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

THIS SECOND AMENDMENT TO COOPERATIVE PURCHASING AGREEMENT (this "Second Amendment") is entered into as of June 20, 2013, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and Cactus Transport, Inc., an Arizona corporation, d/b/a Cactus Asphalt (the "Contractor").

RECITALS

A. After a competitive procurement process, the State of Arizona, Department of Transportation entered into an agreement for TRACS/Project No. 085PM042 H804901C STP-085-A(202)T dated August 24, 2012, with the Contractor for the Contractor to apply polymer chip seal coat and related services on the Gila Bend-Lukeville Highway (the "ADOT Contract").

B. The Town and the Contractor entered into a Cooperative Purchasing Agreement dated March 7, 2013, based upon the ADOT Contract (the "Initial Agreement"), for the Contractor to provide the Town with crack sealing and related services to various roads in the area referred to as Zone 6 (the "Materials and Services").

C. The Initial Agreement was amended once on May 2, 2013, to purchase additional Materials and Services and increase Contractor's compensation. The Initial Agreement and the First Amendment are collectively referred to herein as the "Agreement."

D. The Town has determined that additional Materials and Services by the Contractor are necessary to carry-out the Town's pavement management program in Zone 7.

E. The Town and the Contractor desire to enter into this Second Amendment to (i) provide for the cost of and purchase additional Materials and Services and (ii) extend the term of the Agreement.

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 the Agreement. The term of the Agreement is hereby extended and shall remain in full force and effect until June 30, 2014, 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 $186,000.00, from $225,000.00 to an aggregate amount not to exceed $411,000.00, for the Materials and Services at the rates as set forth in the ADOT Contract and the fee proposal dated May 20, 2013, which is attached hereto as Exhibit A and incorporated herein by reference.

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 Second 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 Second 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 Second Amendment are forever waived.

5. Conflict of Interest. This Second 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

Kenneth W. Buchanan, Town Manager

ATTEST:

Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on June 21, 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.

JANICE E. BAXTER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
December 5, 2016

(affix notary seal here)

Notary Public in and for the State of Arizona

"**Contractor**"

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

By:_____

Name: Jake Dominy

Title: President

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on June ____, 2013, by Jake Dominy as President of CACTUS TRANSPORT, INC., an Arizona corporation, d/b/a CACTUS ASPHALT, on behalf of the corporation.

ARMINDA PALACIO
Notary Public - Arizona
Maricopa County
My Comm. Expires Dec 21, 2013

(affix notary seal here)

_____
Notary Public in and for the State of Arizona

ARMINDA PALACIO
Notary Public - Arizona
Maricopa County
My Comm. Expires Dec 21, 2013

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

[Fee Proposal]

See following page.

CACTUS ASPHALT

To:	Town Of Fountain Hills	**Contact:**	Ken Kurth
Address:	16705 E. Avenue Of The Fountains	**Phone:**	(480) 816-5150
	Fountain Hills, AZ 85268	**Fax:**	(480) 837-8328
Project Name:	Town Of Fountain Hills - Crackseal Zone 7	**Bid Number:**	001
Project Location:	Zone 7 - Major Streets, Fountain Hills, AZ	**Bid Date:**	5/20/2013

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
9240116	CRACK-SEALING (~ 328,000 SY): - Per ADOT CONTRACT & SPECIFICATIONS 085 PM 042 H804901C STP-085-A(202)T	149,000.00	LB	$1.10	$163,900.00
1020	TRAFFIC CONTROL: - Temporary Signs, Cones & Truck Mounted Attenuator	1.00	LS	$5,500.00	$5,500.00
9010001	MOBILIZATION: - Costs Associated With Moving Equipment, Materials And Labor To And From Job Site For Duration Of Project	1.00	LS	$5,000.00	$5,000.00
				Bid Price Subtotal:	**$174,400.00**
				Maricopa County, State And Fountain Hills 6.4350%:	**$11,222.64**
				Total Bid Price:	**$185,622.64**

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 quantites differ from above, the billed amount will reflect agreed upon measured quantities.
- EXCLUSIONS: Tax, Bonds, Permits, Plans, Engineering, Survey, Staking, As-Builts, Testing, Inspection, Gradework, 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.

ACCEPTED:	**CONFIRMED:**
The above prices, specifications and conditions are satisfactory and hereby accepted.	**Cactus Asphalt**
Buyer: _____	
Signature: _____	Authorized Signature: _____
Date of Acceptance: _____	Estimator: John Flores

Paving Seal Coating Crack Sealing Patching Chip Sealing Fabric Overlay More

Contractors Licenses: AZ - 194430 NV - 0040581 NM - 022995 UT - 944049-5501

t 623-907-2800 f 623-907-2900 cactusasphalt.com 8211 W. Sherman St. Tolleson, AZ 85353

TERMS AND CONDITIONS

GENERAL

Owner shall notify Cactus Asphalt (Cactus) when the premises will be ready for work to commence, and shall give unobstructed access to all areas where work is to be done. Any necessary towing shall be the responsibility of the owner.

Cactus is not responsible for any utility lines (water, electric, sprinkler, communications, cable, etc.) which may lie within eighteen inches (18") of the surface. Owner responsible for supplying all known layouts of any such utility lines which are known to exist. Cactus is not responsible for damage to undisclosed, unknown or improperly placed lines.

If Cactus encounters underground utilities, debris, ground water, underground storage tanks, hazardous material, "hard dig" soils, or any material or substance regulated by federal, state, local law, ordinance, or regulation, any other environmental issue or concern, or other concealed conditions that were unknown to Cactus before submission of this Proposal, the contract price shall be equitably adjusted to compensate Cactus for any additional work performed or damages incurred as a result of any concealed conditions. At Cactus' sole discretion, Cactus may stop all work on the project, until the parties have reached an agreement, in writing, concerning any such equitable adjustment, and Cactus shall have no obligation to perform any work which, as determined by Cactus, directly or indirectly involves any environmental risk or hazard.

The Owner is responsible for ensuring that all surfaces are kept in a condition acceptable to the application of the agreed upon product. This includes ensuring that all automatic sprinklers that may place water on the surface are turned off. Any delay caused by failure to perform the above may be charged to owner at the appropriate rate.

Cactus *is not* responsible for ponding water where grade is less than 2%.

Owner is to provide an acceptable water source.

Cactus is fully licensed and insured. All Cactus employees are covered by Worker's Compensation Insurance.

Unless otherwise noted, the prices contained within this agreement do not include the costs of permits or bonds.

WARRANTY:

All work performed by Cactus is covered by a one year warranty on workmanship. Normal wear and tear, abuse, weather, and other acts of God are excepted.

PAYMENT AND TAXES

By law, taxes may only be waived upon receipt of a valid exemption certificate. Taxes are determined in accordance with the jurisdiction where the work is performed.

Unless otherwise stated within this agreement, all payment is due upon completion. In addition to other terms contained elsewhere in this proposal, Owner agrees to pay a service charge at the rate of 2% per month on all accounts that become 10 days past due. All costs of collection, as well as attorney's fees, will be added to the balance and interest due.

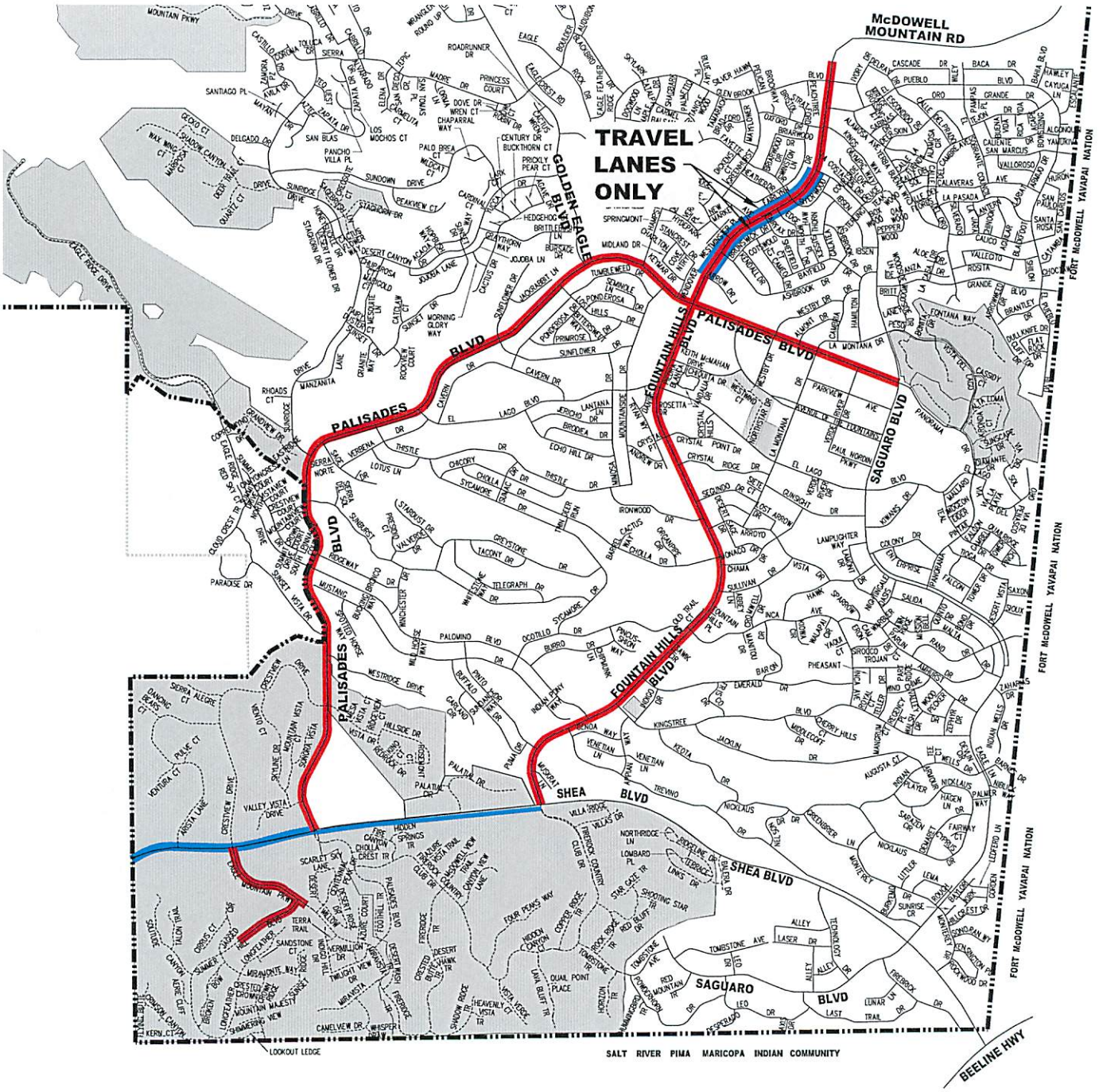
Cactus reserves the right (without further notice) to terminate this agreement if work is stopped for 30 or more days because of a failure to make progress payments or other delay not caused by Cactus. In such event Cactus reserves the right to recover payment for all work performed, including reasonable overhead, profit and damages.

The laws of the State of Arizona shall govern this agreement. If a court finds that any provision of this agreement is not valid, that fact, by itself, shall not mean the rest of this agreement is not valid. Therefore, a court may enforce the remaining provisions of the agreement.

HELPFUL INFORMATTON

Work performed under this contract is subject to a mechanic's/materialmen's lien by any contractors/suppliers who provide services or materials on the project. To avoid perfection of any liens you may ask this contractor for "lien waivers" from all persons supplying material or services on this project.

Town of Fountain Hills
ZONE 7 PAVEMENT MANAGEMENT 2013



LEGEND

- MICRO SURFACE
- MILL & OVERLAY
- PRIVATE ROAD
- GATED-PRIVATE

N
W E
S

0 0.5

SCALE OF MILES

MAP DATE: 5-6-13