

**FIRST AMENDMENT  
TO  
COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
CACTUS TRANSPORT, INC.,  
d/b/a CACTUS ASPHALT**

THIS FIRST AMENDMENT TO COOPERATIVE PURCHASING AGREEMENT (this "First Amendment") is entered into as of May 2, 2013, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and Cactus Transport, Inc., d/b/a Cactus Asphalt, an Arizona corporation (the "Contractor").

RECITALS

A. The Town and the Contractor entered into that certain Cooperative Purchasing Agreement dated March 7, 2013 (the "Original Agreement") for the purpose of (i) acknowledging a cooperative contractual relationship between the Town and the Contractor, (ii) establishing the terms and conditions by which the Contractor is to provide the Town with crack sealing and related services to various roads in the area referred to as Zone 6, as more particularly set forth in the Original Agreement and (iii) setting the maximum aggregate amount to be expended pursuant to the Original Agreement. All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Original Agreement.

B. The Town and the Contractor have identified substantial additional crack sealing work required in Zone 6 due to unexpectedly numerous and deep cracks. Accordingly, the quantities of crack seal materials are insufficient to properly complete the required tasks.

C. The Town and the Contractor desire to enter into this First Amendment for the purposes of (i) increasing the amount of crack seal materials and related services to an amount sufficient to seal major cracks remaining in Zone 6 (the "Additional Materials and Services) and (ii) setting the maximum aggregate amount to be expended pursuant to this First Amendment related to the Additional Materials and Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing 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 Agreement. This First Amendment shall be effective as of the date first set forth above and shall remain in full force and effect until March 7, 2014, unless terminated as otherwise provided pursuant to the terms and conditions of the Original Agreement.

2. Scope of Work. Contractor shall provide the Additional Materials and Services (i) under the terms and conditions of the ADOT Contract, (ii) as set forth in the Fee Proposal attached to the Original Agreement and (iii) pursuant to instructions from the Town.

3. Compensation. The Contractor's total compensation under the Original Agreement shall increase by no more than \$100,000.00 from \$125,000.00 to \$225,000.00 for the Materials and Services set forth in the Original Agreement and the Additional Materials and Services set forth in this First Amendment, at the rates as set forth in the Fee Proposal attached to the Original Agreement.

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

5. 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 Original Agreement and (ii) any and all claims, known and unknown, relating to the Original Agreement and existing on or before the date of this First Amendment are forever waived.

6. Conflict of Interest. This First Amendment and the Original 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 Agreement as of the date and year first set forth above.

“Town”

TOWN OF FOUNTAIN HILLS,  
an Arizona municipal corporation

Kenneth W. Buchanan

Kenneth W. Buchanan, Town Manager

ATTEST:

Bevelyn J. Bender  
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

This instrument was acknowledged before me on May 6, 2013, by Kenneth W. Buchanan, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, on behalf of the Town of Fountain Hills.



(affix notary seal here)

Catherine E. Whynot  
Notary Public in and for the State of Arizona

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**“Contractor”**

CACTUS TRANSPORT, INC.,  
d/b/a CACTUS ASPHALT,  
an Arizona corporation

By: John Flores

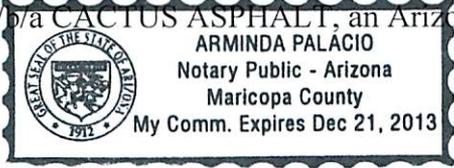
Name: John Flores

Title: Agent

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA )

This instrument was acknowledged before me on April 30, 2013, by John Flores as Agent of CACTUS TRANSPORT, INC., d/b/a CACTUS ASPHALT, an Arizona corporation on behalf of the corporation.



(affix notary seal here)

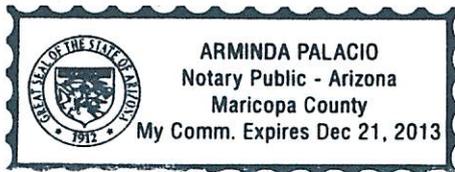
Arminda Palacio  
Notary Public in and for the State of Arizona



|                          |  |                    |                |
|--------------------------|--|--------------------|----------------|
| <b>To:</b>               | Town Of Fountain Hills                                       | <b>Contact:</b>    | Paul Mood      |
| <b>Address:</b>          | 16705 E. Avenue Of The Fountains<br>Fountain Hills, AZ 85268 | <b>Phone:</b>      | (480) 816-5150 |
| <b>Project Name:</b>     | Town Of Fountain Hills - Crackseal Zone 6 Addition           | <b>Fax:</b>        | (480) 837-8328 |
| <b>Project Location:</b> | Zone 6, Fountain Hills, AZ                                   | <b>Bid Number:</b> | 001            |
|                          |  | <b>Bid Date:</b>   | 4/30/2013      |

| Item #  | Item Description   | Estimated Quantity | Unit | Unit Price | Total Price        |
|---|--|--------------------|------|------------|--------------------|
| 9240116   | CRACK-SEALING:<br>- Per ADOT CONTRACT & SPECIFICATIONS<br>085 PM 042 H804901C<br>STP-085-A(202)T                               | 81,000.00          | LB   | \$1.10     | \$89,100.00        |
| 9010001   | MOBILIZATION:<br>- Costs Associated With Moving Equipment, Materials<br>And Labor To And From Job Site For Duration Of Project | 1.00               | LS   | \$4,000.00 | \$4,000.00         |
| <b>Bid Price Subtotal:</b>                                |  |                    |      |            | <b>\$93,100.00</b> |
| <b>Maricopa County, State And Fountain Hills 6.4350%:</b> |  |                    |      |            | <b>\$5,990.99</b>  |
| <b>Total Bid Price:</b>                                   |  |                    |      |            | <b>\$99,090.99</b> |

- Notes:**
- Standard Terms and Conditions to follow.
  - All scheduling contingent upon mutual agreement of Owner and Cactus Asphalt.
  - Cactus is not responsible for removal of vehicles and property from work areas.
  - Quantities provided by the Town of Fountain Hills. In the event that quantities differ from above, the billed amount will reflect agreed upon measured quantities.
  - EXCLUSIONS: Tax, Bonds, Permits, Plans, Engineering, Survey, Staking, As-Built, Testing, Inspection, Graderwork, Landscape Areas, Weed Killer, Crack Routing, Asphalt Patching, Landscape Materials, Vegetation Replacement, Prime Coat, Concrete Structures, Utility Removal or Relocation, Drywells, Rip/Rap, Striping, Signage, Removal of Debris Generated by Other Trades, SWMP Erosion Control, Project Information Sign And Any Special Insurance Requirements.



*Arminda Palacio*

|   |   |
|---|---|
| <p><b>ACCEPTED:</b></p> <p>The above prices, specifications and conditions are satisfactory and hereby accepted.</p> <p>Buyer: _____</p> <p>Signature: _____</p> <p>Date of Acceptance: _____</p> | <p><b>CONFIRMED:</b></p> <p><b>Cactus Asphalt</b></p> <p>Authorized Signature: <i>John Flores</i></p> <p>Estimator: John Flores</p> |
|---|---|



# TOWN OF FOUNTAIN HILLS

16705 E. Avenue of the Fountains - Fountain Hills, AZ 85268



04/30/2013 11:13  
JGhetti

TOWN OF FOUNTAIN HILLS  
BUDGET TRANSFERS AND AMENDMENTS

PG 1  
bgament

| Line            | Org    | Object             | Project | Increase Amount | Decrease Amount |
|-----------------|--------|--------------------|---------|-----------------|-----------------|
| 1               | STPAVE | 6276               |         | 260,000.00      |                 |
| 2               | SRAD   | 6904               |         |                 | 260,000.00      |
| Increase Amount |        | [Total: 260,000.00 |         | ]               |                 |
| Decrease Amount |        | [Total: 260,000.00 |         | ]               |                 |

Approved: *Linda Kavanagh* 5/2/13  
 Linda Kavanagh, Mayor Date

