other mechanical means. Any machines with pug mill retention or shut-off gates shall have them removed prior to being used on this project. The mixing machine shall have sufficient storage capacity of aggregate, emulsified asphalt, and water to maintain an adequate supply to the proportioning controls.

The mixing machine shall be equipped with hydraulic controls for proportioning the material by volume to the mix. Each material control device shall be calibrated, properly marked, pre-set and lockable at the direction of the Engineer. The mixing machine shall be equipped with a water pressure system and nozzle type spray bars to provide a water spray immediately ahead of the spreader box.

The mixing machine shall be equipped with an approved fines feeder that provides a uniform, positive, accurately metered, pre-determined amount of a mineral filler, if used, at the same time and location that the aggregate is fed.



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The slurry mixture shall be uniformly spread by means of a controlled spreader box conforming to the following requirements:

The spreader shall be capable of spreading a traffic lane width and shall have strips of flexible rubber belting or similar material on each side of the spreader box and in contact with the pavement to prevent loss of slurry from the box. The box shall have baffles, or other suitable devices, to insure uniform application on super-elevated sections and shoulder slopes. Spreader boxes shall be maintained in such a manner as to prevent chatter (wash boarding) or other surface defects that will affect the aesthetic value of the finished slurry seal mat.

The rear flexible strike-off blade shall make close contact with the pavement and shall be capable of being adjusted to the various crown shapes so as to apply a uniform slurry seal.

Slurry mixture, to be spread in areas inaccessible to the controlled spreader box, may be spread by other approved methods.

2.06 PLACING

The slurry seal shall not be placed if either the pavement or the air temperature is below 55 degrees F (13C) and falling, but may be applied when both the air and pavement temperature is 45 degrees F (7C) or above and rising. The mixture shall not be applied if high relative humidity prolongs the curing beyond a reasonable time.

The maximum speed of the slurry machine shall not exceed 80 meters per minute (270 feet per minute).

Before placing the slurry seal, the pavement surface shall be cleaned by sweeping, flushing or other means necessary to remove all loose particles of paving, all dirt and all other extraneous material. Immediately ahead of the mixer, the pavement shall be pre-wetted by a pressure water distribution system equipped with a fog-type spray bar which will completely fog the surface of the pavement. The need for application and the rate of application will be determined by the Engineer.

Evidence of solidification of the asphalt, balling or lumping of the aggregates, or the presence of uncoated aggregate will be cause for rejection of the slurry.

Slurry shall be applied in such a manner that no ridges shall remain.

The Contractor shall prevent slurry from being deposited on other than asphalt concrete surfaces and shall remove slurry from surfaces not designated to be sealed at no cost to the City of Goodyear ("City"). The method of slurry removal shall be approved by the Engineer.

At the direction of the Engineer, the Contractor shall repair and reseal all areas of the streets which have not been sealed properly or completely, at no cost to the City.

Where the completed slurry is not uniform in color, the street shall be treated to eliminate the color variation at the Contractor's expense. The method of treatment shall be approved by the Engineer.

Immediately before commencing the slurry seal operations, all surface metal utility covers (including survey monuments) shall be protected by thoroughly covering the surface with an appropriate adhesive and paper or plastic.



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No adhesive material shall be permitted to cover, seal or fill the joint between the frame and cover of the structure. Covers are to be uncovered and cleaned of slurry material by the end of the same work day.

Hand squeegees and other hand equipment shall be provided to remove spillage and spread slurry in areas inaccessible to the spreader box. Ridges or bumps in the finished surface will not be permitted. The mixture shall be uniform and homogeneous after spreading on the existing surface and shall not show separation of the emulsion and aggregate after setting.

Adequate means shall be provided to protect the slurry seal from damage from traffic until such time that the mixture has cured sufficiently so that the slurry seal will not adhere to and be picked up by the tires of the vehicles.

Rollers:

- a. Rollers shall be self-propelled rubber tired rollers (9-12 ton). The roller shall be equipped with an operating water spray system. The resurfaced area shall be subjected to a minimum of 3 full coverage's by the roller. Rolling shall not commence until slurry has cured enough so the slurry will not pick up when rolled. It shall be rolled until all ridges have been ironed out and a uniform surface is obtained.
- b. Rollers shall have an operating strobe light or rotating beacon.

The Contractor shall have two fully operational mixers for use at the project site at all times.

Calibration: Each slurry mixing unit to be used in performance of the work shall be calibrated specifically for the contract prior to construction. Previous calibration documentation covering the exact materials to be used will not be accepted. The documentation shall include an individual calibration of each material at various settings, which shall be related to the machine metering device(s).

These mixers shall be available for inspection by the City at least 48 hours prior to commencing work.

For the purpose of this project, the construction zone is defined to include all stockpile staging areas and travel routes to/from streets where the slurry seal is to be applied.

Any deviations shall not be made without prior written approval from the Engineer. The sites for stockpiling and batching materials shall be clean and free from objectionable materials. Arrangements for these sites shall be the responsibility of the Contractor.

Traffic Control: All traffic affected by this construction shall be regulated in accordance with the City of Phoenix "Traffic Barricade Manual," and these Special Provisions. The following traffic restrictions are minimum requirements throughout the construction period: For the purpose of this project the contractor will be strategically closing segments of roadway in order to limit the impact to the residents. The contractor will be responsible for preparing a notice for each location that includes a full description of the project and color map with instructions of what roadways will be closed on what day and where residents can park. Contact information for the contractor's representatives that will be on site at all times shall be included on the notice. A sample notice will be provided to the bidder upon request. A representative shall be on site at all times equipped with a golf cart to transport residents to and from their houses if needed due to disabilities or workloads. Advanced meetings with the neighbourhood's may be necessary to provide adequate communication.



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Traffic Control and Project Schedule

- a. Contractor shall submit all traffic control plans and neighbourhood notices five (5) days in advance of the project pre-construction meeting.
- b. The Project Manager will review and approve no later than three (3) days before the project pre-construction meeting.
- c. Final traffic control plans, approved neighbourhood notices and the project schedule shall be submitted to the City one day before the scheduled project pre-construction meeting.
- d. The Project Manager shall send the notice to proceed immediately after the project pre-construction meeting. Work may not commence until the notice to proceed has been approved and the notice has been sent.

2.07 MEASUREMENT

Slurry seal will be measured and paid for by the square yard for the actual surface areas covered.

The Contractor shall be responsible for verifying the measurement for each area and to provide this areas measurement to the City prior to bidding the project.

2.08 PAYMENT

The contract price paid per square yard for asphalt rubber slurry seal shall include full compensation for furnishing all labor, materials, tools, equipment and incidentals and for doing all the work involved in the furnishing and placing of the slurry seal complete in place, traffic control, including cleaning the surface and protecting the slurry seal until it has set, all as shown on the plans, as specified in these specifications and as directed by the Project Manager.



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MICRO-SURFACING SPECIFICATIONS TIRE RUBBER POLYMER MODIFIED ASHALTIC EMULSION

1. GENERAL

The work covered by this specification consists of furnishing all labor, equipment, and materials for the application of a quick set traffic solid/polymer micro-surface seal (Types II and III). This specification covers the equipment and construction procedures for rut filling and/or resurfacing of existing paved surfaces. The micro-surface shall be a mixture of cationic tire rubber polymer modified asphaltic emulsion, mineral aggregates, mineral filler, water and other additives properly proportioned, mixed and spread on the pavement surface.

2. MATERIALS

The Contractor shall supply all materials necessary for the performance of the work in accordance with the specifications. The asphalt emulsion, aggregate, and mineral filler shall be as specified below. Materials shall be approved by the City of Goodyear ("City") prior to the start of construction. Certificates of Compliance shall accompany each delivery of emulsion and tire rubber. The Contractor shall be responsible for the safety of all materials of which he has taken delivery until they are in place on the road, and shall take all necessary precautions to avoid loss by fire or theft, or damage by water, and shall bear the cost of replacing any such material that is lost, spilt, destroyed or damaged after delivery.

Micro-surfacing materials shall consist of a properly proportioned mixture of cationic tire rubber polymer modified asphaltic emulsion, mineral aggregates, mineral filler, water, and other additives.

2.1 Aggregate

2.1.1 Mineral Filler: Mineral filler, as required by the mix design, shall be any recognized brand of non-air-entrained Type I/II normal Portland cement that is free of lumps and clods, with a minimum of 85% passing the #200 sieve, added by weight of aggregate as specified by the mix design.

2.1.2 Mineral Aggregate: Coarse and fine aggregates or approved mineral filler shall be per MAG Section 701. Aggregates shall be 100% crushed with no rounded particles. No natural sand will be allowed. The mineral aggregate shall conform to MAG Table 715-1 for gradation only. Application rates shall be 18-20 pounds of aggregate/square yard for Type II. Application rates shall be 25-30 pounds of aggregate/square yard for Type III.

The mineral aggregate and mineral filler shall have a sand equivalency value not less than 50 (ASTM D2419) and be non-plastic.

If more than one kind of aggregate is used, the correct amount of each kind of aggregate needed to produce the required gradation shall be proportioned separately in a manner that will result in a uniform and homogeneous blend. The final blended aggregate shall meet the above requirements for grading, sand equivalency, and plasticity.

2.2 Bituminous Material: The tire rubber polymerized emulsion is a slow-setting, cationic type emulsion for mixing applications and seal coats. A minimum of 4% saturated polymer shall be high sheared into the asphalt prior to the emulsification process. The Agency may choose to sample the tire rubber asphalt for testing. The amount of polymer will be based on weight of polymer and asphalt (total weight) and be certified by the supplier. The polymerized emulsion will meet the specifications listed in MAG Table 714-1, with the exception that the Ductility (25° C/77° F, mm) will be tested per AASHTO T 51 and will have a minimum value of 400.

Tire rubber modified asphaltic emulsion must:



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1. Consist of recycled tire rubber mixed with a bituminous material uniformly emulsified with water and an emulsifying or stabilization agent.
2. The asphalt binder shall contain a minimum of 5% recycled tire rubber. The finished asphalt binder composition shall be smooth and homogeneous. The tire rubber material shall be totally incorporated into the asphalt cement yielding a finished product of singular composition.

3. PROPORTIONING

The micro-surface shall be proportioned in accordance with the mix design. Calibrated sign flow meters shall be provided to measure both the addition of water and additives to the pugmill. Emulsion and cement flow shall be tied directly to aggregate flow. All additive flows shall be calibrated.

3.1 Performance: The micro-surface mixture shall be proportioned per the mix design to ensure:

- (A) Trafficability - the material will permit controlled traffic without damage to the surface within thirty (30) minutes and uncontrolled traffic without damage within sixty (60) minutes, per Section 4.2.2.
- (B) Prevent development of bleeding, raveling, separation or other distress for seven (7) days after placing the micro-surface.

4. MIX DESIGN

4.1 General

4.1.1 The Contractor shall provide a job mix formula from an approved laboratory and present certified test results for the Project Manager's approval. Compatibility of the aggregate and polymer modified emulsion shall be certified by the emulsion manufacturer. All the materials used in the job mix formula shall be representative of the materials proposed by the Contractor for use in the project.

4.1.2 All the products used in the construction shall have certifications from the suppliers and they shall be given to the Project Manager upon delivery to the project.

4.1.3 Mix design and proportioning will be approved by the Project Manager prior to the start of the project.

4.2 Specifications

4.2.1 The Project Manager shall approve the mix design prior to use. The specification limits are as follows:

Residual Asphalt (ASTM D244)	6% - 11.5% by dry weight of aggregate
Mineral Filler (ASTM C136)	0.1% - 1% by dry weight of aggregate
Polymer Content/Type	4% min. (see MAG Section 714.4)
Recycled Tire Rubber	5% minimum
Additive	As required for mix properties
Water	As required for mix properties
Aggregate Grading	Meets Section 4.2.4
Consistency (ISSA T-106)	2.5 to 3.0 cm
Traffic Time	See Section 4.2.2
Abrasion Loss (ISSA TB-100)	75 g/ft ² maximum
Adhesion (ISSA TB-114)	90% minimum



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Loaded Wheel Sand Adhesion

See Section 4.2.3

4.2.2 Modified Cohesion Test (ISSA TB-139): Furnish laboratory test data showing the mix design to be trafficable 30 minutes after application at 77° F conforming to the following criteria in accordance with test methods described in the applicable specifications.

Set Time Test: 30 minutes 12 kg-cm minimum.

Early Rolling Traffic Time: 60 minutes 20 kg-cm minimum.

4.2.3 Loaded Wheel Sand Adhesion Test (ISSA TB-109): Furnish laboratory test data showing the mix design conforming to the following criteria in accordance with test methods described in the appropriate specifications.

Vehicles/day	Minimum Sand Adhesion
0-30	70 g/ft ²
250-1500	60 g/ft ²
1500-3000	55 g/ft ²
greater than 3000	50 g/ft ²

4.2.4 The laboratory shall further report the quantitative effects of moisture content in the unit weight of the aggregate (bulking effect). The report must clearly show the theoretical recommended proportion of aggregate, mineral filler (Min. & Max.), water (Min. & Max.), additive(s), and asphalt, and how the proportions are based (dry aggregate weight, total mix, etc.).

5. TESTING

Samples for quality assurance will be taken throughout the project per ISSA TB101 for testing by an approved laboratory as required by the Project Manager. Materials with test results not meeting these specifications shall be corrected immediately. Testing shall be at the expense of the City for the following:

- (A) Asphalt content
- (B) Aggregate gradation
- (C) Percent polymer content and type—certified by supplier

The Project Manager shall have the right to obtain material at any time for testing purposes.

6. EQUIPMENT

6.1 General: All equipment, tools and machines used in the performance of this work shall be maintained in satisfactory working condition at all times to ensure a high quality product.

6.2 Mixing Equipment: The mixing machine shall be a self-propelled continuous flow mixing machine which shall be able to accurately deliver and proportion the aggregate, mineral filler, water, additive, and polymer-modified asphalt emulsion to a revolving multi-blade mixer capable of minimum speeds of 200 RPM and discharge the product on a continual flow basis. The machine shall have sufficient storage capacity for aggregate, polymer modified asphalt emulsion, mineral filler, water, and additive to maintain an adequate supply to the proportioning controls.



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6.3 Material Control

6.3.1 Calibration: Each mixing unit to be used in the performance of the work shall be calibrated prior to construction. Calibration data, if done within the calendar year, using the same material, may be used, providing a verification of the aggregate feed agrees. Individual volume or weight controls for proportioning each material to be added to the mix shall be provided, and shall be accessible to the Project Manager. Each material control device shall be calibrated prior to work and documented for inspection by the Project Manager.

6.3.2 Aggregate Feed: The aggregate feed to the mixer shall be equipped with a revolution counter or similar device so the amount of aggregate used may be determined at any time.

6.3.3 Emulsion Pump: The emulsion pump shall be the positive displacement type with a jacketed housing for uniform heating. A revolution counter or similar device shall be fitted so that the amount of emulsion used may be determined at any time.

6.3.4 Fines Feeder: An approved fines feeder is required that will provide a uniform, positive, accurately metered range of 0 to 1 percent by dry aggregate weight. The fines feeder shall have a counter so the amount of mineral filler can be determined at any time.

6.3.5 Liquid Additive: The mixing machine shall be equipped with a liquid additive system that provides a pre-determined amount of additive to the mixing chamber. This additive system must be equipped with a counter that can determine the amount used at any time.

6.3.6 Water System: The mixing machine shall be equipped with a water system that provides a pre-determined amount of water to the mixing chamber. This water system must be equipped with a counter that can determine the amount used at any time.

6.4 Operator Controls: Controls will allow the operator to sequence and proportion the material per the mix design.

6.5 Spray Bars: The mixing machine shall be equipped with a water pressure system that provides a water spray immediately ahead of and outside the spreader box.

6.6 Spreading Equipment

6.6.1 The paving mixture shall be spread uniformly by means of mechanical type laydown box attached to the mixer, equipped with agitation, to spread the materials throughout the box without any dead zones. The paddles shall be designed and operated so all the fresh mix will be agitated. Flexible seals, front and rear, shall be in contact with the road surface to prevent loss of mixture from the box. The spreader box shall be equipped with hydraulic cylinders for controlling the thickness of the spread mixture.

6.6.2 The rut filling spreader box shall have six to eight skids to provide for leveling and filling uneven depressed areas. Two adjustable steel strike-off plates are required. The rear flexible seal shall act a final strike-off and shall be adjustable. The steel strike-offs shall be controlled by hydraulic cylinders placed at the rear of the spreader box.

6.6.3 The spreading equipment shall be maintained free from build-up of the mixture on the paddles or side walls. Skips, lumps, or tears will not be allowed in the finished product.



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7. APPLICATION

7.1 General: The micro-surface shall be of the desired consistency when deposited in the spreader box and nothing more shall be added to it. The mixing time shall be sufficient to produce a complete and uniform coating of the aggregate and the mixture shall be chuted into the moving spreader box at a sufficient rate to maintain an ample supply across the full width of the strike-off squeegee at all times.

7.2 Weather: Micro-surfacing shall not be placed if either the pavement or air temperature is below 50° F and falling, but may be applied if both the air and pavement temperature are at least 45° F and rising, and it is not raining.

7.3 Protection of Existing Surfaces: The Contractor shall take all necessary precautions to prevent micro-surface or other material used from entering or adhering to gratings, hydrants, valve boxes, manhole covers, bridge or culvert decks, and other road fixtures. Immediately after resurfacing, the Contractor shall clean off any such material and leave any grating, manholes, etc. in a satisfactory condition.

7.4 Fogging Pavement: The surface shall be pre-wetted by fogging ahead of the spreader box. The rate should be adjusted as dictated by the pavement temperature, surface texture, humidity, and dryness of existing pavement.

7.5 Mix Stability: The mix shall possess sufficient stability so that premature breaking of material in the spreader box does not occur. The mixture shall be homogeneous during mixing and spreading; it shall be free of excess water or emulsion, and free of segregation of the emulsion and aggregate fines from the coarser aggregate.

7.6 Application Rate: The application rates, pounds per square yard of mix specified, are average rates; the surface texture variation throughout the work will dictate the actual spreading rates. The strike-off squeegee shall be adjusted to provide a micro-surface thickness which will completely fill the surface voids and provide an additional thickness not exceeding one and one-half times the largest top-size stone. The requirement of 1½ stone depth does not apply to rut filling operations as these depths vary greatly according to the surface irregularities.

7.7 Joints: No excessive build-up or unsightly appearance shall be permitted on longitudinal or transverse joints. A maximum of four (4) inch overlap will be permitted on longitudinal joints. The Contractor shall provide suitable width spreading equipment to produce a minimum number of longitudinal joints throughout the work. Half passes and odd width passes will be used in minimal amounts. If half passes are used, they cannot be the last pass on any area. Care shall be taken to ensure straight lines along curbs and shoulders. No runoff will be permitted on these areas. Construction joints shall be neat in appearance and shall be tapered or feathered to conform to the existing surface. All excess material shall be removed from the surface upon completion of each run.

7.8 Handwork: Approved squeegees and lutes shall be used to spread the mixture in areas inaccessible to the spreader box and in other areas where hand spreading may be required. Handwork must be kept to a minimum.

7.9 Protection of the Micro-surface: Adequate means shall be provided by the Contractor to protect the uncured product. Any damage done to the product shall be repaired at the Contractor's expense.

7.10 Damage to the Micro-surface: The Contractor's responsibility to replace micro-surface damaged by unexpected rain after spreading shall be limited to the period within four (4) hours of placement of the micro-surface.



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8. PREPARATION/CLEAN UP

The Contractor shall be responsible for coordinating with the City, its subcontractors and other City contractors on the scheduling of all street treatments.

It shall be the Contractor's responsibility to ensure that a smooth and clean transition is made between treatment areas and existing pavements.

It shall be the Contractor's responsibility to ensure that existing pavement areas outside of or adjacent to the treatment area remain undisturbed, clean and not damaged by equipment or material.

It shall be the contractor's responsibility to remove all existing Raised Pavement Markers (RPMs) and to place temporary marking tabs after the application whether the City utilizes the contractors striping subcontractor or exercises its right to utilize its own independent contractor for striping services.

9. SUSPENSION OF WORK

The Project Manager reserves the right to suspend the work wholly or in part if deemed necessary for the best interest of the City. This suspension will be without compensation to the Contractor, other than to adjust the contract time.

9.1 REPAIR OF EARLY DISTRESS

If bleeding, raveling, delamination, rutting, or wash boarding occurs within 60 days after placing the micro-surfacing, the Contractor shall diligently pursue repairs by any method approved by the Engineer. The Contractor shall not be relieved from maintenance until repairs have been completed.

At the end of each day's production, the contractor will provide to the Inspector a report containing the following information:

- a. Tons of dry aggregate consumed that day
- b. Tons of emulsion consumed that day; and
- c. Footage covered that day.

This report shall be received no later than 10:00 a.m. of the following day.

10. TRAFFIC CONTROL

10.1 The contractor shall be responsible for all traffic control necessary to apply the product and to ensure the safety of operators, pedestrians and motorists. All costs for traffic control shall be included in the price per square yard.

10.2 All traffic affected by this construction shall be regulated in accordance with the latest edition of City of Phoenix *Traffic Barricade Manual* and these specifications. The following traffic restrictions are minimum requirements throughout the construction period:

- a. All traffic restrictions listed herein are to supplement the City of Phoenix *Traffic Barricade Manual* and are not intended to delete any part of the manual.



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- b. A minimum of two travel lanes (one for each direction) shall be maintained open to traffic at all times on all major streets. All work that enters or crosses a major street must be done at times other than 6:00 a.m. to 8:30 a.m., and 4:00 p.m. to 7:00 p.m.
- c. A travel lane shall be defined as a minimum of eleven (11) feet of roadway with a safe motor vehicle operating speed of twenty-five (25) miles per hour.
- d. The Contractor shall provide and maintain all necessary traffic controls as outlined in the approved traffic control plan.
- e. Intersection area shall be defined as all of the area within the right-of-way of intersecting streets, plus three-hundred (300) feet beyond the center of the intersected streets on all legs of the intersection.
- f. The Contractor shall maintain all existing traffic signs erect, clean and in full view of the intended traffic at all times. Street name signs at major street intersections shall be maintained erect at all times. If any signs interfere with construction, the Contractor shall notify the Project Manager at least 48 hours in advance for City forces to remove said signs. The Contractor shall be responsible for having all temporary traffic control signs installed and maintained during construction. The City will reset all signs to permanent locations when notified by the Project Manager that construction is complete.
- g. Local access to all properties on the subject project shall be maintained at all possible times in the form of a safe and reasonable direct route to at least one of the above defined major streets. Whenever local access cannot be maintained, the Contractor shall notify the affected property owner or user and the Project Manager at least twenty-four (24) hours in advance.
- h. The Contractor shall be required to provide a uniformed off-duty City of Goodyear police officer to assist with traffic control whenever traffic in any one direction is restricted to one lane at a signalized major intersection or at other locations if it should become necessary in the opinion of the Project Manager. During construction activities that do not restrict a major signalized intersection, police officer assisted traffic control is not required. If the Contractor chooses to use a police officer at other locations during peak traffic hours or to assist with his other traffic control operations. All requests for off-duty officers will be made through the Goodyear Police Department, Off-Duty Work Administrator. A copy of the off-duty request contract will be made available upon request. The Contractor must provide evidence of workmen's compensation coverage before any officer will be permitted to work.

10.3 Traffic Control Schedule

- a. Contractor shall submit all traffic control plans five (5) days in advance of the project pre-construction meeting.
- b. The Project Manager will review and approve no later than three (3) days before the project pre-construction meeting.
- c. At the project pre-construction meeting, the City and contractor shall review the proposed traffic control plans, and project schedule. The final traffic plans shall include all police officers required at signalized intersections. Both parties shall sign off on acceptance of the schedule. Changes to the traffic control plans shall not be accepted without an approved formal change order signed by the City prior to the change. The City shall not be responsible for additional costs due to changes in the schedule by the contractor.



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- d. The Project Manager shall send the traffic control notification immediately after the project pre-construction meeting. Work may not commence until the traffic plan has been approved and the notice has been sent.

11. STRIPING

- a. The contractor shall be responsible for replacing all striping on each project as it appeared prior to the pavement treatment unless specified by the Project Manager. The striping estimate shall be prepared prior to the commencement of work and approved by the Project Manager. No work shall take place until the striping plan and pricing has been approved by the City.
- b. For each project within a scope of work the contractor shall submit a striping and marking proposal including costs, layout and necessary traffic control for review by the City based on the contract pricing. The proposal shall include all paint and thermoplastic pavement markings, and (RPMs) in conjunction with the project. No work shall commence until a striping proposal is accepted. The City shall retain the right to perform all striping by other means.
- c. All traffic control items listed within these specifications shall apply to all striping operations.
- d. Typically, all long line striping, bike lane striping, and bike symbols shall be done in paint markings with reflective glass beads
- e. All crosswalks, stop bars, turn arrows, and "ONLY" symbols and any lines perpendicular to the traffic lane shall be done in thermoplastic markings following the manufacturer's specifications and shall conform to ADOT Standard Specifications for Road and Bridge Construction 2008 Section 704.
- f. Contractor shall be responsible for striping layouts and have all proposals and layouts inspected and approved by the Project Manager before any striping begins. The City shall reserve the right to adjust the type of material used for each project and will negotiate a price for any material changes.
- g. The Contractor shall furnish labor, materials, equipment, tools, transportation, survey and supplies required to complete the work in accordance with the plans, specifications and these pavement marking specifications. The work under this section shall consist of:
- Cleaning and preparing the pavement surface, layout and spot marking.
 - Applying white and yellow traffic paint and reflective glass beads, thermoplastic markings and/or other markings and symbols as directed by the Project Manager
 - Remove and replace (RPMs) that are existing or as requested by the Project Manager in the project scope of work.
 - Installing temporary striping, markings or tabs as directed by the Project Manager. Temporary striping shall be considered incidental to the contract and no additional compensation will be allowed.
- h. The City shall reserve the right to assign this work to a separate contract. If the City utilizes this right, the Contractor shall still be responsible for the removal of existing RPMs and the placement of temporary marker tabs after the treatment application as part of the cost of the treatment and will not receive additional compensation for the material or labor involved in completing this task.



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12. MEASUREMENT

Micro-surfacing will be measured by the square yard.

The Contractor shall be responsible for verifying the measurement for each area and to provide this area measurement to the City prior to bidding the project.

The area to be covered shall be confirmed at the project pre-construction meeting by both parties. No additional payment for additional area shall be made without an authorized change order signed prior to the treatment application.

13. PAYMENT

The micro-surfacing shall be paid by the square yard. The price shall be full compensation for furnishing, mixing and applying all materials; and for all labor, equipment, tools, design tests, traffic control and incidentals necessary to complete the job as specified herein. The contractor shall be required to submit information on the weight of the aggregate and weight of emulsified asphalt, as shown on certified weight tickets from the supplies delivered to the project, less weigh backs. This includes all traffic control and incidentals to complete the project. Contractor will be responsible to verify quantities prior to bid submittal as bid sheet quantities are only estimates.

The striping shall be paid by the unit cost for each item identified in the scope of work as submitted at the project pre-construction meeting.

14. PRE-CONSTRUCTION MEETING/SCHEDULE

- a. Five (5) days prior to the project pre-construction meeting: Contractor to submit traffic control plans and work schedule.
- b. Three (3) days prior to the project pre-construction meeting: City to approve traffic control plans.
- c. The project pre-construction meeting: City and Contractor agree to final project schedule, traffic control and measurement of treatment areas.
- d. One (1) day after to the project pre-construction meeting: City to issue traffic control notice prior to the commencement of work operations.
- e. The City reserves the right to amend the scope of work based on the final project costs submitted by the Contractor.

END OF SCOPE OF WORK



CITY OF GOODYEAR

FEE SCHEDULE

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 Phone: 623-882-7879
 Fax: 623-882-7890

**MICRO-SURFACING SPECIFICATIONS
 TIRE RUBBER POLYMER MODIFIED ASHALTIC EMULSION**

LOCATION	CLASSIFICATION	ESTIMATED SQ. YARDS	TREATMENT TYPE	COST PER SQ. YARD	TOTAL COST
CAMBRIDGE – 748	COLLECTOR	16,522	TYPE II	\$ 1.73	\$ 28,583.06
VIRGINIA/ ENCANTO BLVD – Pebble Creek to Bullard Ave	ARTERIAL	34,500	TYPE II	\$ 1.73	\$ 59,685.00
INDIAN SCHOOL RD- Pebble Creek to W of Sarival	ARTERIAL	32,000	TYPE II	\$ 1.73	\$ 55,360.00
PALM VALLEY BLVD- Litchfield-McDowell	COLLECTOR	37,275	TYPE II	\$ 1.73	\$ 64,485.75
PEBBLE CREEK – Virginia to McDowell Rd	ARTERIAL	52,050	TYPE II	\$ 1.73	\$ 90,046.50
TOTAL		172,350			\$ 298,160.31

INCIDENTAL STRIPING BID ITEMS

STRIPING	ESTIMATED QTY	REVISED QTY	UNIT PRICE	TOTAL COST
Traffic paint, 4" yellow/white	113,060 Ln. Ft.		\$.12	\$ 13,567.20
Traffic paint 6" yellow/white	6,450 Ln. Ft.		\$.18	\$ 1,161.00
Bicycle symbols, paint	72		\$ 45.00	\$ 3,240.00
Traffic thermoplastic 12"	3,952 Ln. Ft.		\$ 1.50	\$ 5,928.00
Traffic thermoplastic 18"	836 Ln. Ft.		\$ 2.25	\$ 1,881.00
Turn Arrow symbols, thermoplastic	84		\$ 110.00	\$ 9,240.00
"ONLY" symbols, thermoplastic	36		\$ 200.00	\$ 7,200.00



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Raised Pavement Markers (RPM), all colors	3,000		\$ 3.00	\$ 9,000.00
TOTAL				\$ 51,217.2

1. Contractor Licensing Requirements:

Bid shall comply with all statutes and rules of the State of Arizona and Registrar of Contractors. In accordance with A.R.S. § 32-1151, and unless otherwise exempted by A.R.S. § 32-1151, Bidder should have the correct class of license as required by the Registrar of Contractors for the work specified, prior to submission of a bid. The Bidder certifies possession of the following license:

Licensed Contractor's Name: Viasun Corporation

Class: CR69 Type: Dual

License Number: 278361 Expiration: 4-30-2016

2. Delivery:

Bidder states that the item(s) will be delivered within 60 calendar days after receipt of order. This delivery schedule shall include any time for shipping.

3. Contract Award:

The City of Goodyear reserves the right to make multiple awards.

END OF FEE SCHEDULE

ARIZONA STATUTORY BID BOND FOR CONSTRUCTION
PURSUANT TO TITLES 28, 34, AND 41, ARIZONA REVISES

(Penalty of this bond must not be less than 10% of the bid amount.)

KNOW ALL MEN BY THESE PRESENTS THAT: ViaSun Corporation

(hereinafter "Principal"), as Principal, and Western National Mutual Insurance Company (hereinafter

"Surety"), a corporation organized and existing under the laws of the State of Minnesota,

with its principal offices in the City of Edina, holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to

Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto City of Goodyear

(hereinafter "Obligee") in the sum of Ten Percent (10%) of the amount of the bid of Principal, submitted by Principal to the Obligee for the work described below, for the payment of which sum, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for

PROJECT NO: 15-3203

PROJECT Street Preservation

NOW, THEREFORE, if the obligee shall accept the proposal of the Principal and the Principal shall enter into a contract with the Obligee in accordance with the terms of the proposal and give the bonds and certificates of insurance as specified in the standard specifications or Contract Documents with good and sufficient surety for the faithful performance of the contract and for the prompt payment of labor and materials furnished in the prosecution of the contract, or in the event of the failure of the Principal to enter into the contract and give the bonds and certificates of insurance, if the Principal pays to the Obligee the difference not to exceed the penalty of the bond between the amount specified in the proposal and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by the proposal then this obligation is void. Otherwise, it remains in full force and effect provided, however, that this bond is executed pursuant to the provisions of Section 34-201, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of that section to the extent as if it were copied at length herein.

Witness our hands this:

ViaSun Corporation

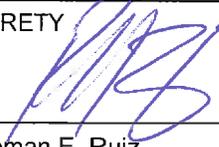
PRINCIPAL _____ SEAL

By:  _____

Title: _____

Western National Mutual Insurance Company

SURETY _____ SEAL

By:  _____
Roman E. Ruiz (Attorney-in-Fact)

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Western National Mutual Insurance Company, a Minnesota mutual insurance company, does make, constitute and appoint: Deborah E. Williams, Roman E. Ruiz and Veronique Himrich
#9414 DEWCO, L.L.C.

Its true and lawful Attorney(s)-in-Fact, with full power and authority for and on behalf of the Company as surety, to execute and deliver and affix the seal of the Company thereto (if a seal is required) bond, undertakings recognizances or other written obligations in the nature thereof, **(other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and note guaranty bonds, self-insurance workers compensation bonds guaranteeing payment of benefits, asbestos abatement contract bonds, waste management bonds, hazardous waste remediation bonds or black lung bonds)**, as follows:

All written instruments in an amount not to exceed an aggregate of Five Million Dollars (\$5,000,000.00) for any single obligation, regardless of the number of instruments issued for the obligation.

and to bind Western National Mutual Insurance Company thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed. This appointment is made under and by authority of the board of directors at a meeting held on September 28, 2010. This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of Western National Mutual Insurance Company on September 28, 2010:

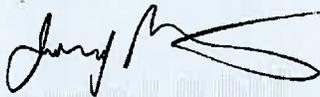
RESOLVED that the president, any vice president, or assistant vice president in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the company to execute and deliver and affix the seal of the Company to bonds, undertakings, recognizances, and suretyship obligations of all kinds, and said officers may remove any such attorney-in-fact or agent and revoke any Power of Attorney previously granted to such person.

RESOLVED FURTHER that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company

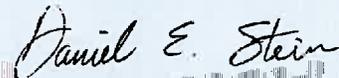
- (i) when signed by the present, any vice president or assistant vice president, and attested and sealed (if a seal be required) by any secretary or assistant secretary; or
- (ii) when signed by the president, any vice president or assistant vice president, secretary or assistant secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or
- (iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the Power of Attorney issued by the Company to such person or persons.

RESOLVED FURTHER that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, Western National Mutual Insurance Company has caused these presents to be signed by its proper officer and its corporate seal to be affixed this 21st day of June, 2013.



Joseph Pingatore, Secretary



Daniel E. Stein, Vice-President

STATE OF MINNESOTA, COUNTY OF HENNEPIN

On this 21st day of June, 2013, personally came before me, **Daniel E. Stein** and **Joseph Pingatore** to me known to be the individuals and officers of the Western National Mutual Insurance Company who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally dispose and say, that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said corporation.

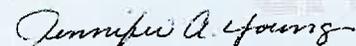


Jennifer A. Young, Notary Public
My commission expires January 31, 2016

CERTIFICATE

I, the undersigned, assistant secretary of the Western National Mutual Insurance Company, a Minnesota corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked, and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.

Signed and sealed at the City of Edina, MN this 10th day of February, 2013



Jennifer A. Young, Assistant Secretary

