

Staff Summary Report



Council Meeting Date: 11/20/08

Agenda Item Number: _____

SUBJECT: Request approval of Job Order No. 5 for milling and rubberized asphalt overlay on Rural Road between Minton and Oxford Drives through the existing job order contract with Cactus Asphalt and approval of a project contingency.

DOCUMENT NAME: 20081120PWDR07 STREET UPGRADING – MAINT – CONSTRUCTION (0809-05) PROJECT NO. 5403191

SUPPORTING DOCS: Yes.

COMMENTS: Total amount for Job Order No. 5 is \$474,952.36 and the amount of the project contingency is \$47,500.

PREPARED BY: Donna Rygiel, Engineering Contract Administrator (x8520)

REVIEWED BY: Andy Goh, Deputy PW Manager/City Engineer (x8896)

APPROVED BY: Glenn Kephart, Public Works Manager (x8205)

LEGAL REVIEW BY: Judi Morgan, Assistant City Attorney (x8227)

FISCAL NOTE: Sufficient funds are available in Transportation Capital Improvement Fund No. 54.

RECOMMENDATION: Approve Job Order No. 5 with Cactus Asphalt in the amount of \$474,952.36, through the existing job order Contract No. C2007-238, and approve a project contingency of \$47,500.

ADDITIONAL INFO: The location for the work is Rural Road between Minton and Oxford Drives including the intersection of Rural Road and Baseline Road, and the parking lot located on the northwest corner of 5th Street and Farmer Avenue. The scope of work includes milling the roadway and overlaying it with rubberized asphalt.

The underlying job order contract is C2007-238. Council has not previously approved any contingencies for this Job Order No. 5. This request will establish the amount of the contingency at \$47,500 which is approximately 10 percent of the job order amount.

Staff reviewed the proposal from Cactus Asphalt and found that it is in order. Cactus Asphalt is one of three contractors previously selected through a process consistent with Ariz.Rev.Stat. § 34-601, *et seq.* for job order contracting services.



CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

JOB ORDER NO. 5 TO CACTUS ASPHALT
THROUGH EXISTING CONTRACT NO. C2007-238

FOR RURAL ROAD MILL AND RUBBERIZED ASPHALT OVERLAY
(MINTON DRIVE TO OXFORD DRIVE INCLUDING INTERSECTION OF
RURAL ROAD AND BASELINE ROAD) PARKING LOT PAVING (5TH STREET AND
FARMER AVENUE)

PROJECT NO. 5403191

This JOB ORDER No. 5 is entered into on this 20th day of November, 2008, with Cactus Asphalt (“**JOC CONTRACTOR**”) through the existing Contract made and entered into by and between the parties on December 6, 2007, (Contract No. C2007-238).

ARTICLE I – JOB ORDER PRICE AND WORK LOCATION: The JOC Contractor shall furnish any and all plant, materials, labor, construction equipment, services and transportation (all applicable taxes included) required for performing all work for the construction of the Rural Road Mill And Rubberized Asphalt Overlay, (Project No. 5403191) (“Project”) for the sum of Four Hundred Seventy-Four Thousand Nine Hundred Fifty-Two and 36/100 Dollars (\$474,952.36), as detailed in the Proposal (Exhibit “A”), and to completely and totally construct the same and install the materials therein for the Project, in a good and workmanlike and substantial manner and to the satisfaction of the City or its properly authorized agents and strictly pursuant to and in conformity with the Specifications and Plans for the Project and other documents that may be requested by the City through the Engineer or other properly authorized agents, as provided herein. The full street or physical address of the construction work location (“Work Location”) is Rural Road from Minton Drive to Oxford Drive, including the intersection of Rural Road and Baseline Road and paving parking lot at 5th Street and Farmer Avenue. The JOC Contractor shall list the Work Location in any subcontract related to this job order at any level and each subcontractor shall likewise include the Work Location in any of its subcontracts.

ARTICLE II – REQUIRED SUBMITTALS: The JOC Contractor shall submit the completed forms referenced in the Forms Appendix (Exhibit “B”) to the City for approval prior to receipt of a Notice to Proceed issued by the City for the Project.

ARTICLE III – AMENDMENT: This Job Order No. 5 is entered into pursuant to the City of Tempe Contract No. C2007-238, and the terms and conditions contained in Contract No. C2007-238 and all exhibits attached to the Contract and to this Job Order No. 5 are by reference incorporated into this Job Order No. 5. All provisions of the underlying Contract where not inconsistent with this Job Order No. 5 shall remain binding on the parties.

ARTICLE IV – CONTRACT TERM: Work shall start as soon as practicable, and in no case later than seven (7) calendar days after the Notice to Proceed is issued by the City, and shall be completed within thirty (30) calendar days thereafter.

[SIGNATURE PAGE FOLLOWS]

RURAL ROAD MILL AND RUBBERIZED ASPHALT OVERLAY
(MINTON DRIVE TO OXFORD DRIVE INCLUDING INTERSECTION OF RURAL ROAD
AND BASELINE ROAD) PARKING LOT PAVING (5TH STREET AND FARMER AVENUE)
Project No. 5409191

The JOC Contractor warrants that the person who is signing this Job Order on behalf of the JOC Contractor is authorized to do so and to execute all other documents necessary to carry out the terms of this Job Order.

DATED this _____ day of _____, 2008.

CITY OF TEMPE, ARIZONA

By: _____
Mayor

By: _____
Public Works Manager

ATTEST:

Recommended by:

City Clerk

Deputy PW Manager/City Engineer

APPROVED AS TO FORM:

City Attorney

DATED this _____ day of _____, 2008.

CACTUS ASPHALT

By: _____
Name

Its: _____
Title

Federal I.D. No./Social Security No.

Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist

EXHIBIT B

FORMS APPENDIX

The following forms shall be completed and submitted with each Job Order.

LIST OF SUBCONTRACTORSSB-1

STATUTORY PERFORMANCE BONDB-1

STATUTORY PAYMENT BONDB-3

STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34,
CHAPTER 6, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____(hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), are held and firmly bound unto _____(hereinafter called the Obligee) in the amount of _____ Dollars (\$_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the 20th day of November, 2008, to complete Project No. 5403191, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such, that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said contract and any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

Provided, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title and Chapter, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by the Court. The performance under this bond is limited to the construction to be performed under this contract and does not include any design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.

Dated this ____ day of _____, 2008.

PRINCIPAL SEAL

BY: _____

**

SURETY SEAL

BY: _____

AGENCY ADDRESS

** Surety hereby acknowledges they are licensed to do business in the State of Arizona **

STATUTORY PAYMENT BOND PURSUANT TO TITLE 34,
CHAPTER 6, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), as held and firmly bound unto _____ (hereinafter called the Obligee) in the amount of _____ Dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the 20th day of November, 2008, to complete Project No. 5403191, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

Now, therefore, the condition of this obligation is such, that if the said Principal shall promptly pay all monies due to all persons supplying labor or materials to the principal or the principal's subcontractors in the prosecution of the construction provided for the contract, then this obligation shall be void, otherwise to remain in full force and effect;

Provided, however, that this bond is executed pursuant to Title 34, Chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Title and Chapter to the same extent as if it were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by the Court.

Dated this _____ day of _____, 2008.

PRINCIPAL SEAL

BY: _____

**

SURETY SEAL

BY: _____

AGENCY ADDRESS

** Surety hereby acknowledges they are licensed to do business in the State of Arizona **

**CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS**

**JOC CONTRACTOR'S AFFIDAVIT
REGARDING
SETTLEMENT OF CLAIMS**

_____,
Arizona

Date _____

**RURAL ROAD MILL AND RUBBERIZED ASPHALT OVERLAY
(MINTON DRIVE TO OXFORD DRIVE INCLUDING INTERSECTION OF RURAL ROAD AND
BASELINE ROAD) PARKING LOT PAVING (5TH STREET AND FARMER AVENUE)
PROJECT NO. 5403191**

To the City of Tempe, Arizona

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above project, whether by subcontractor or claimant in person, have been duly discharged or will be discharged after receipt of the final payment from the City of Tempe for the above project.

The undersigned, for the consideration of \$ _____, as set out in the final pay estimate, as full and complete payment under the terms of the contract, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described project against the City of Tempe. The undersigned further agrees to defend, indemnify and save harmless the City of Tempe against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said City may suffer arising out of the failure of the undersigned to pay for all labor performances, materials, and/or equipment furnished for the performance of said installation.

Signed and dated at _____ this _____ day of _____, 2008.

Job Order Contractor

By: _____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was subscribed and sworn to before me this _____ day of _____, 2008.

Notary Public

[Seal]