

**FIRST AMENDMENT
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
M. R. TANNER DEVELOPMENT AND CONSTRUCTION, INC.**

THIS FIRST AMENDMENT TO COOPERATIVE PURCHASING AGREEMENT (this "First Amendment") is entered into as of ^{November 21} October 3, 2017, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and M. R. Tanner Development and Construction, Inc., an Arizona corporation (the "Contractor").

RECITALS

A. After a competitive procurement process, the City of Chandler ("Chandler") entered into Contract No. ST5-745-3478, dated February 13, 2015, as amended by Amendment Number One, dated January 22, 2016, and Amendment Number Two, dated January 19, 2017 (collectively, the "Chandler Contract"), for the Contractor to provide street replacement and asphalt mill and overlay. A copy of Amendment Number Two is attached hereto as Exhibit 1 and incorporated herein by reference.

B. The Town and the Contractor entered into a Cooperative Purchasing Agreement dated September 15, 2016 (the "Agreement"), based upon the Chandler Contract, for the Contractor to provide the Town with street replacement and asphalt mill and overlay (the "Materials and Services"). All capitalized terms not otherwise defined in this First Amendment have the same meanings as contained in the Agreement.

C. The Town has determined that additional Materials and Services by the Contractor are necessary (the "Additional Materials and Services").

D. The Town and the Contractor desire to enter into this First Amendment to (i) extend the term of the Agreement and (ii) provide for the increase in compensation to the Contractor for the Additional Materials and Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of the Agreement. The term of the Agreement is hereby extended and shall remain in full force and effect until January 22, 2018, unless terminated as otherwise provided pursuant to the terms and conditions of the Agreement.

2. Compensation. The Town shall increase the compensation to Contractor by \$2,500,000.00 for the Additional Materials and Services at the rates set forth in the Chandler Contract, resulting in an increase of the aggregate not-to-exceed compensation from \$1,796,753.59 to \$4,296,753.59.

3. Effect of Amendment. In all other respects, the Agreement is affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

4. Non-Default. By executing this First Amendment, the Contractor affirmatively asserts that (i) the Town is not currently in default, nor has been in default at any time prior to this First Amendment, under any of the terms or conditions of the Agreement and (ii) any and all claims, known and unknown, relating to the Agreement and existing on or before the date of this First Amendment are forever waived.

5. Conflict of Interest. This First Amendment and the Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

“Town”

TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation



Grady E. Miller, Town Manager

ATTEST:



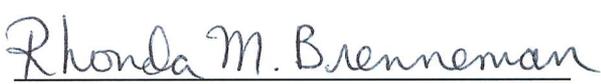
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On November 22, 2017, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.



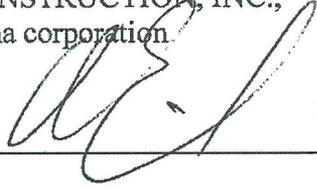


Notary Public

(Affix notary seal here)

“Contractor”

M. R. TANNER DEVELOPMENT
AND CONSTRUCTION, INC.,
an Arizona corporation.

By: 

Name: Alan Evans

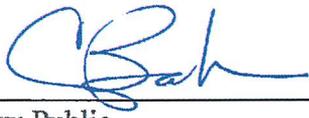
Title: President

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On September 14, 2017, before me personally appeared Alan Evans, the President of M. R. TANNER DEVELOPMENT AND CONSTRUCTION, INC., an Arizona corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.




Notary Public

(Affix notary seal here)

EXHIBIT 1
TO
FIRST AMENDMENT
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
M. R. TANNER DEVELOPMENT AND CONSTRUCTION, INC.

[Amendment Number Two]

See following page.

**AMENDMENT NUMBER TWO,
TO AGREEMENT BETWEEN THE CITY OF CHANDLER
AND
MR TANNER DEVELOPMENT & CONSTRUCTION, INC.
STREET REPLACEMENT & ASPHALT MILL & INLAY
AGREEMENT NO. ST5-745-3478**

18-2319

This Amendment No. 2 to that certain Agreement between the City of Chandler (CITY) and **MR TANNER DEVELOPMENT & CONSTRUCTION, INC.** (Contractor) for Street Replacement & Asphalt Mill & Inlay dated, February 13, 2015 and is entered into this 19 day of January, 2019.

WHEREAS, the parties entered into an Agreement for one year with provisions to extend for four (4) additional terms of one year each. This is the second renewal option.

NOW THEREFORE, the parties agree as follows:

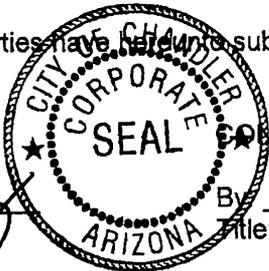
1. Section 4 of the Agreement, as amended, Price, is hereby amended to provide that CITY shall pay to CONTRACTOR in an amount not to exceed **SEVEN MILLION, THREE HUNDRED TWO THOUSAND, THREE HUNDRED THIRTY DOLLARS** (\$7,302,330).
2. Section 5 of the Agreement, as amended, extends the term of the agreement for a one-year period from January 23, 2017 through January 22, 2018.
3. All other terms, conditions and pricing of the above referenced Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this 19 day of January, 2019.

CITY OF CHANDLER:

By: [Signature]

Mayor



CONTRACTOR:

By: [Signature]

Title: Alan Evans, President

APPROVED AS TO FORM:

[Signature]
City Attorney

ATTEST: (If corporation)

[Signature]
Secretary Kevin P Day

ATTEST:

[Signature]
City Clerk

WITNESS: (If individual or Partnership)

[SEAL]

cc 12-8-16