

Contract No. XXXXX

WESTERN MANOR/CASPITA Y GRANDE
PAVEMENT RECONSTRUCTION PROJECT

Project No. XXXXXXXX

Public Works Department

City of Casa Grande

Pedro Apodaca
520-421-8625 Ext. 4840

Cactus Asphalt, A Division of Cactus Transport, Inc.

Bryan Glazer
623-907-2800

THIS CONTRACT made and entered into by and between the **City of Casa Grande**, a Municipal Corporation (the "City") and **Cactus Asphalt, A Division of Cactus Transport, Inc.**, (the "Contractor").

The City and the Contractor for the consideration named agree as follows:

SECTION 1. The complete Contract includes all of the Contract Documents as if set forth in full herein. The Contract and all Contract Change Orders issued after the execution of the Contract, Addendum No(s) 1 issued prior to the opening of the bids, the Special Provisions, the Project Plans (Exhibit(s) A), the Standard Plans, the Standard Specifications, the Waterworks Standards, Reference Specifications, the Bidder's Proposal, the Notice Inviting Bids, the A.R.S §35-393 and 35-393.01 Certification Form, the Performance Bond and the Payment Bond all of which are essential parts of this Contract as defined in Attachment 1. In the event of any conflict in these provisions, the terms of the Contract Documents shall control, each over the other, in the order provided.

SECTION 2. The Contractor shall furnish all materials, except as otherwise provided in the Plans or Specifications, and will perform all the work for the

PROJECT NO. _____

PROJECT NAME: WESTERN MANOR/CASPITA Y GRANDE PAVEMENT RECONSTRUCTION PROJECT

necessary to complete in a good, workmanlike, and substantial manner the work in accordance with the Contract Documents for this Project. The Contract documents are specifically referred to and made a part hereof this Contract.

SECTION 3. The City will pay the Contractor an amount not to exceed One million four hundred thousand (Dollars) (\$1,400,000) for a base contract, subject to change of materials and work orders. The Contractor agrees to receive and accept the prices set forth in the Bid Schedule as full compensation for the work required under the bid items awarded by the City subject to additions and/or reductions of the quantities of the various bid items at the unit prices bid for furnishing all labor and materials and for doing all the work contemplated and embraced under this Contract. The Contractor further agrees that:

- a. The City will not pay any claim submitted to the City by the Contractor unless the claim is **SUBMITTED IN WRITING** to the City and **APPROVED BY THE CITY IN WRITING BEFORE** any such work is started.
- b. The City will not pay for any cost increases for labor and materials outside the original prices as set forth in the Bid Schedule unless **SUBMITTED IN WRITING** to the City and **AGREED TO IN WRITING** by the City **IN ADVANCE**.
- c. In the event of unforeseen difficulties or obstructions arising out of the nature of the work to be performed are encountered by the Contractor, the Contractor **SHALL NOT MOVE FORWARD** with any additional work until that work is **APPROVED IN WRITING** by the City's Project Manager.
- d. The Contractor shall be responsible for all expenses incurred by or in consequence of the suspension and/or discontinuance of work **CAUSED BY** Contractor.
- e. The Contractor shall faithfully complete the work in the manner and in accordance with the Contract Documents and the requirements of the City's Project Manager under them.
- f. Any additional charges incurred without **WRITTEN CONSENT** of the City shall be considered incidental costs to the Contract with **NO COST** to the City.

SECTION 4. TIME IS OF THE ESSENCE for this Contract. The Contractor agrees to commence work pursuant to this Contract within 10 **calendar days** after the date of authorization specified in the Notice to Proceed and to diligently prosecute the same, day to day, to completion within 120 **calendar days** after the date provided except as adjusted by subsequent Contract Change Order(s). All additional work, when authorized by executed Change Order(s) shall be compensated for by a fee as mutually agreed upon by the City and Contractor.

When a contractor submits a request for a date extension for which work must be completed in a contract, a written Contract Change Order shall be initiated outlining the reason for applying for the extension and the drop-dead date the work **will** be completed. If the extension is agreed to and signed by the City and the Contractor, it binds the Contractor to complete the work by the extended date designated in the amendment unless the delay in completion of the work by the Contractor results from an unforeseeable cause beyond the control and without the fault or negligence of the Contractor. It is agreed the City's only liability for delay from any cause shall be limited to granting a time extension to the Contractor. There is no other obligation, expressed or implied, on part of the City to the Contractor for delay from any cause.

SECTION 5. If the work to be performed by Contractor for this Contract is not timely completed, the Contractor shall pay to the City \$1,000 as liquidated damages for each day the work remains incomplete after the scheduled completion date. The scheduled completion date for determining liability for liquidated damages shall be 120 **consecutive days** from the effective date of City's Notice to Proceed to the Contractor.

For the purpose of determining applicability of liquidated damages, completion time shall be extended only if delay in completion of the work by the Contractor results from an unforeseeable cause beyond the control and without the fault or negligence of the Contractor per Section 6.

SECTION 6. Force Majeure: Notwithstanding any other term, condition, or provision hereof to the contrary, in the event any party hereto is precluded from satisfying or fulfilling any duty or obligation imposed upon such party by the terms hereof due to labor strikes, nationwide material shortages, war, civil disturbances, unusual weather conditions, natural disasters, acts of God, or other events beyond the control of such party, the time period provided herein for the performance by such party of such duty or obligation shall be extended for a period equal to the delay occasioned by such events and must be agreed to **IN WRITING BY BOTH PARTIES.**

SECTION 7 The Contractor agrees to indemnify, defend, and save harmless the City, its Mayor and Council, appointed boards and commissions, officials, officers, and employees, individually and collectively from all losses, claims, suits, demands, expenses, subrogations, attorney's fees, or actions of any kind and nature arising out of the Contractor's negligence or any subcontractor employed by the Contractor including bodily injury and death, damages to any property or any other losses, claims, suits, demands, and/or expenses, arising or alleged to have arisen out of the work performed, except any injury or damages arising out of the sole negligence of the City, its officers, agents or employees. The amount and type of insurance coverage requirements set forth in Section 8 will in no way be construed as limiting the scope of indemnity in this paragraph.

SECTION 8. INSURANCE.

8.1 Contractor Liability Insurance. Upon signing of the Agreement and so long as it shall remain in effect, contractor, at its cost and expense, shall purchase and maintain the insurance described in this subsection 14. The insurance shall be purchased and maintained in companies duly licensed or otherwise approved by the State of Arizona, with forms acceptable to the City of Casa Grande, and shall be primary with no right of contribution. The contractor's insurer shall have a minimum A.M. Best's rating of A-VIII. Use of alternative insurers requires prior approval for the City of Casa Grande.

The insurance coverages to be purchased and maintained are:

8.1.1 Workers' Compensation. Contractor shall provide workers' compensation insurance as required by state and federal laws having jurisdiction over Contractor's employees engaged in the performance of the Services within this Agreement.

8.1.2 General Liability. Contractor shall maintain a Commercial General Liability (Occurrence)

policy that includes coverage for premises and operations, products and completed operations, contractual liability, broad form property damage, and personal injury liability. The policy shall have limits of not less than:

- \$1,000,000 for each occurrence of bodily injury and property damage; and
- \$1,000,000 for personal injury;

8.1.3 Automobile Liability. Contractor shall maintain an Automobile Liability policy with a combined single limit for bodily injury and property damage of not less than \$1,000,000 for each accident. The policy shall cover all owned, hired, and non-owned automobiles used in connection with the Agreement for the performance of Contractor's services.

8.1.4 Property Insurance. A policy or policies of fire and extended coverage property damage insurance covering the full insurable value of all tools and equipment used by contractor from time to time on the lands of City of Casa Grande pursuant to the Agreement, including mobile equipment. Contractor shall also require its agents, contractors, licensees and others performing the obligations, or exercising the rights, of Contractor under the Agreement to carry such property damage insurance. Such policy or policies shall cover the full insurable value of such tools and equipment.

8.1.5 Adjustment of Liability Limits. If the initial term of the Agreement shall exceed ten years or if the aggregate term of the Agreement, including any extension or renewal terms agreed to by the parties or provided for in the Agreement shall exceed ten years, on each tenth anniversary of the date of the Agreement, the liability limits provided for in sections 8.1.2 and 8.1.3 shall be increased by an amount proportional to the increase in the US consumer price index occurring since the date of the Agreement or the date of the last such increase as appropriate.

8.1.6 Professional Liability. The Contractor retained by the City to provide the engineering services required by the Agreement will maintain Professional Liability insurance covering errors and omissions arising out of the Services performed by the Contractor or any person employed by him, with an unimpaired limit of not less than \$1,000,000 each claim and \$2,000,000 all claims, or 10% for the construction budget, whichever is larger. In the event the insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of Services as evidenced by annual Certificates of Insurance.

8.2 Insurance Certificate. Contractor shall not exercise any of its rights under the Agreement until it delivers to City of Casa Grande's designated recipient certificates from contractor's insurers showing that the coverage required above has been obtained.

8.2.1 The insurance certificates must show City of Casa Grande, its subsidiaries, affiliates directors, officers, and employees as additional insured parties in respect of all liability coverage except workers' compensation. The policy shall provide and the certificate shall reflect that the insurance afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

8.2.2 The insurance certificate shall provide on its face that the policies it represents will not be terminated, amended, or allowed to expire without 30 days prior written notice to City of Casa Grande.

8.2.3 Failure of City of Casa Grande to demand the insurance certificate or other evidence of full compliance with these insurance requirements or failure of City of Casa Grande to identify a deficiency from any certificate provided to it shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

8.3 Severability of Interests. The policies referenced in 8.1.2 and 8.1.3 shall contain a severability of interests clause, generally providing, "the insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's insurance."

8.4 Waiver of Subrogation. Contractor hereby waives any and all rights that it might have against City of Casa Grande, its employees, officers, and directors, to recover all or part of any loss or damage insured or insurable by the insurance policies carried or required to be carried by it pursuant to the Contract Documents. Contractor shall require each of its agents, contractors, licensees and others performing the obligations, or exercising the rights, of Contractor under the Agreement to provide a similar waiver for City of Casa Grande's benefit.

8.5 Deductibles. Contractor may purchase the required insurance policies with deductibles which are reasonable in light of the contractor's financial condition; provided that any loss not covered due to the deductible will be paid by Contractor. Contractor shall also require its agents, contractors, licensees and others performing the obligations, or exercising the rights, of contractor under the Agreement to carry such property damage insurance. Such policy or policies shall cover the full insurable value of such tools and equipment.

SECTION 9. This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice. If this Contract is terminated, the City shall be liable only for payment for services rendered and accepted by the City before the effective date of termination.

The City reserves the right to terminate in whole or any part of this Contract due to the failure of the Contractor to carry out any term or condition of the Contract. The City will issue a written notice of default to the Contractor for failing to perform the stipulations, conditions or services/specifications required in this Contract. The Contractor shall have 5 days from receipt of the notice to rectify the failure or establish a plan for remedy. Contractor shall provide documentation of the remedy or proposed plan for approval by the City.

The City may terminate this Contract for cause if:

- A. In the opinion of the City, the Contractor attempts to impose personnel, materials or services of an unacceptable quality;
- B. In the opinion of the City, the Contractor fails to furnish the required services and/or product within the time stipulated in the Contract;
- C. In the opinion of the City, the Contractor fails to make progress in the performance of the requirements of the Contract;
- D. The Contractor gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the Contract.

In the event the Contractor has failed to perform any substantial obligation to be performed by the Contractor under this Agreement and said failure has not been cured within the times set forth in this Agreement, then the City may, upon written notice, withhold all monies due and payable to Contractor, without penalty, until such failure to perform is cured or otherwise adjudicated.

If funds that are appropriated or allocated for the payment of obligations under this Contract are not allocated by the City and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by the City at the end of the period for which funds are available. The City will notify the Contractor in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the City in the event that this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

Upon Notice of Termination the Contractor shall appraise the work the Contractor has completed and submit this appraisal to the City for evaluation.

The Contractor shall receive as compensation for services performed through the date of such termination, a fee for the percentage of work actually completed. This fee shall be a percentage of the Contractor fee described in this Contract and shall be in the amount mutually agreed to between the Contractor and the City. The City shall make this final payment within sixty (60) days after the Contractor has delivered the last of the partially completed items or service.

Notice required under this section shall be in writing and shall be served by certified mail upon the other party. When served by certified mail, services shall be conclusively deemed made five (5) days after posting thereof in the United States mail, postage prepaid.

SECTION 10. Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to materially fulfill such a commitment shall result in a breach of this Contract. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

SECTION 11. The Contractor agrees that any inspection by the City Representative or by other agents or employees of the City of the work performed is for the purpose of ensuring the technical competence of the work and adherence to other contractual provisions. Inspections are not for the purpose of safeguarding workers on the job, which is the sole responsibility of the Contractor.

The Contractor warrants that he/she is fully familiar with all the safety requirements of the Occupational Safety and Health Act as promulgated by the Federal Government and as implemented by the State of Arizona, and that he/she will be solely responsible for implementing and enforcing the same at all times.

SECTION 12. The Contractor agrees to accomplish the work with a minimum of traffic interruption. If it becomes necessary to close any traffic lanes on any street within the City, permission must first be obtained from the City Engineer's Office. Permission shall be requested at least 48 hours in advance for residential streets and 72 hours in advance for arterial streets. The Contractor shall furnish and place all detour signs and any other warning signs in accordance with the SPECIAL PROVISIONS.

SECTION 13. All writings, programs, data, public records, or other materials prepared by the Contractor and/or its Contractors or subcontractors, in connection with the performance of this Agreement shall be the sole and absolute property of the City.

SECTION 14. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Arizona in and for the County of Pinal. This Agreement shall be governed by the laws of the State of Arizona. Should the City bring any legal or equitable action for the purpose of protecting or enforcing its rights under this Contract, the City shall recover, in addition to all other relief, its reasonable attorney's fees and court costs to be fixed by the court.

SECTION 15. It is agreed that the City Engineer or his/her designee is authorized to execute Contract Change Order(s) necessary to the prosecution of the work, all in accordance with the Standard Specifications.

SECTION 16. The Contractor agrees that he/she will not proceed with any extra work unless he/she has been authorized in writing to do so by the City Engineer or his/her designee prior to the commencement of any extra work.

SECTION 17. The Parties do for themselves, their heirs, executors, administrators, successors and assigns agree to the full performance of all the provisions herein contained. Contractor may not, either voluntarily or by action of law, assign any obligation assumed by the Contractor without prior written consent of the City.

SECTION 18. No portion of this contract may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of the Contracting Officer. It will be the responsibility of the Contractor to ensure that any and all subcontractors comply with the terms and conditions of this agreement and that City of Casa Grande is named as express third-party beneficiary of such subcontracts with full rights as such.

SECTION 19. The Contractor shall cause the Performance Bond and Payment Bond to remain in full force and effect through the warranty and guarantee period. By my signature hereunder, as Contractor, I agree to keep the Performance

Bond and Payment Bond or cashier's check in equivalent of the full Performance Bond and Payment Bond in full force and effect through said period. The cashier's check shall serve the same purposes and fully cover the requirements of a Performance Bond and a Payment Bond.

SECTION 20. By my signature hereunder, as Contractor, I certify that I will comply with all provisions of the City of Casa Grande Project No. XXXX.

SECTION 21. This contract may be subject to review by any federal or state auditor. The City or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the City. Such review may occur with or without notice, and may include, but is not limited to, on site inspection by City Agents or employees, inspection of all records or other materials which the City deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for five (5) years after contract termination in accordance with A.R.S. §35-214 and shall make them available for such review within the City of Casa Grande, State of Arizona, upon request.

SECTION 22. DISPUTES

22.1 General. Differences between the Contractor and the City, arising under and by virtue of the Contract Documents shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions and decisions of the Contracting Officer, shall be final and conclusive.

22.2 Notice of Potential Claims. The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the City, or (2) the happening of any event or occurrence, unless the Contractor has given the City a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the Work performed, labor and material used, and all costs and additional time claimed to be additional.

22.3 Detailed Claim. The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before the final payment by the City, the Contractor has given the City a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of supporting documents evidencing the amount or the extension of time claimed to be due.

SECTION 23. By my signature hereunder, as Contractor, I agree that even if only one (1) Progress Payment is prosecuted by the City of Casa Grande for this Project, the City will retain ten percent (10%) of the Progress Payment amount. The ten percent (10%) retention will be discharged in accordance with the Standard Specifications.

SECTION 24. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes or omissions in the work, services, or professional services of the Contractor, its agents, employees, or any other person (not the City) for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services the Contractor may be legally liable in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, its agents, officers, officials, and employees from and against all claims, damages, losses, and expenses that are attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of any person or property, including loss or use resulting therefrom, caused by any negligent acts, errors, mistakes, omissions, work, services, or professional services in the performance of this Contract by Contractor or any employee of the Contractor, or any other person (not the City) for whose negligent acts, errors, mistakes, omissions, work, or services the Contractor

my be legally liable. The amount and type of insurance coverage requirement set for the herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

To the fullest extent permitted by law, the City agrees to indemnify and hold the Contractor harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the City's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the City is legally liable, and arising from the project that is the subject of this Agreement. The Contractor is not obligated to indemnify the City in any manner whatsoever for the City's own negligence.

SECTION 25. By my signature hereunder, as Contractor, I agree that I am not an employee of the City, and that I am performing the duties as an Independent Contractor, supplying my own employees, and maintaining my own insurance and handling all of my own internal accounting. The City in no way controls, directs, or has any direct responsibility for the actions of the Contractor. The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the City at the present time or in the future.

By my signature hereunder, as Contractor, I understand and acknowledge that the City will not withhold federal or state income. Where required by state or federal law, the Contractor authorizes the City to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the City against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to, Business or Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the City does not hold title.

By my signature hereunder, as Contractor, I agree that I shall be responsible for the compliance with the United States Immigration Reform and Control Act of 1986, and shall indemnify and hold harmless the City for any liability arising from failure of the Contractor to comply with this Act. This indemnification includes the costs of suit.

By my signature hereunder, as Contractor, I agree that I shall be responsible for compliance with the Americans with Disabilities Act of 1990 and shall indemnify and hold harmless the City for any liability arising from failure of the Contractor to comply with this act. This indemnification includes the costs of suit.

SECTION 26. By their signatures hereunder, as Contractor and City, the Parties agree to be bound by all applicable Federal and State regulations governing Equal Opportunity and Non-Discrimination.

SECTION 27. Pursuant to the requirements of Arizona Revised Statutes, Title 34, the City will require both of the following documents to be completed and submitted before the final payment is made and retainage is released.

1. A certification from the Prime Contractor that all bona fide project claims and bills from his/her subcontractors and suppliers have been paid, and that all his/her project claims against the City have been resolved (CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS).
2. The consent of surety affidavit signed by an authorized representative of the surety (CONSENT OF SURETY TO FINAL PAYMENT AND FULL RELEASE OF CONTRACT RETAINAGE OR SUBSTITUTE SECURITIES).

The City of Casa Grande reserves the right to obtain from the Contractor "satisfactory receipts for all labor and material billed and waivers of liens from any and all persons holding claims against the work".

SECTION 28. This Contract is subject to the provisions of A.R.S. § 38-511 which provides in pertinent part that the state, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the Contract or any extension of the Contract is in effect, an employee or agent 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.

SECTION 29. Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989.

SECTION 30. To the extent applicable under A.R.S. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor's or subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by City. The Contractor agrees to insert language similar to this paragraph in all contracts in which they engage with subcontractors on this project to ensure that those subcontractors are meeting the requirements of the above-mentioned statutes. City retains the legal right to randomly inspect the papers and records of the Contractor and its subcontractors who work on the Agreement to ensure that the Contractor and its subcontractors are complying with the above-mentioned warranty. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by City. The Contractor and its subcontractors shall cooperate with City's random inspections including granting City entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

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

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

SECTION 31. The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the City or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the City Attorney, or an order entered by a court after having acquired jurisdiction over the City. Contractor shall immediately give to the City notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the City, its officials, agents, or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

SECTION 32. In the event of a public records request to the City for the Licensed Program or Licensed Documentation, the City shall promptly provide a copy of such request to Contractor so that it has at least 7 days from Contractor's receipt of such request in which to seek an order restraining the City from disclosing the Licensed Program and Documentation pursuant to such public records request. If Contractor does not obtain a restraining order within such period of time, the City may disclose the Licensed Program and Licensed Documentation pursuant to such public request as the City deems appropriate to comply with Arizona's Public Records Laws.

SECTION 33. Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Contractor to the department head of the department for whom services are rendered and to the City Attorney's Office. Notice may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

SECTION 34. The provisions of paragraphs 5, 8, 9, 10, 13, 14, 21, 22, 24, 25, 26, 28, 29, 30, 31, 32, 33, and 37 as well as the provisions of any non-collusion affidavit, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

SECTION 35. This is the entire Contract between the parties. If any portion(s) of this Contract is (are) later found to be invalid or unenforceable, such portion(s) shall be null and void and without any effect on the rest of the Contract which shall continue in full force and effect.

SECTION 36. This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Arizona, and the City of Casa Grande.

SECTION 37. Contractor acknowledges and agrees that it is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel and, furthermore, Contractor acknowledges that it has signed the A.R.S §35-393 and 35-393.01 Certification Form, which is attached hereto and incorporated herein, to that effect.

SECTION 38. THIS CONTRACT SHALL BE VALID UPON EXECUTION BY THE PARTIES.

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Dated this the _____ day of _____, 20____.

City of Casa Grande, an Arizona
municipal corporation.

Cactus Asphalt, A Division of Cactus
Transport, Inc.

By: _____
Larry D. Rains,
City Manager

By: _____
Name: _____
Title: _____

Attest:

Gloria Leija, City Clerk CMC/AAE

Approved as to form:

Brett Wallace, City Attorney

A.R.S §35-393 and 35-393.01 CERTIFICATION FORM

Definitions contained in A.R.S. 35-393:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
 - (a) In compliance with or adherence to calls for a boycott of Israel other than those boycotts to which 50 United States Code section 4607(c) applies.
 - (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, and includes a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate.
3. "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.
4. "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the state treasurer or retirement system owns shares or interests either:
 - (a) together with other investors that are not subject to this section.
 - (b) that are held in an index fund.
5. "Public entity" means this State, a political subdivision of this STATE or an agency, board, commission or department of this state or a political subdivision of this state.
6. "Public fund" means the state treasurer or a retirement system.
7. "Restricted companies" means companies that boycott Israel.
8. "Retirement system" means a retirement plan or system that is established by or pursuant to title 38.

All offerors must select one of the following:

_____ My company **does not** participate in, and agrees not to participate in during the term of the contract a boycott of Israel in accordance with A.R.S. §35-393.01.

_____ My company **does** participate in a boycott of Israel as defined by A.R.S. §35-393.01.

By submitting this response, Contractor agrees to indemnify and hold the City, its agents and employees, harmless from any claims or causes of action relating to the City's action based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the City in defending such an action.

Company Name

Signature of Person Authorized to Sign

Company Street Address

Printed Name of Signatory

City, State, Zip

Title of Signatory

PERFORMANCE BOND
(100% of Total Contract Amount)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Casa Grande, State of Arizona, has awarded to Cactus Asphalt, A Division of Cactus Transport, Inc., as principal, designated as the "Contractor", a "Contract" for the work generally described as follows:

PROJECT NO. _____
PROJECT NAME: WESTERN MANOR/CASPITA Y GRANDE PAVEMENT RECONSTRUCTION PROJECT

WHEREAS, said Contractor is required to furnish a bond in connection with Contract guaranteeing performance and this bond shall remain in full force and effect through the warranty and guarantee period of the Contract.

NOW THEREFORE, we the undersigned Contractor and Surety, are held and firmly bound unto the City of Casa Grande in the amount not to exceed One million four hundred thousand (Dollars) (\$1,400,000), to be paid to the City or its attorney, its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

The above Contractor, his/her or its heirs, executors, administrators, successors or assigns, shall in all things stand to, abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract and any alteration made as provided, on his/her or their part to be kept and performed at the time and in the manner specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City of Casa Grande, its officers, employees and agents, as therein stipulated. It shall be and remain in full force and virtue until such time the project is completed then this obligation shall become null and void. In the event suit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all costs incurred by the City in the suit, including reasonable attorneys' fees to be fixed by the court.

IN WITNESS WHEREOF, we have hereunto set our hands, and seals on this _____ day of, _____ 20____.

CONTRACTOR:

SURETY:

Name: _____

Name: _____

Address: _____

Address: _____

Tel. No.: _____

Tel. No.: _____

By: _____

By: _____

Attorney-in-Fact

NOTE: This bond must be executed by both parties, and in the case of a corporation, with corporate seal affixed. All signatures must be acknowledged. (Attach acknowledgments.) The attorney-in-fact for the bonding company must be registered in at least one county in the State of Arizona.

PAYMENT BOND
(100% of Total Contract Amount)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Casa Grande, State of Arizona, has awarded to Cactus Asphalt, A Division of Cactus Transport, Inc., as principal, hereinafter designated as the "Contractor", a "Contract" for the work generally described as follows:

PROJECT NO: _____

PROJECT NAME: WESTERN MANOR/CASPITA Y GRANDE PAVEMENT RECONSTRUCTION PROJECT

WHEREAS, Contractor is required to furnish a bond in connection with the Contract, to secure the payment of claims of laborers, mechanics, material men and other persons as provided by law.

NOW THEREFORE, we the undersigned Contractor and Surety are held and firmly bound unto the City of Casa Grande in the amount not to exceed One million four hundred thousand (Dollars), (\$1,400,000) for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

If Contractor, his/her or its heirs, executors, administrators, successors or assigns, or subcontractors, shall fail to pay any of the persons named in, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any claimant, or any amounts required to be deducted, withheld, and paid over to the Tax Board from the wages of employees of the Contractor and his/her subcontractors, pursuant to the Revenue and Taxation Code, with respect to work and labor, that the Surety or Sureties will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In the event suit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all costs incurred by the City in the suit, including reasonable attorneys' fees to be fixed by the court.

This bond shall inure to the benefit of any of the persons named as to give a right of action to such persons or their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, we have hereunto set our hands, and seals on this _____ day of _____, 20_____.

CONTRACTOR:

SURETY:

Name: _____

Name: _____

Address: _____

Address: _____

Tel. No.: _____

Tel. No.: _____

By: _____

By: _____

Attorney-in-Fact

NOTE: This bond must be executed by both parties, and in the case of a corporation, with corporate seal affixed. All signatures must be acknowledged. (Attach acknowledgments.) The Attorney-in-fact for the bonding company must be registered in at least one county in the State of Arizona.

CONSENT OF SURETY TO FINAL PAYMENT AND

**ATTACHMENT 1
DEFINITION OF TERMS**

| | |
|---------------------------------|---|
| Addendum | Written or graphic instrument(s) issued in writing, after advertisement, but prior to the opening of the Bids, which alter, change, clarify, correct, modify or revise the Contract Documents. |
| Bid | The offer of the bidder, submitted on the prescribed form(s) to perform the Work and/or furnish material(s) and/or furnish labor and/or furnish equipment at the price(s) quoted. |
| Bidder's Proposal: | The offer of a bidder, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted. |
| Bidders Bond | The security furnished with a bid to guarantee that the bidder shall enter into the contract if the bid is accepted. |
| Change Order | A written order, issued and signed by the City Department Director or designee to the Contractor, directing addition(s), deletion(s) or revision(s) in the Work, adjustment in Contract Price(s) or Contract Time, said Change Order(s) is/are issued after the execution of the Contract, all as incidental to the prosecution of the Work as advertised. |
| Contract | The written agreement between the City and the contractor setting forth the obligations of the parties thereunder including, but not limited to, the performance of the work, the furnishing of labor and materials and the basis of payment. |
| Liquidated Damages | The monetary damages amount that the parties to the Contract shall be paid to the City by the Contractor for each day the work remains incomplete after the scheduled completion date. The Liquidated Damages amount will be set in accordance except as otherwise required in the project specifications, shall be in accordance with all applicable Uniform Standard Details for Public Works Construction and the Uniform Standard Specifications for Public Works Construction as published by Maricopa Association of Governments (MAG), latest edition, et seq. |
| Notice Inviting Bids | The public announcement, as required by law, inviting Bids for work to be performed and/or materials to be furnished and/or labor to be furnished and/or equipment to be furnished. |
| Payment Bond | The security provided by the contractor solely for the protection of claimants supplying labor and materials to the contractor or to subcontractors of the contractor. |
| Performance Bond | The security provided by the contractor solely for the protection of the contracting agency and conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof. |
| Project Manager | The City designee in direct charge of the Project and responsible for the completion of the project according to the provisions of the Contract. |
| Project Plans | Specific details and dimensions peculiar to the work which are supplemented by the standard details insofar as they may apply. |
| Reference Specifications | Any specifications referred to in the Contract Documents other than Standard requirements peculiar to an individual project. |
| Special Provisions | Additions and revisions to the Standard Specifications covering conditions and Specifications, including, but not limited to: bulletins, standards, rules, methods of analysis or tests, codes, other agency specifications, engineering societies, or industrial associations |

referred to in the Contract Documents. These refer to the latest edition, including amendments in effect and published at the time of advertising the Project or issuing the permit, unless otherwise specifically referred to by edition, volume or date.

Standard Plans The latest edition of the Uniform Standard Details for Public Works Construction and the Uniform Standard Specifications for Public Works Construction as published by Maricopa Association of Governments (MAG) including all SUPPLEMENTAL AMENDMENTS, as prepared by a joint effort of the Departments of Transportation of the Maricopa Association of Governments (MAG) where appropriate.

Standard Specifications The latest edition of the Uniform Standard Details for Public Works Construction and the Uniform Standard Specifications for Public Works Construction as published by Maricopa Association of Governments (MAG) including all SUPPLEMENTAL AMENDMENTS, as prepared by a joint effort of the Departments of Transportation of the Maricopa Association of Governments (MAG) where appropriate

Waterworks Standards The latest edition of the Uniform Standard Details for Public Works Construction and the Uniform Standard Specifications for Public Works Construction as published by Maricopa Association of Governments (MAG) including all SUPPLEMENTAL AMENDMENTS, as prepared by a joint effort of the Departments of Transportation of the Maricopa Association of Governments (MAG) where appropriate, unless modified within the Plans and/or the Standard Notes and Detail Plan Sheet for the City of Casa Grande and Arizona Water Company Details.