



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

Memo No. ST 08-023

1. Agenda Item Number:

31

2. Council Meeting Date:

February 28, 2008

TO: MAYOR & COUNCIL

3. Date Prepared: January 31, 2008

THROUGH: CITY MANAGER

4. Requesting Department: Public Works

5. SUBJECT: Award Contract No. ST8-745-2552 for Acrylic Seal Coat / Recycled Tire Rubber Modified Surface Seal (TRMSS) on Bituminous Paved Surfaces to Cholla Pavement Maintenance Inc. and Cactus Asphalt in the amount of \$280,000 for one-year with the option to renew for four (4) additional one-year periods.

6. RECOMMENDATION: Recommend approval of Contract No. ST8-745-2552 for Acrylic Seal Coat / Recycled Tire Rubber Modified Surface Seal (TRMSS) on Bituminous Paved Surfaces to Cholla Pavement Maintenance Inc. and Cactus Asphalt in the amount of \$280,000 for one-year with the option to renew for four (4) additional one-year periods.

7. HISTORICAL BACKGROUND/DISCUSSION: Acrylic Seal has been used for many years in the City and TRMSS is being used this year to garner the benefits of the tire rubber added to the sealant. Neighboring cities are using TRMSS with success. By utilizing discarded tires in the asphalt sealant, the street retains its appearance and longevity. By recycling this rubber material we are maintaining our streets using a "green" technology. Acrylic Seal and Recycled Tire Rubber Modified Surface Seal (TRMSS) are tools that are used to maintain the City streets. The products will both be used this year for comparison and evaluation. These products seal smaller cracks and put a thin layer of asphalt with polymers on the pavement to protect the pavement from deterioration and help to lengthen the life of the pavement.

Informational door hangers will notify citizens and businesses. Streets will not be closed, as only half a street will be sealed at a time.

8. EVALUATION PROCESS: On December 19, 2007 staff issued a bid for Acrylic Seal Coat / Tire Rubber Modified Surface Seal (TRMSS) on Bituminous Paved Surfaces. The bid was advertised and all registered vendors were notified. On January 24, 2008, four responses were received and evaluated with the results as follows:

	<u>Acrylic Seal Coat</u>	<u>TRMSS</u>
Cholla Pavement Maintenance Inc	\$3.08/gal	\$2.85/gal
Cactus Asphalt	\$2.96/gal	\$2.97/gal
Hawker & Evans	\$3.23/gal	\$3.32/gal
Sunland Asphalt	\$4.16/gal	\$3.92/gal

Staff is recommending award to Cholla Pavement Maintenance Inc., and Cactus Asphalt who were deemed to have submitted the lowest responsive and responsible offers. The City will be splitting the product and utilizing 20,000 gallons of Acrylic Seal Coat and 74,000 gallons of TRMSS.

9. FINANCIAL IMPLICATIONS:

Fund Source:

<u>Acct. No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Amount:</u>
101.3300.0000.6513	General Fund	Street Maintenance	N/A	\$280,000

The purchase will be split as follows between the two products offered:

20,000 gallons of Acrylic Seal Coat @ \$2.96 per gallon

74,000 gallons of TRMSS @ \$2.85 per gallon

10. PROPOSED MOTION: Recommend approval of Contract No. ST8-745-2552 for Acrylic Seal Coat / Recycled Tire Rubber Modified Surface Seal (TRMSS) on Bituminous Paved Surfaces to Cholla Pavement Maintenance Inc. and Cactus Asphalt in the amount of \$280,000 for one-year with the option to renew for four (4) additional one-year period.

ATTACHMENT: Location Map

APPROVALS

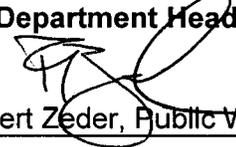
11. Requesting Department

Daniel W. Cook, Deputy Public Works Director



12. Department Head

Robert Zeder, Public Works Director



13. Procurement Officer

Sharon Brause, CPPB



14. City Manager

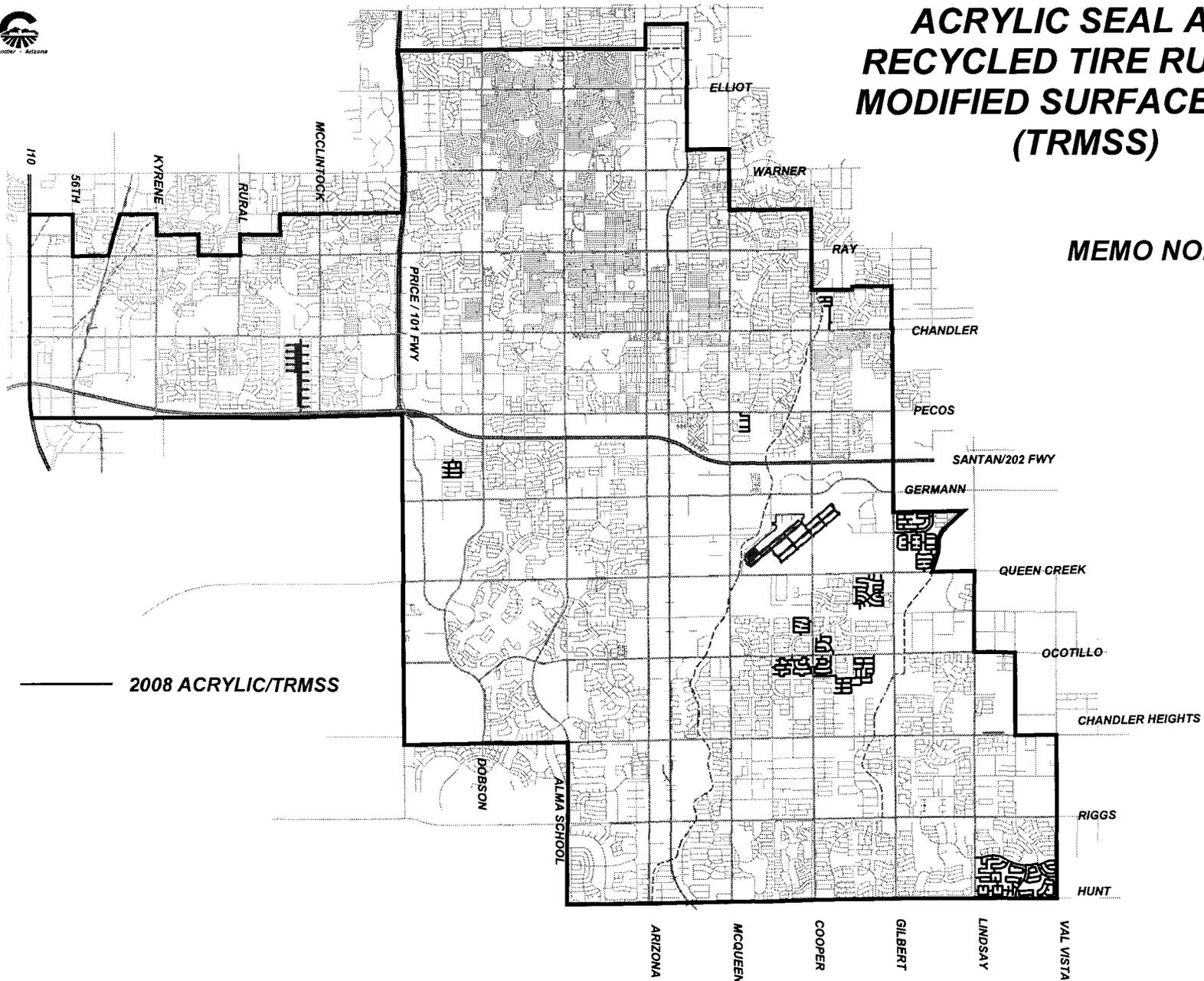
W. Mark Pentz





ACRYLIC SEAL AND RECYCLED TIRE RUBBER MODIFIED SURFACE SEAL (TRMSS)

MEMO NO. ST08-023



**CITY OF CHANDLER PURCHASE CONTRACT
ACRYLIC SEAL COAT /TRMSS ON BITUMINOUS PAVED SURFACES
CONTRACT NO.: ST8-745-2552**

THIS AGREEMENT is made and entered into this 14th day of February, 2008, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **CACTUS ASPHALT, a division of CACTUS TRANSPORT INC**, a Corporation in the State of Arizona, hereinafter referred to as "CONTRACTOR".

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATION AND OPERATION:

- 1.1. **Contract Administrator:** CONTRACTOR shall act under the authority and approval of the Streets Superintendent /designee (Contract Administrator), to provide the goods and merchandise required by this Contract.
- 1.2. **Ordering Instructions:** Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.
- 1.3. **Ordering Process.** Upon award of a contract by the City, any designated department may procure the specific product, equipment or material awarded by the issuance of a Contract Purchase Order to the appropriate CONTRACTOR. Each Contract Purchase Order must cite the correct Chandler contract number.

2. GOODS AND MERCHANDISE TO BE PROVIDED: CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, attached hereto and made a part hereof by reference, at the prices listed on Exhibit B, all as more specifically set forth in the Specifications and details included therein.

- 2.1. **Safety Standards:** All items supplied pursuant to this contract must 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.
- 2.2. **Non-Discrimination:** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.3. **Licenses:** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by CONTRACTOR as applicable to this contract.
- 2.4. **Contract Orders:** CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all contract orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all contract orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.
- 2.5. **Advertising, Publishing and Promotion of Contract:** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

- 2.6. **Compliance With Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.7. **Payment.** A separate invoice shall be issued for each shipment of goods or materials, and no payment will be issued prior to receipt of goods or materials and receipt of a correct invoice.
- 2.8. **Estimated Quantities.** The quantities shown on Exhibit B (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. CITY reserves the right to increase or decrease the quantities actually required.
- 2.9. **New/Current Products.** All goods, equipment, materials, parts and other components supplied pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended.
- 2.10. **Packing and Shipping.** The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.
3. **Warranties:**
 - 3.1. **Liens:** CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
 - 3.2. **Quality:** Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:
 - 3.2.1. Of a quality to pass without objection in the trade under the Contract description;
 - 3.2.2. Fit for the intended purposes for which the materials are used;
 - 3.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 3.2.4. Adequately contained, packaged and marked as the Contract may require; and
 - 3.2.5. Conform to the written promises or affirmations of fact made by CONTRACTOR.
 - 3.3. **Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.
 - 3.4. **Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.
4. **ACCEPTANCE AND DOCUMENTATION:** All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification

- 4.1. **Records.** The CONTRACTOR shall retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 4.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.
- 4.3. **Delivery.** Delivery shall be made within () calendar days after receipt of a Contract Purchase Order (ARO).
- 4.4. **PRICE:** CITY shall pay to CONTRACTOR a total contract amount of Two Hundred Seventy Two Thousand Five Hundred Dollars and 00/100 (\$272,500) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.
- 4.5. **Pricing:** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.
- 4.6. **Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
- 4.7. **Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.
- 4.8. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.
- 4.9. **TAXES:** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR.
- 4.10. **IRS W-9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W-9 Form on file with CITY, unless said form is not required by law.
- 4.11. **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 4.12. **Acceptance by CITY.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was

requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.

4.13. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.

5. **TERM:**

6.1 The contract term is for a one-year period subject to mutually agreed upon additional successive periods of a maximum twelve months per extension with a maximum aggregate including all extensions not to exceed five (5) years. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.

6. **USE OF THIS CONTRACT:**

6.1. The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.

6.2. **Emergency Purchases:** CITY reserves the right to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

6.3. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

7. **CITY'S CONTRACTUAL REMEDIES:**

7.1. **Right to Assurance:** If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

7.2. **Non-exclusive Remedies:** The rights and the remedies of CITY under this Contract are not exclusive.

7.3. **Nonconforming Tender:** Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

7.4. **Right of Offset:** CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

8. **TERMINATION:**

- 8.1. **Termination for Convenience:** CITY reserves the right to terminate this Contract or any part thereof for its sole convenience with thirty (30) days written notice. CONTRACTOR shall receive payment for the goods and materials already shipped to CITY.
- 8.2. **Termination for Cause:** CITY may, upon written notice, terminate this Contract for CONTRACTOR'S failure to comply with the terms of this Contract.
- 8.3. **Termination for Misrepresentation.** CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.
- 8.4. **Cancellation for Conflict of Interest:** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 8.5. **Gratuities:** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the CONTRACTOR.
- 8.6. **Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Sub-CONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.
- 8.7. **Continuation of Performance Through Termination:** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.8. **No Waiver:** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
10. **ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes and other matters in question between CITY and CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance or the breach by any party thereto, including but not limited to, original claims or

disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.

- 10.1. **Notice:** CONTRACTOR shall submit written notice of any claim or dispute to the Contract Administrator within thirty (30) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as they occur and not postponed until the end of the Contract nor lumped together with other pending claims.
- 10.2. **Forfeiture:** Failure to submit a notice of any claim, dispute, or other issue within such thirty (30) days shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of CITY'S position.
- 10.3. **CITY Response:** The Contract Administrator will provide to CONTRACTOR a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONTRACTOR'S written claim.
- 10.4. **Appeal:** If CONTRACTOR disagrees with the response of the Contract Administrator, within fifteen days of the date of the response by the Contract Administrator, CONTRACTOR shall file with the Contract Administrator, written notice of appeal. The Contract Administrator shall provide copies of all relevant information concerning the Contract and claim or dispute to the Assistant Management Services Director who will determine the appeal. The Assistant Management Services Director may request additional information from either party, may hold an informal informational hearing or may make the determination based on the information provided. The Assistant Management Services Director shall make a final determination of the appeal and provide written notice to CONTRACTOR within sixty (60) days from the date of CONTRACTOR'S written notice of appeal.
- 10.5. **Arbitration:** If CONTRACTOR is not satisfied with the determination of the Assistant Management Services Director, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes. If CONTRACTOR chooses not to accept the decision of the Assistant Management Services Director, CONTRACTOR shall notify the Contract Administrator in writing within ten (10) business days of receipt of the Assistant Management Services Director's decision of a request for arbitration. The CONTRACTOR shall post a cash bond with the Arbitrator in the amount of \$5,000, or a greater amount as determined by the Arbitrator, that will defray the cost of the arbitration as set forth in paragraph M, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.
 - A. **Arbitration Panel:** The Arbitration Panel shall consist of the arbitrators selected by the parties involved in the dispute, (i.e., CITY will select one arbitrator, CONTRACTOR will select one arbitrator, and any other CONTRACTOR who has a contract with CITY which contains this ADR provision and is a party to the same dispute will also select an arbitrator), and the foregoing arbitrators shall select a neutral Arbitrator who will hear the matter and make a final determination, as set forth herein.
 - B. **Expedited Hearing:** The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Arbitrator to set an expedited hearing if circumstances justify it. The Arbitrator shall contact the parties and schedule the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than sixty (60) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitrator upon a showing of emergency circumstances.
 - C. **Procedure:** The Arbitrator shall conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitrator a

written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Arbitrator.

- D. **Hearing Days:** To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.
- E. **Award:** The Arbitrator shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Contract and the laws of the State of Arizona.
- F. **Scope of Award:** The Arbitrator shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitrator shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.
- G. **Jurisdiction:** The Arbitrator shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
- H. **Entry of Judgment:** Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.
- I. **Severance and Joinder:** To reduce the possibility of inconsistent adjudications, the Arbitrator, may at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and the Arbitrator may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. The Arbitrator is not authorized to join to the proceeding parties not in privity with CITY.
- J. **Appeal:** Any party may appeal errors of law by the Arbitrator if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Arbitrator of any powers contrary to or inconsistent with the Contract; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.

- K. **Uniform Arbitration Act:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.
- L. **Fees and Costs:** Each party shall bear its own fees and costs in connection with any informal hearing before the Assistant Management Services Director. All fees and costs associated with any arbitration before the Arbitrator, including without limitation, the Arbitrator's fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the non-prevailing party, except as provided for herein. The determination of prevailing and non-prevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitrator.
- M. **Equitable Litigation:** Notwithstanding any other provision of ADR to the contrary, any party may petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to ongoing work pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitrator. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.
11. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.
12. **INSURANCE:**
- 12.1. **Insurance Representations and Requirements:**
- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. 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 is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.

- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.
- E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.
- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. 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. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

12.2 Proof of Insurance – Certificates of Insurance

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverage's, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the

contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.

- D. REQUIRED CITY reserves the right to request and to receive, within 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.

12.3 Coverage

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.
- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
- D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
- E. Claims for damages insured by usual personal injury liability coverage;
- F. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
- G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
- H. Claims for bodily injury or property damage arising out of completed operations;
- I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
- J. Claims for injury or damages in connection with one's professional services;
- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

12.4 Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$2,000,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$5,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$5,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the insurance

Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONTRACTOR'S operations and products, and completed operations.

12.5 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 any owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

12.6. Worker's Compensation and Employer's Liability

CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

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

13. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of CITY		In the case of the CONTRACTOR	
Department:	Public Works - Streets	Firm Name:	Cactus Asphalt, a division of Cactus Transport, Inc
Contact:	Rulhann Goemaal	Contact:	Jeff Martinez
Mailing Address:	PO Box 4008 - MS 909	Address:	8211 W Sherman St
Physical Address:	975 E Armstrong Bldg C	City, State, Zip	Tolleson, AZ 85353
City, State, Zip	Chandler, AZ 85244	Phone:	623-907-2800
Phone:	408-782-3498	FAX:	623-907-2900
FAX:	480-782-3495	EMAIL:	jmm@CactusAsphalt.com

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

14. GENERAL TERMS:

- 14.1. **Entire Agreement:** This Contract, including Exhibits A and B attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 14.2. **Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 14.3. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 14.4. **Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or

materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on those changes.

14.5. Conflict of Interest:

14.5.1 No Kickback: 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 City Council or any employee of CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to CITY.

14.5.2 Kickback Termination: CITY may cancel this Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of CITY'S departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a CONTRACTOR to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. §38-511).

14.5.3 No Conflict: CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. Independent CONTRACTOR: The CONTRACTOR under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

15.1 No Parole Evidence: This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

15.2 Authority: Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of February, 2008.

FOR THE CITY OF CHANDLER

MAYOR

ATTEST:

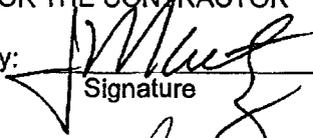
City Clerk

Approved ~~as~~ as to form:

City Attorney



FOR THE CONTRACTOR

By: 

Signature

SEAL ATTEST: If Corporation

Secretary

**TECHICAL SPECIFICATIONS
ACRYLIC SEAL COAT /TRMSS ON BITUMINOUS PAVED SURFACES
Bid No. ST8-745-2552**

The City of Chandler wishes to enter into an agreement with a Contractor to provide Acrylic Seal Coat / TRMSS, which shall be applied on approximately on 609,341 square yards of bituminous paved surfaces. CONTRACTOR shall furnish all labor, material and equipment necessary to place material specified on streets designated by CITY, primarily residential and collector streets will be sealed. Acrylic Seal/Plastic Seal will not be applied to arterial streets.

NOTE: The City of Chandler shall retain the option, at Contract Administrator/designee's discretion, to utilize either Option 1 or Option 2 listed on Exhibit B "Pricing" at any time during this contract.

- A. STANDARD SPECIFICATIONS AND STANDARD DETAIL: Attention is called to the fact that CITY is now operating under the latest revision of the 1992 edition of the Uniform Standard Specification for Public Works Construction, published by the Maricopa Association of Governments as amended by CITY, which is herewith incorporated by reference and made a part hereof.

CITY is also operating under the latest revision of the 1992 edition of Standard Details as published by the Maricopa Association of Governments as amended by CITY.

- B. TIME OF APPLICATION AND WEATHER CONDITION: Acrylic Seal Coat shall not be applied when the surface is wet or when there is a threat of rain. The ambient air temperature shall be at least 50°F and rising and the application shall cease when the air temperature is 55°F and falling.

Acrylic Seal shall be applied only between the hours of 8:30 a.m. and 2:00 p.m. local Arizona time. All streets must be capable of being opened to traffic by 4:00 p.m. local Arizona time.

- C. INSPECTION: CITY will perform inspection and shall require forty-eight (48) hour notice before the start of work. CONTRACTOR shall call the CONTRACT ADMINISTRATOR/designee at (480) 782-3500 prior to start of work.

- D. NOTIFICATION OF PUBLIC:

CONTRACTOR shall notify each residence and business at least 48-hours in advance of work being done when his or her street is to be surfaced. This will provide adequate lead-time for residents to move vehicles from the streets. The notification shall be done in writing by the use of "door hangers" that have been approved by CONTRACT ADMINISTRATOR/designee. The door hangers shall be placed in a secure manner on the front door of each residence or business or, if not accessible, in a location where the owner will see and read it. The information shall be printed on some bright colored paper, which can be easily seen by the resident. Items to be included on door hangers shall be:

Date of work to be done -
Type of work - Acrylic Seal Surfacing
Contractors Name -
Contractor's phone number -
No parking on street allowed for the next 24 hrs -
Ask resident not to drive on fresh seal material -

Note: CONTRACTOR shall provide information on the notices to the residents as to how to remove acrylic seal material from shoes, driveways or vehicles.

- E. MATERIAL: The Asphalt Emulsion shall meet the requirements of Table #1 attached. The TRMSS shall meet the requirements of Table #5 attached. The emulsion shall then be diluted with water in accordance

with Section G herein. CONTRACTOR shall submit a certification from the manufacturer stating that the base emulsion being supplied meets the requirements of Table #1. The TRMSS shall meet the requirements of Table #5 attached.

PREPARATION OF PAVEMENT: Pavement surface to be coated shall be sound, surface cured and clean in order for the acrylic modified asphalt emulsion to perform properly.

Cleaned surface – CONTRACTOR shall clean the pavement to be free from clay, salt, sand, grease, dirt, and other foreign matter. It is imperative that the pavement be thoroughly cleaned. Cleaning shall be accomplished by means of power blowers, stiff bristle brooms, vacuum unit, or by pressure flushing. Only pick up type sweepers will be allowed, no sidekick brooms shall be used.

Deleterious matter - Accumulation of grease or oil shall be removed by scraping, burning or scrubbing with detergent (detergent shall be thoroughly rinsed from surface). Any areas where pavement is physically sound, yet oil has still soaked in shall be coated with an acrylic oil spot primer to promote better adhesion and to prevent bleed through.

- G. APPLICATION OF MATERIALS: Dilution - Dilution rate is 2 parts asphalt emulsion concentrate to 1 part potable water. CONTRACTOR shall use the manufacturer's recommended dilution be formulated at the manufacturer's plant using hot soft water and proper blending techniques.

Temperature - Recommended application temperature is between 120°F and 160°F. For best results, CONTRACTOR shall use a delivery system that is equipped with heating capability and circulation to insure proper mixing and even spraying. **This does not apply to TRMSS material.**

Application rate – CONTRACTOR shall apply sealer in one uniform coat with controlled rate capabilities or a spray wand. Application rate shall be 0.10 to 0.15 gallon per square yard of diluted material. Test sections prior to commencement of job shall determine actual coverage rate. CITY Contract Administrator/designee will determine the application rate on individual sections.

Outside temperature – CONTRACTOR shall apply the sealer when the ambient temperature is 50°F and rising with no threat of rain for an 8-hour period.

Drying time - Drying time for sealer shall normally be 2-hours before opening to traffic. Actual weather conditions will determine drying time and, in any case, avoid traffic until the surface is no longer tacky.

- H. POST APPLICATION: After application of sealer, CONTRACTOR shall squeeze off depressions in the pavement that collect residual sealer and puddles to avoid a tacky, slow curing surface.
- I. PROTECTION TO ADJACENT PROPERTY: CONTRACTOR shall take care to prevent the spraying of the Acrylic Seal Coat on adjacent pavement and that portion of the pavement being used for traffic, on structures, guard rails, guide posts, markers (all types), manhole and valve covers, trees, shrubs, and adjacent property, improvements and facilities of all kinds.
- J. PROTECTION OF TREATED SURFACE: CONTRACTOR shall be responsible for providing adequate barricading and signing to protect both the motorized public and the treated surface (see Exhibit D). In the event of loss of striping, CONTRACTOR shall be responsible for temporary traffic control using vertical panels, reflective raised pavement markers or chip seal markers. The treated surface shall be protected by barricades and/or signs until the Acrylic Seal Coat will not be picked up by traffic. CONTRACTOR shall follow the CITY Barricade Manual in providing the required traffic control. In addition to the barricade manual, CONTRACTOR shall be required to set out some informational signs and/or electronic message boards which will be provided by CITY, and shall be returned to CITY in good condition at the completion of the project. CITY Contract Administrator/designee will work with CONTRACTOR's crew leader in detailing the location for said signs. CONTRACTOR shall be required to furnish and place temporary "No Parking" signs along streets that allow residential or commercial parking. These signs shall be placed 24-

hours in advance of the application of the Acrylic Seal. Only one half (1/2) of the street surface shall be sealed and closed at a time.

- K. ALTERNATE WORK - PARKING LOT RESURFACING: Additional work may be added to this contract that involves the resealing of CITY owned parking lots. At the present time, quantities are not available. We are asking for a unit price complete for this work. The following information shall be considered by CONTRACTOR when calculating a unit price for this work.
1. The material shall be the same as requested in the specification, Acrylic Seal Coat.
 2. CONTRACTOR will provide any and all Traffic Control needed, as well as provide all sweeping and cleaning required in the parking lots. CITY will be responsible for having all the vehicles removed from parking lots. CONTRACTOR shall provide all labor, equipment, materials, bond, insurance and overhead in unit price given for this work.
- L. PAYMENT: Payment for Acrylic Seal Coat in place shall be by the gallon, diluted 2 parts emulsion to 1 part water for concentrate. CONTRACTOR shall provide a copy of all material tickets before billing is accepted and paid by CITY.

TABLE #1

Acrylic Modified Asphalt Emulsion, Plastic Seal II (or equivalent), product description and specifications:

A spray-applied **asphalt emulsion modified with acrylic polymer** that protects asphalt pavements from environmental damage cause by air, moisture, and the sun's ultra-violet rays.

Typical product specifications are as follows:

Test on Emulsion	Method	Min	Max
Saybolt Furol Viscosity @ 77° F, sec	AASHTO T-59	15	50
Residue by Evaporation, % by weight of Emulsion	AASHTO T-59	57	
Sieve, % by weight	AASHTO T-59		0.1
Test on Residue			
Residue by vacuum recovery	AZ 504		
Softening Point, °F	AASHTO T-53	130	
Penetration @ 77°F, 100g/5 sec, dmm	AASHTO T-49	20	60
Ductility @ 77°F, 5cm/min, cm	AASHTO T-51	20	

Product Development Testing

Weathering Test ASTM D4799-03
"Standard Practice for Accelerated Weathering Test Conditions and Procedures for Bituminous Materials (Fluorescent UV, Water Spray, and Condensation Method)".

Note: Test results of 25 dry mils of film shall be 450 hrs minimum without alligator cracking, chalking, or edge creep.

The conditions for the QUV set-up are the following:

QUV from Q-Panel Company, bulb QFS-40

QUV settings:

- Condensate cooling timer = 15 minutes
- Cycle Timer: 4 two hour UV cycles / 4 two hour Condensate Cycles
- UV Power & Thermostat Adjustments: 2.0 & 2.5
- Condensate Power & Thermostat Adjustments: 2.0 & 2.5

Successful supplier shall furnish a certified copy from a recognized testing laboratory of test results and test methods used.

Acrylic polymer products shall contain a maximum of 10% acrylic resin content.

TABLE #5

TIRE RUBBER MODIFIED SURFACE SEAL (TRMSS) for Preservative Sealing:

Tire Rubber Modified Surface Seal shall meet the requirements of Table 5 below:

TABLE 5 – TIRE RUBBER MODIFIED SURFACE SEAL (TRMSS)		
PROPERTY	TEST METHOD	REQUIREMENT
Viscosity, Krieb Unit (KU)	ASTM D 562	35-65
Weight/Gallon	ASTM D2939.07	8.3- 8.6
Residue by Evaporation %	ASTM D2939.08	35 – 45
Sieve Analysis	ASTM 244 (sec 44-47)	0.1 max
Performance criteria Testing, Note (1)		
Wet Track Abrasion, %, Note (2)	ISSA (TB-100)	<5
Accelerated Weathering Test, Note (3)	ASTM G 154	Pass
Asphalt Cement Certificate of Compliance (4) Ground Whole Tire Rubber %	Certificate of compliance	10 min.
Penetration 77 F, 100g, 5 sec, dmm	ASTM D5	15-55.
Softening Point, F	ASTM D36	130
Solubility % (3 set average)	ASTM D2042	97.5

Note: (1) TRMSS diluted, ready-to-use.

Note: (2) Calculated weight loss, percentage of original Volume, 1 hour soak.

Note: (3) 1,000 hours. UVA-340 lamp, 0.77 W/m²(V1.0 calibration), 8 hours UV light @ 50C, 5 min. spray, 3.55 hours condensation @ 50C.

Note: (4) Ground whole tire rubber modified asphalt cement.

**EXHIBIT B
PRICING**

In compliance with your Invitation for Bids, Bidder hereby agrees to perform all work for the construction of Acrylic Seal Coat in strict accordance with the Contract documents, within the time set forth therein, and at the prices stated below.

OPTION 1

<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>PRICE (per gallon)</u>	<u>EXCLUDING TAX</u>
Furnish and apply Acrylic Seal Coat	20,000 GL	\$2.96	\$ 59,200.00

Alternate Work - Parking Lot Resurfacing

1. Unit Price per Square Yard Complete in Place \$1.00/sq yard

2. Material Sources
 - A. Source of Emulsified Asphalt: Ergon Asphalt Products
 - B. Source of Oil: Ergon Asphalt Products
 - C. Refining Source of Asphalt: Frontier / Exxon Mobil

Bids shall include all charges for all materials, labor, construction equipment, incidental expenses, general conditions, supervision, taxes, insurance, overhead and profit.

**CITY OF CHANDLER PURCHASE CONTRACT
ACRYLIC SEAL COAT /TRMSS ON BITUMINOUS PAVED SURFACES
CONTRACT NO.: ST8-745-2552**

THIS AGREEMENT is made and entered into this 13th day of Feb, 2008, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **CHOLLA PAVEMENT MAINTENANCE, INC**, a Corporation in the State of Arizona, hereinafter referred to as "CONTRACTOR".

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATION AND OPERATION:

1.1. Contract Administrator: CONTRACTOR shall act under the authority and approval of the Streets Superintendent /designee (Contract Administrator), to provide the goods and merchandise required by this Contract.

1.2. Ordering Instructions: Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.

1.3. Ordering Process. Upon award of a contract by the City, any designated department may procure the specific product, equipment or material awarded by the issuance of a Contract Purchase Order to the appropriate CONTRACTOR. Each Contract Purchase Order must cite the correct Chandler contract number.

2. GOODS AND MERCHANDISE TO BE PROVIDED: CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, attached hereto and made a part hereof by reference, at the prices listed on Exhibit B, all as more specifically set forth in the Specifications and details included therein.

2.1. Safety Standards: All items supplied pursuant to this contract must 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.

2.2. Non-Discrimination: The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

2.3. Licenses: CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by CONTRACTOR as applicable to this contract.

2.4. Contract Orders: CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all contract orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all contract orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

2.5. Advertising, Publishing and Promotion of Contract: The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

- 2.6. **Compliance With Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.7. **Payment.** A separate invoice shall be issued for each shipment of goods or materials, and no payment will be issued prior to receipt of goods or materials and receipt of a correct invoice.
- 2.8. **Estimated Quantities.** The quantities shown on Exhibit B (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. CITY reserves the right to increase or decrease the quantities actually required.
- 2.9. **New/Current Products.** All goods, equipment, materials, parts and other components supplied pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended.
- 2.10. **Packing and Shipping.** The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.
3. **Warranties:**
 - 3.1. **Liens:** CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
 - 3.2. **Quality:** Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:
 - 3.2.1. Of a quality to pass without objection in the trade under the Contract description;
 - 3.2.2. Fit for the intended purposes for which the materials are used;
 - 3.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 3.2.4. Adequately contained, packaged and marked as the Contract may require; and
 - 3.2.5. Conform to the written promises or affirmations of fact made by CONTRACTOR.
 - 3.3. **Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.
 - 3.4. **Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.
4. **ACCEPTANCE AND DOCUMENTATION:** All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification

- 4.1. **Records.** The CONTRACTOR shall retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 4.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.
- 4.3. **Delivery.** Delivery shall be made within ~~60(60)~~ calendar days after receipt of a Contract Purchase Order (ARO).
- 4.4. **PRICE:** CITY shall pay to CONTRACTOR an amount of Two Hundred Seventy Two Thousand Five Hundred Dollars and 00/100 (\$272,500) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.
- 4.5. **Pricing:** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.
- 4.6. **Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
- 4.7. **Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.
- 4.8. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.
- 4.9. **TAXES:** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR.
- 4.10. **IRS W-9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W-9 Form on file with CITY, unless said form is not required by law.
- 4.11. **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 4.12. **Acceptance by CITY.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was

requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.

4.13. Price Reduction. CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.

5. TERM:

6.1 The contract term is for a one-year period subject to mutually agreed upon additional successive periods of a maximum twelve months per extension with a maximum aggregate including all extensions not to exceed five (5) years. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.

6. USE OF THIS CONTRACT:

6.1. The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.

6.2. Emergency Purchases: CITY reserves the right to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

6.3. Cooperative Use of Contract. In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

7. CITY'S CONTRACTUAL REMEDIES:

7.1. Right to Assurance: If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

7.2. Non-exclusive Remedies: The rights and the remedies of CITY under this Contract are not exclusive.

7.3. Nonconforming Tender: Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

7.4. Right of Offset: CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

8. TERMINATION:

- 8.1. **Termination for Convenience:** CITY reserves the right to terminate this Contract or any part thereof for its sole convenience with thirty (30) days written notice. CONTRACTOR shall receive payment for the goods and materials already shipped to CITY.
- 8.2. **Termination for Cause:** CITY may, upon written notice, terminate this Contract for CONTRACTOR'S failure to comply with the terms of this Contract.
- 8.3. **Termination for Misrepresentation.** CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.
- 8.4. **Cancellation for Conflict of Interest:** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 8.5. **Gratuities:** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the CONTRACTOR.
- 8.6. **Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Sub-CONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.
- 8.7. **Continuation of Performance Through Termination:** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.8. **No Waiver:** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
10. **ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes and other matters in question between CITY and CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance or the breach by any party thereto, including but not limited to, original claims or

disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.

- 10.1. **Notice:** CONTRACTOR shall submit written notice of any claim or dispute to the Contract Administrator within thirty (30) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as they occur and not postponed until the end of the Contract nor lumped together with other pending claims.
- 10.2. **Forfeiture:** Failure to submit a notice of any claim, dispute, or other issue within such thirty (30) days shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of CITY'S position.
- 10.3. **CITY Response:** The Contract Administrator will provide to CONTRACTOR a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONTRACTOR'S written claim.
- 10.4. **Appeal:** If CONTRACTOR disagrees with the response of the Contract Administrator, within fifteen days of the date of the response by the Contract Administrator, CONTRACTOR shall file with the Contract Administrator, written notice of appeal. The Contract Administrator shall provide copies of all relevant information concerning the Contract and claim or dispute to the Assistant Management Services Director who will determine the appeal. The Assistant Management Services Director may request additional information from either party, may hold an informal informational hearing or may make the determination based on the information provided. The Assistant Management Services Director shall make a final determination of the appeal and provide written notice to CONTRACTOR within sixty (60) days from the date of CONTRACTOR'S written notice of appeal.
- 10.5. **Arbitration:** If CONTRACTOR is not satisfied with the determination of the Assistant Management Services Director, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes. If CONTRACTOR chooses not to accept the decision of the Assistant Management Services Director, CONTRACTOR shall notify the Contract Administrator in writing within ten (10) business days of receipt of the Assistant Management Services Director's decision of a request for arbitration. The CONTRACTOR shall post a cash bond with the Arbitrator in the amount of \$5,000, or a greater amount as determined by the Arbitrator, that will defray the cost of the arbitration as set forth in paragraph M, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.
 - A. **Arbitration Panel:** The Arbitration Panel shall consist of the arbitrators selected by the parties involved in the dispute, (i.e., CITY will select one arbitrator, CONTRACTOR will select one arbitrator, and any other CONTRACTOR who has a contract with CITY which contains this ADR provision and is a party to the same dispute will also select an arbitrator), and the foregoing arbitrators shall select a neutral Arbitrator who will hear the matter and make a final determination, as set forth herein.
 - B. **Expedited Hearing:** The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Arbitrator to set an expedited hearing if circumstances justify it. The Arbitrator shall contact the parties and schedule the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than sixty (60) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitrator upon a showing of emergency circumstances.
 - C. **Procedure:** The Arbitrator shall conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitrator a

written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Arbitrator.

- D. **Hearing Days:** To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.
- E. **Award:** The Arbitrator shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Contract and the laws of the State of Arizona.
- F. **Scope of Award:** The Arbitrator shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitrator shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.
- G. **Jurisdiction:** The Arbitrator shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
- H. **Entry of Judgment:** Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.
- I. **Severance and Joinder:** To reduce the possibility of inconsistent adjudications, the Arbitrator, may at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and the Arbitrator may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. The Arbitrator is not authorized to join to the proceeding parties not in privity with CITY.
- J. **Appeal:** Any party may appeal errors of law by the Arbitrator if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Arbitrator of any powers contrary to or inconsistent with the Contract; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.

- K. **Uniform Arbitration Act:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.
- L. **Fees and Costs:** Each party shall bear its own fees and costs in connection with any informal hearing before the Assistant Management Services Director. All fees and costs associated with any arbitration before the Arbitrator, including without limitation, the Arbitrator's fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the non-prevailing party, except as provided for herein. The determination of prevailing and non-prevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitrator.
- M. **Equitable Litigation:** Notwithstanding any other provision of ADR to the contrary, any party may petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to ongoing work pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitrator. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.
11. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.
12. **INSURANCE:**
- 12.1. **Insurance Representations and Requirements:**
- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. 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 is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.

- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.
- E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.
- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. 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. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

12.2 Proof of Insurance – Certificates of Insurance

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverage's, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the

contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.

- D. REQUIRED CITY reserves the right to request and to receive, within 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.

12.3 Coverage

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.
- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
- D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
- E. Claims for damages insured by usual personal injury liability coverage;
- F. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
- G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
- H. Claims for bodily injury or property damage arising out of completed operations;
- I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
- J. Claims for injury or damages in connection with one's professional services;
- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

12.4 Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$2,000,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$5,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$5,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance

Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONTRACTOR'S operations and products, and completed operations.

12.5 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 any owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

12.6 Worker's Compensation and Employer's Liability

CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

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

- 13. NOTICES:** All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of CITY	In the case of the CONTRACTOR
Department: <u>Public Works - Streets</u>	Firm Name: <u>Cholla Pavement Maintenance Inc.</u>
Contact: <u>Rutbann Goemaal</u>	Contact: <u>Chance Cherry</u>
Mailing Address: <u>PO Box 4008 - MS 909</u>	Address: <u>PO Box 5430</u>
Physical Address: <u>975 E Armstrong Bldg C</u>	City, State, Zip: <u>Apache Junction AZ 85278</u>
City, State, Zip: <u>Chandler, AZ 85244</u>	Phone: <u>480-893-1044</u>
Phone: <u>408-782-3494</u>	FAX: <u>480-893-1064</u>
FAX: <u>480-782-3495</u>	EMAIL: <u>CPMInc@Qwest.net</u>

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

14. GENERAL TERMS:

- 14.1. Entire Agreement:** This Contract, including Exhibits A and B attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 14.2. Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 14.3. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 14.4. Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or

materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on those changes.

14.5. Conflict of Interest:

14.5.1 No Kickback: 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 City Council or any employee of CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to CITY.

14.5.2 Kickback Termination: CITY may cancel this Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of CITY'S departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a CONTRACTOR to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. §38-511).

14.5.3 No Conflict: CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. Independent CONTRACTOR: The CONTRACTOR under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

15.1 No Parole Evidence: This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

15.2 Authority: Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 13th day of February, 2008.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

MAYOR

By: Judy A. Bugn
Signature

ATTEST:

City Clerk

SEAL ATTEST: If Corporation
John P. Steen
Secretary

Approved as to form:

City Attorney *pm*

**TECHICAL SPECIFICATIONS
ACRYLIC SEAL COAT /TRMSS ON BITUMINOUS PAVED SURFACES
Bid No. ST8-745-2552**

The City of Chandler wishes to enter into an agreement with a Contractor to provide Acrylic Seal Coat / TRMSS, which shall be applied on approximately on 609,341 square yards of bituminous paved surfaces. CONTRACTOR shall furnish all labor, material and equipment necessary to place material specified on streets designated by CITY, primarily residential and collector streets will be sealed. Acrylic Seal/Plastic Seal will not be applied to arterial streets.

NOTE: The City of Chandler shall retain the option, at Contract Administrator/designee's discretion, to utilize either Option 1 or Option 2 listed on Exhibit B "Pricing" at any time during this contract.

- A. STANDARD SPECIFICATIONS AND STANDARD DETAIL: Attention is called to the fact that CITY is now operating under the latest revision of the 1992 edition of the Uniform Standard Specification for Public Works Construction, published by the Maricopa Association of Governments as amended by CITY, which is herewith incorporated by reference and made a part hereof.

CITY is also operating under the latest revision of the 1992 edition of Standard Details as published by the Maricopa Association of Governments as amended by CITY.

- B. TIME OF APPLICATION AND WEATHER CONDITION: Acrylic Seal Coat shall not be applied when the surface is wet or when there is a threat of rain. The ambient air temperature shall be at least 50°F and rising and the application shall cease when the air temperature is 55°F and falling.

Acrylic Seal shall be applied only between the hours of 8:30 a.m. and 2:00 p.m. local Arizona time. All streets must be capable of being opened to traffic by 4:00 p.m. local Arizona time.

- C. INSPECTION: CITY will perform inspection and shall require forty-eight (48) hour notice before the start of work. CONTRACTOR shall call the CONTRACT ADMINISTRATOR/designee at (480) 782-3500 prior to start of work.

- D. NOTIFICATION OF PUBLIC:

CONTRACTOR shall notify each residence and business at least 48-hours in advance of work being done when his or her street is to be surfaced. This will provide adequate lead-time for residents to move vehicles from the streets. The notification shall be done in writing by the use of "door hangers" that have been approved by CONTRACT ADMINISTRATOR/designee. The door hangers shall be placed in a secure manner on the front door of each residence or business or, if not accessible, in a location where the owner will see and read it. The information shall be printed on some bright colored paper, which can be easily seen by the resident. Items to be included on door hangers shall be:

Date of work to be done -
Type of work - Acrylic Seal Surfacing
Contractors Name -
Contractor's phone number -
No parking on street allowed for the next 24 hrs -
Ask resident not to drive on fresh seal material -

Note: CONTRACTOR shall provide information on the notices to the residents as to how to remove acrylic seal material from shoes, driveways or vehicles.

- E. MATERIAL: The Asphalt Emulsion shall meet the requirements of Table #1 attached. The TRMSS shall meet the requirements of Table #5 attached. The emulsion shall then be diluted with water in accordance

with Section G herein. CONTRACTOR shall submit a certification from the manufacturer stating that the base emulsion being supplied meets the requirements of Table #1. The TRMSS shall meet the requirements of Table #5 attached.

PREPARATION OF PAVEMENT: Pavement surface to be coated shall be sound, surface cured and clean in order for the acrylic modified asphalt emulsion to perform properly.

Cleaned surface – CONTRACTOR shall clean the pavement to be free from clay, salt, sand, grease, dirt, and other foreign matter. It is imperative that the pavement be thoroughly cleaned. Cleaning shall be accomplished by means of power blowers, stiff bristle brooms, vacuum unit, or by pressure flushing. Only pick up type sweepers will be allowed, no sidekick brooms shall be used.

Deleterious matter - Accumulation of grease or oil shall be removed by scraping, burning or scrubbing with detergent (detergent shall be thoroughly rinsed from surface). Any areas where pavement is physically sound, yet oil has still soaked in shall be coated with an acrylic oil spot primer to promote better adhesion and to prevent bleed through.

- G. **APPLICATION OF MATERIALS:** Dilution - Dilution rate is 2 parts asphalt emulsion concentrate to 1 part potable water. CONTRACTOR shall use the manufacturer's recommended dilution be formulated at the manufacturer's plant using hot soft water and proper blending techniques.

Temperature - Recommended application temperature is between 120°F and 160°F. For best results, CONTRACTOR shall use a delivery system that is equipped with heating capability and circulation to insure proper mixing and even spraying. **This does not apply to TRMSS material.**

Application rate – CONTRACTOR shall apply sealer in one uniform coat with controlled rate capabilities or a spray wand. Application rate shall be 0.10 to 0.15 gallon per square yard of diluted material. Test sections prior to commencement of job shall determine actual coverage rate. CITY Contract Administrator/designee will determine the application rate on individual sections.

Outside temperature – CONTRACTOR shall apply the sealer when the ambient temperature is 50°F and rising with no threat of rain for an 8-hour period.

Drying time - Drying time for sealer shall normally be 2-hours before opening to traffic. Actual weather conditions will determine drying time and, in any case, avoid traffic until the surface is no longer tacky.

- H. **POST APPLICATION:** After application of sealer, CONTRACTOR shall squeeze off depressions in the pavement that collect residual sealer and puddles to avoid a tacky, slow curing surface.
- I. **PROTECTION TO ADJACENT PROPERTY:** CONTRACTOR shall take care to prevent the spraying of the Acrylic Seal Coat on adjacent pavement and that portion of the pavement being used for traffic, on structures, guard rails, guide posts, markers (all types), manhole and valve covers, trees, shrubs, and adjacent property, improvements and facilities of all kinds.
- J. **PROTECTION OF TREATED SURFACE:** CONTRACTOR shall be responsible for providing adequate barricading and signing to protect both the motorized public and the treated surface (see Exhibit D). In the event of loss of striping, CONTRACTOR shall be responsible for temporary traffic control using vertical panels, reflective raised pavement markers or chip seal markers. The treated surface shall be protected by barricades and/or signs until the Acrylic Seal Coat will not be picked up by traffic. CONTRACTOR shall follow the CITY Barricade Manual in providing the required traffic control. In addition to the barricade manual, CONTRACTOR shall be required to set out some informational signs and/or electronic message boards which will be provided by CITY, and shall be returned to CITY in good condition at the completion of the project. CITY Contract Administrator/designee will work with CONTRACTOR's crew leader in detailing the location for said signs. CONTRACTOR shall be required to furnish and place temporary "No Parking" signs along streets that allow residential or commercial parking. These signs shall be placed 24-

hours in advance of the application of the Acrylic Seal. Only one half (1/2) of the street surface shall be sealed and closed at a time.

- K. **ALTERNATE WORK - PARKING LOT RESURFACING:** Additional work may be added to this contract that involves the resealing of CITY owned parking lots. At the present time, quantities are not available. We are asking for a unit price complete for this work. The following information shall be considered by CONTRACTOR when calculating a unit price for this work.
1. The material shall be the same as requested in the specification, Acrylic Seal Coat.
 2. CONTRACTOR will provide any and all Traffic Control needed, as well as provide all sweeping and cleaning required in the parking lots. CITY will be responsible for having all the vehicles removed from parking lots. CONTRACTOR shall provide all labor, equipment, materials, bond, insurance and overhead in unit price given for this work.
- L. **PAYMENT:** Payment for Acrylic Seal Coat in place shall be by the gallon, diluted 2 parts emulsion to 1 part water for concentrate. CONTRACTOR shall provide a copy of all material tickets before billing is accepted and paid by CITY.

TABLE #1

Acrylic Modified Asphalt Emulsion, Plastic Seal II (or equivalent), product description and specifications:

A spray-applied **asphalt emulsion modified with acrylic polymer** that protects asphalt pavements from environmental damage cause by air, moisture, and the sun's ultra-violet rays.

Typical product specifications are as follows:

Test on Emulsion	Method	Min	Max
Saybolt Furol Viscosity @ 77° F, sec	AASHTO T-59	15	50
Residue by Evaporation, % by weight of Emulsion	AASHTO T-59	57	
Sieve, % by weight	AASHTO T-59		0.1
Test on Residue			
Residue by vacuum recovery	AZ 504		
Softening Point, °F	AASHTO T-53	130	
Penetration @ 77°F, 100g/5 sec, dmm	AASHTO T-49	20	60
Ductility @ 77°F, 5cm/min, cm	AASHTO T-51	20	

Product Development Testing

Weathering Test ASTM D4799-03
"Standard Practice for Accelerated Weathering Test Conditions and Procedures for Bituminous Materials (Fluorescent UV, Water Spray, and Condensation Method)".

Note: Test results of 25 dry mils of film shall be 450 hrs minimum without alligator cracking, chalking, or edge creep.

The conditions for the QUV set-up are the following:

QUV from Q-Panel Company, bulb QFS-40

QUV settings:

- Condensate cooling timer = 15 minutes
- Cycle Timer: 4 two hour UV cycles / 4 two hour Condensate Cycles
- UV Power & Thermostat Adjustments: 2.0 & 2.5
- Condensate Power & Thermostat Adjustments: 2.0 & 2.5

Successful supplier shall furnish a certified copy from a recognized testing laboratory of test results and test methods used.

Acrylic polymer products shall contain a maximum of 10% acrylic resin content.

TABLE #5

TIRE RUBBER MODIFIED SURFACE SEAL (TRMSS) for Preservative Sealing:

Tire Rubber Modified Surface Seal shall meet the requirements of Table 5 below:

TABLE 5 – TIRE RUBBER MODIFIED SURFACE SEAL (TRMSS)		
PROPERTY	TEST METHOD	REQUIREMENT
Viscosity, Krieb Unit (KU)	ASTM D 562	35-65
Weight/Gallon	ASTM D2939.07	8.3- 8.6
Residue by Evaporation %	ASTM D2939.08	35 – 45
Sieve Analysis	ASTM 244 (sec 44-47)	0.1 max
Performance criteria Testing, Note (1)		
Wet Track Abrasion, %, Note (2)	ISSA (TB-100)	<5
Accelerated Weathering Test, Note (3)	ASTM G 154	Pass
Asphalt Cement Certificate of Compliance (4) Ground Whole Tire Rubber %	Certificate of compliance	10 min.
Penetration 77 F, 100g, 5 sec, dmm	ASTM D5	15-55.
Softening Point, F	ASTM D36	130
Solubility % (3 set average)	ASTM D2042	97.5

Note: (1) TRMSS diluted, ready-to-use.

Note: (2) Calculated weight loss, percentage of original Volume, 1 hour soak.

Note: (3) 1,000 hours. UVA-340 lamp, 0.77 W/m²(V1.0 calibration), 8 hours UV light @ 50C, 5 min. spray, 3.55 hours condensation @ 50C.

Note: (4) Ground whole tire rubber modified asphalt cement.

**EXHIBIT B
PRICING**

In compliance with your Invitation for Bids, Bidder hereby agrees to perform all work for the construction of Acrylic Seal Coat in strict accordance with the Contract documents, within the time set forth therein, and at the prices stated below.

OPTION 2

<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>PRICE (per gallon)</u>	<u>EXCLUDING TAX</u>
Furnish and apply TRMSS	74,000 GL	\$2.85	\$210,900.00

Alternate Work - Parking Lot Resurfacing

1. Unit Price per Square Yard Complete in Place \$0.75/sq yard

2. Material Sources
 - A. Source of Emulsified Asphalt: Wright Asphalt
 - B. Source of Oil: Wright Asphalt
 - C. Refining Source of Asphalt: Wright Asphalt