

## CONTRACT FOR CONSTRUCTION SERVICES

THIS CONTRACT FOR CONSTRUCTION SERVICES (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between The City of Coolidge, Arizona, an Arizona municipal corporation (“City”), and Ace Asphalt of Arizona, Inc., an Arizona corporation (“Contractor”)

WHEREAS, City desires to retain a contractor to furnish Work in connection with pavement rehabilitation in the area of the City of Coolidge Transit Station, 395 W. Palo Verde Avenue, Coolidge, Arizona (“Project”) and to make payment for the same in accordance with the terms and conditions set forth in this Agreement, including all attachments and addenda, including the Invitation for Bids (Exhibit A) and Contractor’s Bid (Exhibit B) which are incorporated herein by mutual agreement of the parties; and

WHEREAS, in procuring the Work, the City has complied with the open market procedures set forth in the City of Coolidge’s City Code.

NOW, THEREFORE, City agrees to retain and does hereby retain Contractor and Contractor agrees to provide the services required according to the terms and conditions and for the consideration hereinafter set forth:

1. **CONTRACTOR’S WORK.** The term “Work” shall mean construction services in connection with the Project. Contractor shall, through personnel employed by Contractor, or procured from qualified and licensed subcontractors, perform all the Work, and provide all material, equipment, tools and labor necessary to complete the following Work:

See attached Exhibit A, which is incorporated into this Agreement.

2. **ADDITIONAL SERVICES.** Should the City request additional work beyond that specified in Section 1, Contractor shall charge, and City shall pay, an amount mutually agreed upon in writing prior to Contractor performing the additional work. Any additional work shall be incorporated into a written Change Order, executed by the authorized representatives of both parties, setting forth the additional work to be performed, the performance time schedule and the compensation for such additional work.

3. **COMPENSATION.** In accordance with the terms and conditions of this Agreement, City shall compensate Contractor for its Work as follows:

See attachment Exhibit B, which is incorporated into this Agreement.

In no event, shall the total compensation under this contract exceed TEN THOUSAND EIGHT HUNDRED NINETY-FIVE AND NO/100 Dollars (\$10,895.00) (“Contract Price”). Exhausting the total amount payable for activities described in Section 1 above shall not relieve Contractor of its obligations to perform such Work. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.

4. **CONTRACTOR BILLING AND PAYMENT.** Contractor shall bill the City on a time and expense basis in a total amount not to exceed Section 3 above. All payment requests shall be submitted to the City for review and approval. City shall pay such billings within thirty (30) Days of the date of receipt of the Contractor's invoice, subject to review and certification by the City's authorized representative prior to payment.

5. **CONTRACTOR'S SERVICES.**

5.1 General Services.

a. Contractor shall, through personnel employed by the Contractor, or procured from qualified subcontractors or subconsultants, perform all Work and provide all labor, material, equipment, tools, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Work.

b. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

c. The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

d. The Contractor will maintain an adequate and competent staff of qualified persons, as may be determined by the City, throughout the performance of this Agreement.

e. The Contractor shall have a representative reasonably available to the City who shall have the expertise and experience required to supervise the Work.

f. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Agreement. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

5.2 Construction Services.

a. The Contractor shall completely and totally construct the Project and install the material therein for the City in a good and workmanlike manner. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Contract Documents.

b. The Contractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents.

c. The Contractor's representative shall at all times be present at the site when construction activities are taking place.

d. The Contractor assumes responsibility to the City for the proper performance of the Work of subcontractors and any acts and omissions in connection with such performance.

e. The Contractor shall coordinate the activities of all subcontractors.

**6. CONTRACT TIME; LIQUIDATED DAMAGES; DELAY**

6.1 The Work shall commence September 5, 2018 and be completed by September 9, 2018, unless otherwise agreed to in writing by the Parties.

6.2 The City and Contractor recognize that time is of the essence of this Agreement. The parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City One Hundred Dollars (\$100.00) for each day that expires after the time specified in Section 6.1 for completion until the Work is fully complete.

6.3 If Contractor desires an extension of time to complete the Work, it must submit its request therefore in writing to the City within 48 hours after the cause for such extension arises. No consideration will be given to such request unless it is so submitted. Such extension shall be considered valid only if the City has given its written consent thereto. Contractor shall be entitled to an extension of time to complete the Work only for circumstances outside of its control. It is understood, however, that no extension of time shall be granted for the reason of pickets, strikes, slow-downs or other labor disputes involving the employees of Contractor or its subcontractors. No extension of time shall be granted for events or circumstances that Contractor could have reasonably anticipated (i.e. seasonal shortages or weather), for shortages or delays in the delivery of materials or equipment, or for unavailability of adequate and qualified labor.

7. **TAXES.** The Contractor shall pay sales, consumer, use and similar taxes that are legally required when the Agreement is executed.

8. **PERMITS, FEES AND NOTICES.** The Contractor shall obtain and pay for all permits and fees, licenses, and inspections necessary for proper execution and completion of the Work. Copies of permits and notices must be provided to the City prior to starting the permitted activity. The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without notice of the City, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the City in writing of any known inconsistencies in this Agreement with such governmental laws, rules and regulations.

9. **STANDARD OF PERFORMANCE.** While performing the Work, Contractor shall exercise the reasonable care and skill customarily exercised by reputable members of Contractor's profession practicing in the Phoenix Metropolitan Area, and shall use reasonable diligence and best judgment while exercising its skill and expertise.

10. **NOTICES.** All notices to the other party required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

If to City:

City of Coolidge  
City Manager  
130 W. Central Avenue  
Coolidge, Arizona 85128

If to Contractor:

Ace Asphalt of Arizona, Inc.  
Attn: Eric Albright  
3030 S. 7<sup>th</sup> Avenue  
Phoenix, AZ 85040

11. **TERMINATION.**

11.1 Termination for Lack of Funding. Contractor understands and acknowledges that the Project is a grant funded project and the ability of the City to fund the Project is based on its receipt of grant funds from the Federal Transit Administration and the Arizona Department of Transportation. As such, the City may terminate this Agreement at any time if the above-mentioned grant funding fails to provide sufficient funding for the Project. The City may terminate the Agreement for lack of grant funding by giving the Contractor's seven (7) days written notice. Such termination shall not prejudice any other right or remedy the City may have under this Agreement. If the Agreement is terminated for lack of grant funding, the Contractor shall be paid for all work performed as of the date of termination, but the Contractor shall not be paid any termination expenses or anticipated profit on work not performed.

11.2 Termination by the City for Cause. The City may terminate this Agreement if the Contractor (i) persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials; (ii) fails to make payment to subcontractors for materials or labor in accordance with this Agreement; (iii) persistently disregard laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; (iv) is otherwise guilty of substantial breach of a provision of the Agreement. In the event of such termination, Contractor shall deliver to City all work in any state of completion at the date of effective termination.

When any of the above reasons exist, the City may without prejudice to any other rights or remedies and after giving the Contractor ten (10) Days written notice, terminate this Agreement with the Contractor and may (i) take possession of the site and of all materials thereon owned by the Contractor; and (ii) finish the Work by whatever reasonable method the City may deem expedient.

When the City terminates the Agreement for one of the reasons stated above, the Contractor shall not be

entitled to receive further payment until the Work is finished. If the unpaid balance of the Agreement exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the City. This obligation for payment shall survive termination of the Agreement.

11.3 Termination by the City for Convenience. The City may terminate this Agreement without cause by giving the Contractor ten (10) Days written notice. Such termination shall not prejudice any other right or remedy the City may have under this Agreement. If this Agreement is terminated without cause, the Contractor shall be paid for work performed to the date of receipt of such termination notice.

12. **SUBCONTRACTORS.** Contractor shall, within ten (10) Days after the execution of this Agreement and before awarding any subcontract, furnish City with a list of proposed subcontractors, if any, and shall not employ any that City may object to for any reason. Contractor shall employ only subcontractors who are duly licensed in Arizona and qualified to perform the Work per the requirements of the Contract Documents. Contractor agrees that it is as fully responsible to City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Contractor. Nothing contained in the Agreement shall create any contractual relations between any subcontractor and City.

13. **CONSTRUCTION SITE.**

13.1 The Contractor shall keep the site on which the Project is located reasonably free from debris, trash and construction wastes to permit the Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon completion of the construction, the Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the construction to permit the City to occupy the Project for its intended use.

13.2 The Contractor shall take whatever steps, procedures or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of the Pinal County Environmental Health Department Rules and Regulations.

13.3 Contractor acknowledges that the City is not the controlling employer for the purpose of OSHA standards, enforcement and violations. The City of Coolidge, its employees, agents and representatives assume no responsibility of liability for the physical condition of the Project site or the safety program for the Project.

14. **WARRANTY.**

14.1 The Contractor warrants to the City that the construction, including all materials

and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

14.2 The Contractor's warranty obligation shall be for one (1) year, except for such greater periods as may be required by the technical specifications.

14.3 Nothing in this warranty is intended to limit any manufacturer's warranty which provides the City with greater warranty rights than set forth in this Section.

14.4 The Contractor will provide the City with all manufacturers' warranties upon completion of the Project.

14.5 The Contractor agrees to correct any construction that is found to not be in conformance with the Contract Documents within a period of one (1) year from the date of completion of the construction, or within such longer period to the extent provided by the Contractor or its subcontractors.

14.6 The Contractor shall, within seven (7) Days of receipt of written notice from the City that the construction is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming construction, including the correction, removal or replacement of the nonconforming construction and any damage caused to other parts of the construction affected by the nonconforming construction.

14.7 If the Contractor fails to commence the necessary steps within such seven (7) day period, the City may provide the Contractor with written notice that the City will commence correction of such nonconforming construction with its own forces. If the City does perform such corrective construction, the Contractor shall be responsible for all reasonable costs incurred by the City in performing such correction. Any such work performed by the City as a result of the Contractor's failure to commence corrective action shall not impact, in any way, the remaining warranty of the affected construction.

14.8 If the nonconforming construction creates an emergency requiring an immediate response, the Contractor will respond and initiate corrections within twenty-four (24) hours.

14.9 The one (1) year warranty period applies only to the Contractor's obligation to correct nonconforming construction and is not intended to constitute a period of limitations for any other rights or remedies the City may have regarding the Contractor's other obligations under the Contract Documents or this Agreement.

15. **RECORDS.** Records of Contractor's labor, payroll, and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Contractor's records shall be available for up to three (3) years following final completion of the Project and Contractor shall make such records available during that retention period for examination or audit by City personnel during regular business hours.

16. **INSURANCE:**

16.1 General.

a. Insurer Qualifications. Without limiting any obligations or liabilities of the Contractor, the Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

b. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect the Contractor. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but have no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement 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 this Agreement.

c. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

d. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

e. Primary Insurance. The Contractor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

f. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

g. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of the Contractor. The Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

h. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. The Contractor shall be solely responsible for any such deductible or self-insured retention amount.

i. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, the Contractor shall execute written agreement with the Subcontractor containing the indemnification provisions and insurance requirements (unless waived by City in City's sole discretion) set forth herein protecting the City and the Contractor. The Contractor shall be responsible for executing the agreement with the Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

j. Evidence of Insurance. Prior to commencing any work or services under this Agreement, the Contractor shall furnish the City with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by Contractor's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a certificate of insurance is submitted as verification of coverage, the City shall reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the life of this Agreement, it shall be the Contractor's responsibility to forward renewal certificates within ten (10) Days after the renewal date containing all the aforementioned insurance provisions. Certificates of insurance shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

- (a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
- (b) Auto Liability - Under ISO Form CA 2048 or equivalent.
- (c) Excess Liability - Follow Form to underlying insurance.

(2) The Contractor 's insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, including Workers' Compensation, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by the Contractor under this Agreement.



(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

16.2 Required Insurance Coverage.

a. Commercial General Liability. The Contractor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$4,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury or death, personal injury, advertising injury and property damage. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials, volunteers and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

b. Vehicle Liability. The Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on the Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

c. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

16.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) Days prior written notice to the City.

17. **RIGHT OF THE CITY TO CONTRACT WITH OTHERS.** Nothing in this Agreement shall imply City is obligated to obtain the services described herein with only this particular Contractor.

18. **UNCONTROLLABLE FORCES.** City and Contractor shall exert all efforts to perform their respective responsibilities under this Agreement. However, neither party shall hold the other party responsible for inability to render timely performance if such inability is a direct result of a force beyond its control, including but not limited to the following: lockouts, embargoes, failure of carriers, inability to obtain transportation facilities, acts of God or the public enemy, or other events beyond the control of the other or the other's employees and agents.

19. **INDEMNIFICATION.** Contractor shall defend, indemnify, and hold City, its officers and employees harmless from any and all loss, damage, claim for damage, liability, expense, or cost, including attorneys' fees, which arise out of, or is in any way connected with the performance of work under this Agreement by Contractor, or any of Contractor's employees, agents or subcontractors, and from all claims by Contractor's employees, subcontractors and agents for compensation for services rendered to Contractor in the performance of this Agreement, notwithstanding that City may have benefited from their services. This indemnification provision shall apply to any and all acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor or Contractor's employees, subcontractors or agents. This Section shall survive the expiration or early termination of the Agreement.

20. **WAIVER OF TERMS AND CONDITIONS.** The failure of City or Contractor to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

21. **INDEPENDENT CONTRACTOR.** Contractor shall at all times during Contractor's performance of the services retain Contractor's status as 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.

22. **ARBITRATION.** In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Contractor and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) Days, then within three (3) Days thereafter, the City and Contractor shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the City and Contractor. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to

initiate litigation subsequent to the final decision of the arbitrator.

23. **GOVERNING 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.

24. **LICENSE.** 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 Coolidge" and Contractor agrees to obtain a business tax license pursuant to the City of Coolidge's City Code and keep such license current during the term of this Agreement. Any activity by subcontractors within the corporate city limits, will invoke the same business tax regulations on any subcontractors, and Contractor ensures its subcontractors will obtain any required business tax license.

25. **NONASSIGNMENT.** Neither party to this Agreement shall assign its interest in the Agreement, either in whole or in part. Contractor shall not assign any monies due or to become due to it hereunder without the prior written consent of City.

26. **ENTIRE AGREEMENT.** This Agreement, including Exhibits A and B and any attachments, represents 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 Agreement, 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.

27. **SEVERABILITY.** If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

28. **CONFLICTS OF INTEREST.** The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Agreement.

29. **AMERICANS WITH DISABILITIES ACT.** This agreement is subject to all applicable

provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFF Parts 35 and 36. (Non-Discrimination: The Contractor shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans With Disabilities Act. The Contractor shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.)

30. **DISADVANTAGED BUSINESS ENTERPRISE.** As stated in the Federal Clauses under Disadvantage Business Enterprise, this contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The goal for Arizona Department of Transportation is 7.25 percent race neutral.

31. **FEDERAL REGULATIONS.** Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Contractor acknowledges, by signature to this Agreement, that: Contractor is not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions; Contractor's principals are not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions.

32. **UNDOCUMENTED WORKERS.** Contractor understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986. Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractor") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Immigration Warranty"). A breach of the Immigration Warranty shall constitute a material breach of this Agreement and shall subject the Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City. The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Agreement to ensure that the Contractor or Subcontractor is complying with the Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of subcontractors to ensure compliance with Immigration Warranty. Contractor agrees to assist the City in regard to any random verifications performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Immigration Warranty if they establish that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this paragraph must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor.

33. **NO KICK-BACK CERTIFICATION.** Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has an interest, financially or otherwise, in the Contractor's firm. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or at its discretion to deduct from the compensation to be paid Contractor hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

34. **OWNERSHIP.** All of the products of this Project, including recommendations, drawings, artwork, photos and similar materials used to produce the required submittals, shall become the property of the City. Any furnished materials shall remain the property of the City. All such items shall be delivered to the City in usable condition after completion of the Work, and prior to submission of the invoice for payment. Any materials excavated from the Project site shall be used on the Project where possible. The City reserves the right to maintain possession of unused excavation materials at the City's discretion.

35. **ISRAEL BOYCOTT.** Contractor shall not participate in, and agrees not to participate in during the term of this Agreement a boycott of Israel in accordance with A.R.S. §35-393.01

36. **CONTRACT DOCUMENTS.**

The Contract Documents consist of the following:

- a. This Agreement;
- b. The Invitation for Bids and all addenda and attachments;
- c. The Contractor's Bid, excluding page 6 of 7 Terms and Conditions;
- d. Information for Bidders;
- e. Special Provisions;
- f. Other documents, plans or drawings listed in the Invitation for bids;
- g. Notice of Award
- h. Acceptance of Notice of Award
- i. Notice to Proceed;
- j. Change Orders and addenda;
- k. Federal clauses;
- l. Federal Certifications;
- m. Bid Protest: Procedures and Resolution;
- n. Modifications issued after execution of this Agreement.

If there is any conflict between this Agreement and the Contract Documents, the terms and conditions of this Agreement shall control.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives as of the day and year first above written.

**ACE ASPHALT OF ARIZONA, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY OF COOLIDGE**  
An Arizona municipal corporation

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**INVITATION FOR BIDS**

**EXHIBIT B**  
**CONTRACTOR'S BID**