

# CITY OF APACHE JUNCTION

## STREET MAINTENANCE AGREEMENT

PROJECT #: SST20-18

"Crack Seal FY21"

THIS AGREEMENT made and entered into by and between the CITY OF APACHE JUNCTION ("City"), an Arizona municipal corporation, and CACTUS ASPHALT, an Arizona corporation, ("Contractor"), sometimes collectively referred to as the "Parties" or individually as a "Party".

### RECITALS

- A. Contractor asserts its willingness, ability and qualifications to provide the completed products, goods and services (the "Work") called for in cooperative Pinal County Job Order Contract No. 175923, Contractor's Estimate dated July 8, 2020 and this Agreement (the "Contract Documents").
- B. City and Contractor desire to set forth herein their respective responsibilities and the manner and terms upon which Contractor shall complete the Work.
- C. City has complied with the public bidding requirements under Arizona Revised Statutes, Title 34, and Apache Junction City Code ("A.J.C.C.") Article 3-7, Procurement Procedure or such work is categorically exempt from such process.

### AGREEMENT

NOW, THEREFORE, City retains Contractor to perform, and Contractor agrees to render the Work in accordance with the terms and conditions set forth as follows:

1. **PROJECT DESCRIPTION**: Contractor shall do and perform or cause to be done and performed in a good workmanlike manner, the Work in accordance with and as more fully described in cooperative Pinal County Job Order Contract No. 175923 and Contractor's estimate dated July 8, 2020, Exhibit A, including, but not limited to:

- A. Crack vacuum and crack seal streets within the Renaissance Point, Arizona Grande, East Palm Springs and Superstition Vista Mobile Estates subdivisions.
- B. Apply approximately 50,000 pounds of crack seal to cracks 1/4 inch to 1 inch in width.

C. Crack fill cracks 1 inch to 2 inches utilizing Crack Mastic to a total weight of approximately 7,500 pounds.

D. Provide traffic control for the duration of the Work. Traffic control plan(s) shall be pre-approved by the City.

2. **PAYMENTS & COMPLETION:** The total amount payable by the City to the Contractor in the amount not to exceed one hundred thirty-six thousand three hundred three dollars and ninety-seven cents (\$136,303.97) (the "Contract Sum") for the performance of the Work under the Contract Documents. All contracts will be operable for their full term at the rates quoted in the initial bid proposal, unless otherwise extended in writing by the City. Once City finds the Work acceptable under the Contract Documents, City shall promptly submit for processing a certificate for payment stating that, to the best of its knowledge, information and belief on the basis of its observation and inspection, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that partial payment or the entire balance due the Contractor is payable.

3. **CONTRACT TERM:** Contractor shall begin the Work no sooner than September 16, 2020 and complete it no later than February 26, 2021. This provision does not limit the liability of Contractor for actual damages sustained by City as a result of any breach of contract or warranty by Contractor. Extensions may be approved at times as the Parties mutually deem fit.

4. **LABOR AND MATERIALS:** Unless otherwise provided in the Contract Documents, Contractor shall provide, pay for and insure under the requisite laws and regulations all labor, materials, equipment, tools and machinery, water, heat, utilities, transportation, other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

5. **INSPECTIONS AND QUALITY OF WORK:** Contractor understands and agrees that inspection of the Work performed hereunder will occur by City. Contractor agrees that City will have the exclusive right to determine, in its sole discretion, whether the Work has been performed in accordance with the Contract Documents. Contractor further agrees to make the Work as may be directed by City to conform to said Contract Documents.

6. **WARRANTY**: Contractor shall guarantee the Work against defective workmanship or materials for a period of one (1) year from the date of its final acceptance under the contract, ordinary wear and tear and unusual abuse or neglect excepted. Any omission on the part of City to condemn defective Work or materials at the time of maintenance Work shall not be deemed an acceptance and Contractor will be required to correct defective Work or materials at any time before acceptance. Within one (1) year from the date of acceptance due to faults in workmanship or materials, Contractor shall begin making the necessary repairs to the satisfaction of City within fourteen (14) calendar days of receipt of written notice from City. Such Work shall include the repair or replacement of other Work or materials damaged or affected by making the above repairs or corrective work all at no additional cost to City. In the case of Work materials or equipment for which warranties are required by the special provisions of the Contract Documents, Contractor shall provide or secure from the appropriate subcontractor or supplier such warranties addressed to and in favor of City and deliver same to City prior to final acceptance of the Work. Delivery of such warranties shall not relieve Contractor from any obligation assumed under any other provision of the contract. The warranties and guarantees provided in this subsection of the Contract Documents shall be in addition to and not in limitation of any other warranties, guarantees or remedies required by law, and shall survive the expiration of this Agreement for the time period mentioned above.

7. **TAXES**: Contractor shall pay all license, sales, transaction privilege, consumer, use and other similar taxes for the Work or portions thereof provided by Contractor which are legally enacted at the time bids are received whether or not yet effective or subsequently applicable due to acts of jurisdictions or bodies other than City.

8. **PERMITS & FEES**: Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all permits, government fees, licenses and inspections necessary for the proper execution and completion of work which are customarily secured after execution of the contract and which are legally required. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. City permits for this Work will be provided to Contractor at no cost. Contractor represents and warrants that any license necessary to perform the work under this Agreement is current and valid. Contractor understands that the activity described herein constitutes "doing business in the City of Apache Junction" and

Contractor agrees to obtain a business license pursuant to Article 8-2 of the Apache Junction City Code, Vol. I, and keep such license current during the term of this Agreement and after termination of this Agreement any time work is performed pursuant to the warranty provisions set forth in Section 6. Contractor also acknowledges that the tax provision of the Apache Junction Tax Code, Chapter 8A, may also apply and if so, shall obtain a transaction privilege license and/or other licenses as may be required by the city code. Any activity by subcontractors within the corporate city limits will invoke the same licensing regulations on any subcontractors, and Contractor ensures its subcontractors will obtain any and all applicable licenses. Further, Contractor agrees to pay all applicable privilege and use taxes that are applicable to the activities, products and services provided under this Agreement.

9. **INDEPENDENT CONTRACTOR:** Contractor shall at all times during Contractor's performance of the services retain Contractor's status as an independent contractor. Contractor's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes, or provide workers compensation or unemployment insurance for or on behalf of them or Contractor. Contractor shall supervise and direct the delivery of the materials using its best skill and attention. Except as provided in this Agreement, Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work required by the Contract Documents. Contractor shall be responsible to City for the acts and omissions of its employees, subcontractors and their agents and employees and other persons providing any of the Work.

10. **SUPERINTENDENT:** Contractor shall employ a competent project superintendent who shall be in attendance at the project site during the progress of the Work. The superintendent shall represent and be the community agent of Contractor and communications given to the superintendent shall be as binding as if given to Contractor. Important communications shall be confirmed in writing. The designated superintendent shall be designated for each project and communicated to City before the Work is performed.

11. **PROGRESS SCHEDULE:** Contractor shall, immediately after entering into this Agreement, generate an estimated Work progress schedule, which shall be maintained and updated during the project. Work may progress during regular City business hours only if it is determined by City not to disturb normal operations.

**12. INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless City, its elected and appointed officers, officials, agents, and employees from and against any and all liability including but not limited to demands, claims, actions, fees, costs and expenses, including attorney and expert witness fees, arising from or connected with, or alleged to have arisen from or connected with, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, the Work or services of Contractor, its agents, employees, or any tier of Contractor's subcontractors in the performance of this Agreement, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor or its subcontractors in the performance of this Agreement or any subcontract. Contractor's duty to defend, hold harmless and indemnify City, any special districts, elected and appointed officers, officials, agents, and employees shall arise in connection with any tortious claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by an Contractor's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of Contractor, any tier of Contractor's subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services Contractor may be legally liable.

**13. SUBCONTRACTORS:** All subcontractors chosen by Contractor will be subject to City's approval. All subcontractors shall be identified by Contractor prior to award of contract. Contractor shall make no substitutions for any subcontractor, person or entity previously selected without the approval of City.

**14. APPLICABLE LAW AND VENUE:** The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing Party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

**15. INSURANCE:** Contractor, at its own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed in the State of Arizona with policies and forms satisfactory to City.

All insurance required herein shall be maintained in full force and effect until all Work required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of City, constitute a material breach of this Agreement.

Contractor's insurance shall be primary insurance as respects the City, and any insurance or self-insurance maintained by City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect City.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, officers, officials and employees for any claims arising out of Contractor's acts, errors, mistakes, omissions, Work or service.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. Contractor shall be solely responsible for the deductible and/or self retention and City, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, City's right to insist on strict fulfillment of Contractor's obligations under this Agreement.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Agreement, shall name City, its agents, officers, officials and employees as Additional Insureds.

## REQUIRED COVERAGE

### Commercial General Liability

Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Agreement, which coverage will be at least as broad as that on Insurance Service Office, Inc. Policy Form No. CG 00011093, or any replacements thereof.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B, CG 20101185, and shall include coverage for Contractor's operations and products and completed operations.

If required by this Agreement, if Contractor sublets any part of the Work, Contractor shall purchase and maintain, at all times during prosecution of the Work, under this Agreement, an Owner and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of Contractor's Work, under this Agreement. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues Contractor's Commercial General Liability insurance.

### Automobile Liability

Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of Contractor's Work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

### Workers' Compensation

Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the Work; and, Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

By execution of this Agreement, Contractor certifies as follows:

"I am aware and understand the provisions of A.R.S. § 23 900et seq. which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of this chapter, and I will comply with such provisions before commencing the performance of the Work of this Agreement."

If Contractor has no employees for whom workers' compensation insurance is required, Contractor shall submit a declaration or affidavit to City so stating and covenanting to obtain such insurance if and when Contractor employs any employees subject to coverage.

In case any work is subcontracted, Contractor will require subcontractors to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of Contractor.

### Certificates of Insurance

Prior to commencing Work or services under this Agreement, Contractor shall furnish City with Certificates of Insurance, or formal endorsements as required by the Agreement, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect. The form of the certificates of insurance and endorsements shall be subject to the approval of the Apache Junction City Attorney's Office, shall comply with the terms of this Agreement, and shall be issued and delivered to City Attorney, City of Apache Junction, 300 East Superstition Boulevard, Apache Junction, AZ, 85119.

In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Contractor's Work and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Agreement, a renewal certificate must be sent to City thirty (30) calendar days prior to the expiration date.

All Certificates of Insurance shall be identified with bid serial number and title. Policies or certificates and completed forms of City's Additional Insured Endorsement (or a substantially equivalent insurance company form acceptable to the City Attorney) evidencing the coverage required by this section shall be filed with the City and shall include the City as an additional insured. The policy or policies shall be in the usual form of a public liability insurance, but shall also include the following provision:

"Solely as respects work done by or on behalf of the named insured for the City of Apache Junction, it is agreed that the City of Apache Junction and its officers and employees are added as additional insureds under this policy."

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) calendar days' prior written notice to City.

**16. CHANGE ORDERS:** A change order is a written order to Contractor, approved by the City representative, issued after execution of this maintenance agreement authorizing a change in the Work or an adjustment in the maintenance agreement sum or the maintenance agreement time. A change order signed by Contractor indicates their agreement therewith. City may, without invalidating this maintenance agreement, order changes in the Work within the general scope of the maintenance agreement consisting of additions, deletions or other revisions, the maintenance agreement sum and the maintenance agreement being adjusted accordingly. All such changes in the Work shall be authorized by change order and shall be performed under the applicable conditions of this maintenance agreement. The City representative shall have authority to order minor changes in the Work not involving an adjustment in the maintenance agreement sum or extension of maintenance agreement time and not inconsistent with the intent of this maintenance agreement. All such changes shall be effected by written order and shall be binding upon City and Contractor. All change order disagreements of the Contractor shall be submitted in writing to the City Manager within five (5) calendar days after the difference of opinion or grievance occurs. Within five (5) calendar days of receiving a written grievance, the City Manager shall respond in writing to the Contractor and City staff representative. The City Manager's decision shall be final and binding.

17. **SUCCESSORS & ASSIGNS**: City and Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other Party hereto and to the partners, successors, assigns and legal representatives of such other Party in respect to all covenants, agreements and obligations contained in the contract documents. Neither Party to the contract shall assign the contract or sublet it as a whole or delegates its duties thereunder without the written consent of the other, nor shall Contractor assign any monies due or to become due to or to become due to it without the previous written consent of City.

18. **WRITTEN NOTICE**: Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity, or to an office of the corporation for whom it was intended or if delivered at or sent registered or certified mail, return receipt requested, and first class postage prepaid to the last business address known to them who gives the notice.

19. **CLAIMS FOR DAMAGES**: Should either Party to the contract suffer injury or damage to personal property because of any act or omission of the other Party or of their employees or agents for whose acts they are legally liable, claims shall be made in writing to such other parties within a reasonable time after the first observance of such injury or damages.

20. **PAYMENT & PERFORMANCE BONDS**: City shall have the right to require Contractor to furnish bonds covering the faithful performance of the contract and the payment of all obligations arising hereunder. Attached are standard bond forms which must be completed by Contractor, and Contractor agrees to conform to all provisions set forth in such forms.

21. **SAFETY**: Contractor and/or its subcontractors shall be solely responsible for job safety at all times.

22. **RIGHTS & REMEDIES**: The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by City or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any action or failure to act constitute an approval of or an acquiescence to any breaches hereunder except as may be specifically agreed to in writing.

23. **FORCE MAJEURE**: Neither City nor Contractor, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the obligations under this Agreement. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular Contractors, subcontractors, vendors or investors desired by Contractor in connection with the obligations under this Agreement. Contractor agrees that Contractor alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

24. **TERMINATION**:

A. **TERMINATION BY CITY**: City shall be permitted to terminate this Agreement if in the discretion of the Public Works Director or his or her designee, they believe Contractor has failed to meet the terms of this Agreement. City shall provide Notice of Termination to Contractor by Certified U.S. Mail ten (10) calendar days before such termination takes effect.

B. **TERMINATION BY CONTRACTOR**: Contractor may terminate this Agreement if City fails to make payment as agreed upon in this document. Any other termination will be deemed a breach of contract by Contractor. Contractor shall provide Notice of Termination to City by Certified U.S. Mail ten (10) calendar days before such termination takes effect.

**25. RECORDS:** Records of Contractor's labor, payroll and other costs pertaining to this Agreement shall be kept on generally recognized accounting basis and made available to City for inspection on request. Contractor shall maintain records for a period of at least two (2) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by City personnel during regular business hours.

**26. AMENDMENT:** It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto, and that oral understandings or agreements not incorporated herein shall not be binding on the Parties. The representatives of the Parties (signatory for Contractor noted below or his or her designee, and the City Manager, or his or her designee), shall be authorized to execute future amendments or extensions of this Agreement.

**27. ENTIRE AGREEMENT:** This Agreement and any attachments represent the entire agreement between City and Contractor and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the supporting documents, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

**28. SEVERABILITY:** City and Contractor each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

**29. TIME IS OF THE ESSENCE:** Time is of the essence with respect to all provisions in this Agreement. Any delay in performance by either Party shall constitute a material breach of this Agreement.

**30. CONFLICT OF INTEREST:** This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

**31. PROHIBITION TO CONTRACT WITH CONTRACTORS WHO ENGAGE IN BOYCOTT OF THE STATE OF ISRAEL:** The Parties acknowledge A.R.S. §§ 35-393 through 35-393.03, as amended, which forbids public entities from contracting with Contractors who engage in boycotts of the State of Israel. Should Contractor under this Agreement engage in any such boycott against the State of Israel, this Agreement is automatically terminated. Any such boycott is a material breach of contract and will subject Contractor to monetary damages, including but not limited to, consequential and liquidated damages.

**32. COMPLIANCE WITH FEDERAL AND STATE LAWS:** Contractor understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to the services performed under this Agreement.

As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor will verify the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of this Agreement. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. City at its option may terminate this Agreement after the third violation. Contractor shall not be deemed in material breach of this Agreement if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-

214(A). City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works under this Agreement to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized representative as of this \_\_\_\_ day of \_\_\_\_\_, 2020.

CACTUS ASPHALT, an Arizona corporation

  
By: James Gallegos

Its: Managing Partner

CITY OF APACHE JUNCTION, ARIZONA,  
an Arizona municipal corporation


\_\_\_\_\_  
By: Jeff Serdy

Its: Mayor

ATTEST:

\_\_\_\_\_  
Jennifer Peña  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Richard J. Stern  
City Attorney

# Exhibit A



<b>To:</b>	CITY OF Apache Junction	<b>Contact:</b>	Shane Klesow
<b>Address:</b>	575 E. Baseline Road Apache Junction,, AZ 85219	<b>Phone:</b>	(480) 982-1055
		<b>Fax:</b>	(480) 983-5752
<b>Project Name:</b>	FY 2021 Crack Seal	<b>Bid Number:</b>	
<b>Project Location:</b>	East Plam Springs Subdivision / AZ Grande Subdivision, Apache Junction, AZ	<b>Bid Date:</b>	7/8/2020

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1-1	Crack Sealing 1/4 To 1" Width	50,000.00	LB	\$1.27	\$63,500.00
1-3	Crack Vacuum	50,000.00	LB	\$0.15	\$7,500.00
1-4	Traffic Control-Crack Sealing	50,000.00	LB	\$0.47	\$23,500.00
2-1	Crack Seal 1" To 2" Utilizing Crack Mastic	7,500.00	LB	\$3.55	\$26,625.00
2-2	Traffic Control-Crack Mastic	7,500.00	LB	\$1.03	\$7,725.00
<b>Bid Price Subtotal:</b>					<b>\$128,850.00</b>
<b>Pinal County, State And Apache Junction 5.79%:</b>					<b>\$7,453.97</b>
<b>Total Bid Price:</b>					<b>\$136,303.97</b>

## Notes:

- \* Standard Terms and Conditions to follow.
- \* All scheduling contingent upon mutual agreement of Owner and Cactus Asphalt.
- \* Prices above based on completing each task in one mobilization. If an additional mobilization is required, charges may apply.
- \* Quoted prices valid for 60 days unless otherwise noted.
- \* Cactus is not responsible for notification, nor removal of vehicles and property from work areas.
- \* Cactus will require this proposal with exclusions be included in any contractual agreement.
- \* In the event that quantities differ from above, billing will reflect agreed upon measured quantities.
- \* EXCLUSIONS (Unless Otherwise Specified): Bonds, Permits, Plans, Engineering, Survey, Staking, As-Builts, Testing, Inspection, Graderwork, Landscape Areas, Weed Killer, Crack Routing, Asphalt Patching, ABC or Landscape Materials, Vegetation Replacement, Preservative Seals, Prime Coat, Concrete Structures, Irrigation or Pipe Work, Utility Removal or Relocation, Drywells, Rip/Rap, Structural Backfill, Striping, Signage, Parking Bumpers Removal or Replacement, Import, Export, Excavation, Subgrade Stabilization, Removal of Debris Generated by Other Trades, Erosion Control, Thickened Pavement Edge, Project Information Sign And Any Special Insurance Requirements.
- \* Pricing based off Pinal County JOC #175923



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/30/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER  
Crest Insurance Group, LLC  
5285 East Williams Circle Suite 4500  
Tucson AZ 85711

CONTACT NAME: Diane Walsh  
PHONE (A/C, No, Ext): 480-689-5339  
E-MAIL ADDRESS: DWalsh@crestins.com

FAX (A/C, No):

INSURED  
Cactus Transport, Inc.  
dba: Cactus Asphalt  
Cactus LPG LLC  
8211 W. Sherman Street  
Tolleson AZ 85353

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	Great American Insurance Company	16691
INSURER B:	Acuity	14184
INSURER C:	Continental Casualty Company	20443
INSURER D:	Carolina Casualty Insurance Company	10510
INSURER E:		
INSURER F:		

## COVERAGES

CERTIFICATE NUMBER: 575662681

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$5,000 Ded GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	Y	Z78218	8/1/2020	8/1/2021	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$3,000,000 PRODUCTS - COMP/OP AGG \$3,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	Z78218	8/1/2020	8/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			TUU052884107	8/1/2020	8/1/2021	EACH OCCURRENCE \$15,000,000 AGGREGATE \$15,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	CCWC247305	8/1/2020	8/1/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Builders Risk			6050340529	8/1/2020	8/1/2021	Limit 3,000,000

## DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder and owner (if applicable) when required in a written contract are additional insured with respect to General Liability on a primary and non-contributory basis. Additional Insured status and primary and non contributory applies with respect to Auto Liability when required in a written contract. A Waiver of Subrogation applies with respect to Auto Liability, General Liability, and Worker's Compensation when required in a written contract. Umbrella Follows form over General Liability, Auto Liability and Workers' Compensation. This form is subject to all policy forms, terms, endorsements, conditions definitions & exclusions. Applicable Forms: CG7301, CG7194, CG7274, CA7261 & CA7214.

RE: PROJECT #: SST20-18 Crack Seal FY21

Solely as respects work done by or on behalf of the named insured for the City of Apache Junction, it is agreed that the City of Apache Junction and its officers and employees are added as additional insureds under this policy.

## CERTIFICATE HOLDER

City of Apache Junction  
575 E. Baseline Road  
Apache Junction AZ 85219

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Cody Ritchie*

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