CONTRACT
FOR
CONSTRUCTION

THIS AGREEMENT, made and entered into this 26th day of May, 2016, by and between Earth Resources Corporation, (hereinafter the "CONTRACTOR"), and the Town of Prescott Valley, a municipal corporation of Arizona (hereinafter the "TOWN").

The TOWN engages the CONTRACTOR to construct the project known and described as Chip Seal FY16/17 Project, (hereinafter the "PROJECT").

WITNESSETH:

WHEREAS, the CONTRACTOR, for and in consideration of the sum to be paid to the CONTRACTOR by the TOWN, in the manner and at the time hereinafter provided, and of the other covenants and agreements herein contained, and under the penalties expressed in the bonds provided, hereby agrees, for the CONTRACTOR, the CONTRACTOR's heirs, executors, administrators, successors, and assigned as follows:

ARTICLE 1. SCOPE OF WORK

The CONTRACTOR shall furnish any and all labor, materials (other than those listed as supplied by the TOWN), equipment, transportation, utilities, services and facilities required to perform all work for the construction related to the PROJECT, to completely and totally construct the same and install the material therein for the TOWN, in a good and workmanlike and substantial manner and to the satisfaction of the TOWN through its Engineers and under the direction and supervision of the Engineer, or the Engineer's properly authorized agents, and strictly pursuant to and in conformity with the Plans and Specifications prepared by the Engineers for the TOWN, and with such modifications of the same and other documents that may be made by the TOWN through the Engineer or the Engineer's properly authorized agents, as provided herein.

ARTICLE 2. CONTRACT DOCUMENTS

The Call for Bids, Bid Packet, Plans, Specifications, Special Provisions, Addenda (if any), Bid Proposal and Schedule (as accepted by the TOWN), this Contract, and any Performance Bonds, Payment Bonds, Certificates of Insurance, and Change Orders are by this reference the Contract Documents and are made a part of the Contract to the same extent as if set forth herein in full.

Contract is not valid until (a) contract documents are executed, (b) bonds are posted, and (c) the notice to proceed has actually been delivered to the CONTRACTOR.

ARTICLE 3. TIME OF COMPLETION

The CONTRACTOR covenants and agrees at the CONTRACTOR's own proper cost and expense, to do all work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by the Contract, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the Bid Proposal.

ARTICLE 4. PAYMENTS TO CONTRACTOR

For and in consideration of the faithful performance of the work herein embraced as set forth in the Contract Documents, and in accordance with the directions of the TOWN, through its Engineer and to its satisfaction, the TOWN agrees to pay the CONTRACTOR the amount earned, computed from actual quantities of work performed and accepted or materials furnished at the unit bid price in the Bid Proposal and to make such payment in accordance with applicable Arizona Revised Statutes, after final inspection and acceptance of the work.

The TOWN by mutual agreement may make progress payments on contracts of less than ninety days and shall make monthly progress payments on all other contracts as provided for in this paragraph. Payment to the CONTRACTOR on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under such Contract may include payment for material and equipment, but to ensure the proper performance of such Contract, the TOWN shall retain ten per cent (10%) of the amount of each estimate until final completion and acceptance of all material, equipment and work covered by the Contract. An estimate of the work submitted shall be deemed approved and certified for payment after ten (10) days from the date of submission unless before that time the TOWN or TOWN's agent prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the Contract. The TOWN may withhold any amount from the progress payment sufficient to pay the expenses the TOWN reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen (14) days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received by the TOWN on submission to any person designated by the TOWN for the submission, review or approval of the estimate of the work.

When the Contract is fifty per cent (50%) completed, one-half (1/2) of the amount retained, including any securities substituted as set forth below, shall be paid to the CONTRACTOR upon the CONTRACTOR's request, provided the CONTRACTOR is making satisfactory progress on the Contract and there is no specific cause or claim requiring a greater amount to be retained. After the Contract is fifty per cent (50%) completed, no more than five percent (5%) of the amount of any subsequent progress payments made under the Contract may be retained, providing the CONTRACTOR is making satisfactory progress on the project, except that if at any time the TOWN determines satisfactory progress is not being made, ten per cent (10%) retention shall be reinstated for all progress payments made under the Contract subsequent to the determination.

Upon completion and acceptance of each separate building, public work or other division of the Contract on which the price is stated separately in the Contract, except as qualified below, payment may be made in full, including retained percentages thereon, less authorized deductions. In preparing estimates, the material and equipment delivered on the site to be incorporated in the job shall be taken into consideration in determining the estimated value by the Architect or Engineer.

Ten percent (10%) (or five percent (5%) the CONTRACTOR is making satisfactory progress) if of all estimates shall be retained by the TOWN as a guarantee for complete performance of the Contract, to be paid to the CONTRACTOR within sixty (60) days after completion or filing notice of completion of the Contract. Retention of payments by the TOWN longer than sixty (60) days after final completion and acceptance requires a specific written finding by the TOWN of the reasons justifying the delay in payment. The TOWN may not retain any moneys after sixty (60) days which are in excess of the amount necessary to pay the expenses the purchasing agency reasonably expects to incur in order to pay or discharge the expenses determined by the TOWN

in the finding justifying the retention of moneys. In lieu of the retention provided in this section, the TOWN shall, at the option of the CONTRACTOR, accept as a substitute an assignment of time certificates of deposit of banks licensed by this State, securities of or guaranteed by the United States of America, securities of this State, securities of counties, municipalities and schools within this State, or shares of savings and loan institutions authorized to transact business in this State, in an amount equal to ten per cent (10%) (or five percent (5%) the CONTRACTOR is making satisfactory progress) of all estimates which shall be retained by the agent as a guarantee for complete performance of the Contract. In the event the TOWN accepts substitute security as described in this paragraph for the ten percent (10%) (or five percent (5%) the CONTRACTOR is making satisfactory progress) retention, the CONTRACTOR shall be entitled to receive all interest or income earned by such security as it accrues and all such security in lieu of retention shall be returned to the CONTRACTOR by the TOWN within sixty (60) days after final completion and acceptance of all material, equipment and work covered by the Contract if the CONTRACTOR has furnished the TOWN satisfactory receipts for all labor and material billed and waivers of liens from any and all persons holding claims against the work. In no event shall the agent accept a time certificate of deposit of a bank or shares of a savings and loan institution in lieu of the retention specified unless accompanied by a signed and acknowledged waiver of the bank or savings and loan association of any right or power to set off against either the TOWN or the CONTRACTOR in relationship to the certificates or shares assigned.

In any instance where the TOWN has accepted substitute security as provided above, any Subcontractor undertaking to perform any part of such public work shall be entitled to provide substitute security to the CONTRACTOR upon terms and conditions similar to those described above, and such security shall be in lieu of any retention under the Subcontract.

ARTICLE 5. PAYMENTS TO SUBCONTRACTORS

The CONTRACTOR shall pay to his/her Subcontractors or material suppliers, and each Subcontractor shall pay to his/her Subcontractor or material supplier, within seven (7) days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the CONTRACTOR or Subcontractor on account of the work performed by his/her Subcontractors, to the extent of each such Subcontractor's interest therein, except that no Contract for construction may materially alter the rights of any CONTRACTOR, Subcontractor or material supplier to receive prompt and timely payment as provided under ARS Section 34-221(E). Such payments to Subcontractors or material suppliers shall be based on payments received pursuant to that Section. Any diversion by the CONTRACTOR or Subcontractor or payments for work performed on a Contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for disciplinary action by the Registrar of CONTRACTORs. The Subcontractor or material supplier shall notify the Registrar of Contractors and the TOWN in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in that Section.

Nothing herein prevents the CONTRACTOR or Subcontractor, at the time of application and certification to the TOWN or CONTRACTOR, from withholding such application and certification to the TOWN or CONTRACTOR for payment to the Subcontractor or material supplier for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third-party claims filed or reasonable evidence that a claim will be filed, failure of a Subcontractor to make timely payments for labor, equipment and materials, damage to the CONTRACTOR or another Subcontractor, reasonable evidence that the Subcontract cannot be completed for the unpaid balance of the Subcontract sum, or a reasonable amount for retention that does not exceed the actual percentage retained by the TOWN.

ARTICLE 6. INTEREST PAYMENTS

If any payment to the CONTRACTOR is delayed after the date due, interest shall be paid at the rate of one per cent (1%) per month or fraction of a month on such unpaid balance as may be due.

If any periodic or final payment to a Subcontractor is delayed by more than seven (7) days after receipt of the periodic or final payment by the CONTRACTOR or Subcontractor, the CONTRACTOR or Subcontractor shall pay the CONTRACTOR's Subcontractor or material supplier interest, beginning on the eighth (8th) day, at the rate of one per cent (1%) per month or a fraction of a month on such unpaid balance as may be due.

ARTICLE 7. DAMAGES UPON DELAY

Negotiations between the TOWN and the CONTRACTOR for the recovery of damages related to expenses incurred by the CONTRACTOR for a delay for which the TOWN is responsible, which is unreasonable under the circumstances and which was not within the contemplation of the parties to the Contract, are provided under this Contract. This Article shall not be construed to void any provision in the Contract which requires notice of delays, provides for arbitration or other procedure for settlement, or provides for liquidated damages.

ARTICLE 8. FORFEITURE AND DEFAULT OF CONTRACT

It is agreed to by the Contractor that if he:

A. Fails to begin the work under the contract within a reasonable time, or
B. Fails to perform the work with sufficient workmen and equipment or with sufficient materials to assure the prompt completion of said work, or
C. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
D. Discontinues the prosecution of the work, or
E. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
F. At any time colluded with any party or parties, or
G. Allows any final judgment to stand against him unsatisfied for a period of 14 calendar days, or
H. For any cause whatsoever, fails to carry on the work in an acceptable manner, the Engineer will give notice in writing to the Contractor and his surety of such delay, neglect, or default, and advise them that the work must be resumed immediately.

If the Contractor or surety, within a period of 14 calendar days after such notice, has not proceeded in accordance therewith, then the TOWN will, upon written notification from the Engineer of the fact of such delay, neglect or default and the Contractor's failure to comply with such notice, have full power and authority without violating the contract, to take the prosecution of the work out of the hands of the Contractor. The TOWN may appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the opinion of the Engineer will be required for the completion of said contract in an acceptable manner.

All costs and charges incurred by the TOWN, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due said Contractor.

If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the TOWN the amount of such excess.

ARTICLE 9. TERMINATION OF CONTRACT

The TOWN may terminate the contract or a portion thereof if conditions encountered during the progress of the work make it impossible or impracticable to proceed with the work or a local or national emergency exists.

When contracts, or any portion thereof, are terminated before completion of all work in the contract, adjustments in the amount bid for the pay items will be made on the actual quantity of work performed and accepted, or as mutually agreed for pay items of work partially completed or not started. No claim for loss of anticipated profits will be considered.

Termination of the contract or any portion thereof shall not relieve the Contractor of his responsibilities for the completed work nor the surety of its obligation for and concerning any just claims arising out of the work performed.

ARTICLE 10. INDEMNIFICATION

To the fullest extent permitted by law, the CONTRACTOR shall defend, indemnify and hold harmless the TOWN, its agents, officers, officials and employees from and against all claims, damages, losses and expenses (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the CONTRACTOR, its agents, employees or any tier of CONTRACTOR's subcontractors in the performance of this Contract. CONTRACTOR's duty to defend, hold harmless and indemnify the TOWN, its agents, officers, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by CONTRACTOR's acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the CONTRACTOR, any tier of CONTRACTOR's subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the CONTRACTOR may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

ARTICLE 11. PRESCOTT VALLEY BUSINESS LICENSE

The CONTRACTOR and any Subcontractors may be required to acquire and maintain a Prescott Valley Business License for the duration of the PROJECT in accordance with TOWN Code Article 8-02, as determined by the TOWN Clerk.

ARTICLE 12. INSURANCE REQUIREMENTS

Without limiting any of their liabilities or obligations hereunder, the CONTRACTOR, at its own expense and prior to commencing with Work, shall secure and maintain the herein stipulated minimum insurance with companies duly licensed or otherwise authorized by the State of Arizona, possessing a current A.M. Best Company, Inc. rating of not less than A-, with policies and forms satisfactory to the TOWN.

A. General Clauses

Additional Insured: The insurance coverage, except Workers' Compensation, required by this contract, shall name the TOWN, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance coverage carried by the TOWN or its employees shall be excess coverage, and not contributory coverage to that provided by the CONTRACTOR.

Coverage Term: All insurance required herein shall be maintained in full force and effect until Work required to be performed under the terms of the Contract are satisfactorily completed and formally accepted; failure to do so may constitute a material breach of this Contract, at the sole discretion of the TOWN. In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for two(2) years past completion and acceptance of the CONTRACTOR's work or services, as evidenced by annual Certificates of Insurance.

Primary Coverage: The CONTRACTOR's insurance shall be primary insurance as respects TOWN and any insurance maintained by TOWN shall be excess of the CONSULTANT's insurance and shall not contribute to it.

Claim Reporting: Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the TOWN.

Waiver: The policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the TOWN, its agents, representatives, directors, officers, and employees for any claims arising out of the work of the CONTRACTOR's work or service.

Deductible/Retention: The policies may provide coverage which contains deductibles or self insured retentions. Such deductibles and/or self insured retentions shall not be applicable with respect to the coverage provided to the TOWN under such policies. The CONTRACTOR shall be solely responsible for deductible and/or self insured retentions and the TOWN, at its option, may require the CONTRACTOR to secure the payment of such deductible or self insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

Certificates of Insurance: Prior to commencing with work under this Contract, CONTRACTOR shall furnish TOWN with Certificates of Insurance as required by the Contract, issued by CONTRACTOR's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract by date, project name, and CIP number and shall provide for not less than thirty (30) days per certificate, advance Notice of Cancellation, Termination, or Material Alteration.

Such certificates shall be sent directly to:

Town of Prescott Valley
Public Works Operations Manager
7501 E. Civic Circle
Prescott Valley, AZ 86314

If a policy expires during the life of the contract, a renewal certificate must be sent to the TOWN fifteen (15) days prior to the expiration date.

The TOWN shall not be obligated, to review 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, the TOWN's right to insist on strict fulfillment of CONTRACTOR's obligations under this Contract.

Cancellation and Expiration: Insurance required herein shall not expire, be canceled, or materially changed without fifteen (15) days prior written notice to the TOWN.

The CONTRACTOR hereby agrees to indemnify and save harmless the TOWN and any jurisdiction or agency issuing permits for any work included in the project, their officers, employees, agents and representatives from all suits, actions, losses, damages, expenses, costs or claims of any character or any nature brought on account of any injuries or damages sustained by any person(s) or property arising out of the work done in fulfillment of the construction or the improvement under the terms of these Contract Documents, or on account of any act or omission by the CONTRACTOR or his/her agents, or from any claims or amounts arising or recovered under Worker's Compensation laws, or any other law, by-law, ordinance, order or decree.

B. WORKERS' COMPENSATION

CONTRACTOR shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONTRACTOR's employees engaged in the performance of the Work, and Employer's Liability insurance of not less than $1,000,000 for each accident, $1,000,000 disease for each employee, and $1,000,000 disease policy limit.

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

C. AUTOMOBILE LIABILITY

CONTRACTOR shall carry 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 and a $2,000,000 aggregate including bodily injury and property damage with respect to any of the CONTRACTOR's owned, hired, and non-owned vehicles assigned to or used in performance of the Work. Coverage will be at least as broad as coverage Code 1, "any auto," (Insurance Service Office, Inc. policy form CA 0001 1/87, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and $5,000,000 per accident limits for bodily injury and property damage shall apply.

D. GENERAL LIABILITY

CONTRACTOR shall maintain Commercial General Liability insurance with a limit of not less than $1,000,000 for each occurrence with a $2,000,000 Products and Completed Operations Aggregate and $2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products/completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract, which coverage will be at least as broad as Insurance Service Office, Inc.'s Policy Form CG 000211093 or any update thereof. The coverage shall not exclude X, C, U.

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

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s, Additional Insured, Form B, CG20100704, or any update thereof, and shall include coverage for CONTRACTOR's operations and products and completed operations.

If required by this Contract, the CONTRACTOR subletting any part of the work, services or operations awarded to the CONTRACTOR shall purchase and maintain, at all times during prosecution of the work, services or operations under this contract, an TOWN's and CONTRACTOR's Protective Liability insurance policy for bodily and property damage, including death, which may arise in the prosecution of the Work or CONTRACTOR's operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than $1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the CONTRACTOR's Commercial General Liability insurance.

ARTICLE 13. COMPLIANCE WITH FEDERAL AND STATE LAWS

A. CERTAIN FEDERAL LAWS

The 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. The CONTRACTOR must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees."

B. STATE AND FEDERAL IMMIGRATION LAWS

Under provisions of A.R.S. § 41-4401, CONTRACTOR hereby warrants to the TOWN that the CONTRACTOR and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "CONTRACTOR Immigration Warranty").

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 TOWN.

The TOWN 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 TOWN in regard to any such inspections.

The TOWN may, at its sole discretion, conduct random verification of the employment records of the CONTRACTOR and any subcontractors to ensure compliance with CONTRACTOR's Immigration Warranty. CONTRACTOR agrees to assist the TOWN in regard to any random verifications performed.

Neither the CONTRACTOR nor any 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.

****

The CONTRACTOR Agrees that this Contract, as awarded, is for the stated work, and understands that payment for the total work will be on the basis of the indicated amount(s), as bid in the Bid Proposal.

TOWN:
Town of Prescott Valley, Arizona

_____
Harvey C. Skoog, Mayor

CONTRACTOR:
Earth Resources Corporation

_____
Signature

_____
BY: Print Name & Title

ATTEST: Town of Prescott Valley

BY:_____
Diane Russell, Town Clerk
(CORPORATE SEAL)

APPROVED AS TO FORM:

BY: _____
Ivan Legler, Town Attorney