

Staff Summary Report



Council Meeting Date: 1/22/09

Agenda Item Number: _____

SUBJECT: Request approval of addenda with Sunland, Inc., Asphalt and Sealcoating, J. Banicki Construction, Inc., and Cactus Transport, Inc. to extend the job order contracts for an additional twelve months each to perform on-call paving and resurfacing, of streets and City facilities.

DOCUMENT NAME: 20090122PWDR02 ENGINEERING ADMINISTRATION (0803-02)

SUPPORTING DOCS: Yes.

COMMENTS: Total cost for each addendum is \$4,000,000.

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: This is a bond-funded project. Funding for these contract addenda will be provided from each Capital Improvement Fund for which each job order is performed.

RECOMMENDATION: Approve each addendum.

ADDITIONAL INFO: The job order contracting method of construction uses an on-call contractor, who was selected using a quality based selection method, to perform multiple capital improvement projects. These twelve month contract extensions are the first of two potential contract extensions.

This paving and street resurfacing work is performed as a series of individual job orders. Each job order is defined cooperatively by staff and the job order contractor. Scope, schedule and price are established for each individual job order, which is then recommended to Mayor and Council for award if the job order exceeds \$50,000. The maximum amount of each individual job order is \$1,000,000.

Sunland, Inc., Asphalt & Sealcoating, J. Banicki Construction, Inc., and Cactus Transport, Inc. were originally selected by a review committee from the short list of qualified firms for job order construction using a qualification based process pursuant to A.R.S. § 34-603. Each original contract amount was \$4,000,000. The addenda will increase each total contract amount to \$8,000,000.

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

JOB ORDER CONTRACT
FOR

PAVING AND SURFACING OF STREETS
AND CITY FACILITIES

PROJECT NO. 5406011

ADDENDUM NO. 1
TO CONTRACT C2007-218

This Addendum made and entered into on the 22nd day of January, 2009, by and between the City of Tempe, Arizona, an Arizona municipal corporation, ("City"), and Sunland, Inc. - Asphalt & Sealcoating, an Arizona corporation ("Contractor"), amends the original agreement made and entered between the same parties on December 6, 2007, (C2007-218) ("Contract").

R E C I T A L S:

- A. As parties hereto entered into that Contract for Paving and Resurfacing of Streets and City Facilities, said Contract has proven to be an efficient and cost-effective method for City projects and City requires ongoing support services from Contractor.
- B. The parties desire to further define their respective rights and obligations with respect to the Contract price, Contract term, period of service, non-discrimination and legal compliance.
- C. The parties intend that the following sections shall be integrated into the Contract in place of the former similarly identified section, if any, and that this Addendum be given the full force and effect of law as the Contract.

Now therefore, in consideration of the mutual promises and covenants as more

particularly set forth below, the parties do hereby amend the Contract to read as follows:

I. Contract Price. The maximum annual Contract Price shall be \$4,000,000.

II. Contract Term. The Contract time shall be extended through January 22, 2010, or until the additional \$4,000,000 has been expended by the City pursuant to the original Contract, which ever occurs first, with an option by the City to renew for a second twelve (12) month period or the balance of the maximum Contract amount or as otherwise specified.

III. Non-Discrimination and Legal Compliance. City is an equal opportunity, affirmative action employer. Contractor hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, gender or veteran status. Contractor covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity. The Contractor agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this clause.

In addition, Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Arizona Fair and Legal Employment

Act, including any amendments thereto along with all laws, rules and regulations attendant thereto. Contractor acknowledges that a breach of this warranty is a material breach of this Contract and Contractor is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

Contractor represents and warrants to City that neither Contractor nor any affiliate or representative of Contractor (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order No. 13224, 66 Fed.Reg. 49079 (“Order”); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering. In addition, Contractor certifies that it does not have a scrutinized business operation in either Iran or Sudan.

IV. All other provisions of the original Contract where not inconsistent with this Addendum shall remain binding on the parties hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Addendum this _____
day of _____, 2009.

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

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

CONTRACTOR
Sunland Inc. – Asphalt & Sealcoating

Name

Title

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

Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

A rectangular stamp with the word "COPY" in a bold, sans-serif font. To the left of the word is a small square containing the letter "c". The stamp is slightly tilted and has a distressed, ink-like appearance.

JOB ORDER CONTRACT
FOR

PAVING AND SURFACING OF STREETS
AND CITY FACILITIES

PROJECT NO. 5406011

ADDENDUM NO. 1
TO CONTRACT C2007-221

This Addendum made and entered into on the 22nd day of January, 2009, by and between the City of Tempe, an Arizona municipal corporation ("City"), and J. Banicki Construction, Inc., an Arizona corporation ("Contractor"), amends the original agreement made and entered between the same parties on December 6, 2007, (C2007-221) ("Contract").

R E C I T A L S:

- A. As parties hereto entered into that Contract for Paving and Resurfacing of Streets and City Facilities, said Contract has proven to be an efficient and cost-effective method for City projects and City requires ongoing support services from Contractor.
- B. The parties desire to further define their respective rights and obligations with respect to the Contract price, Contract term, non-discrimination and legal compliance.
- C. The parties intend that the following sections shall be integrated into the Contract in place of the former similarly identified section, if any, and that this Addendum be given the full force and effect of law as the Contract.

Now therefore, in consideration of the mutual promises and covenants as more

particularly set forth below, the parties do hereby amend the Contract to read as follows:

I. Contract Price. The maximum annual Contract Price shall be \$4,000,000.

II. Contract Term. The Contract time shall be extended through January 22, 2010, or until the additional \$4,000,000 has been expended by the City pursuant to the original Contract, which ever occurs first, with an option by the City to renew for a second twelve (12) month period or the balance of the maximum Contract amount or as otherwise specified.

III. Non-Discrimination and Legal Compliance. City is an equal opportunity, affirmative action employer. Contractor hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, gender or veteran status. Contractor covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity. The Contractor agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this clause.

In addition, Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Arizona Fair and Legal Employment

Act, including any amendments thereto along with all laws, rules and regulations attendant thereto. Contractor acknowledges that a breach of this warranty is a material breach of this Contract and Contractor is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

Contractor represents and warrants to City that neither Contractor nor any affiliate or representative of Contractor (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order No. 13224, 66 Fed.Reg. 49079 ("Order"); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering. In addition, Contractor certifies that it does not have a scrutinized business operation in either Iran or Sudan.

IV. All other provisions of the original Contract where not inconsistent with this Addendum shall remain binding on the parties hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Addendum this _____ day of _____, 2009.

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

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

CONTRACTOR
J. Banicki Construction, Inc.

Name

Title

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

Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

JOB ORDER CONTRACT
FOR

PAVING AND SURFACING OF STREETS
AND CITY FACILITIES

PROJECT NO. 5406011

ADDENDUM NO. 1
TO CONTRACT C2007-238

This Addendum made and entered into on the 22nd day of January, 2009, by and between the City of Tempe, an Arizona municipal corporation ("City"), and Cactus Transport, Inc., an Arizona corporation ("Contractor"), amends the original agreement made and entered between the same parties on December 6, 2007, (C2007-238) ("Contract").

R E C I T A L S:

- A. As parties hereto entered into that Contract for Paving and Resurfacing of Streets and City Facilities, said Contract has proven to be an efficient and cost-effective method for City projects and City requires ongoing support services from Contractor.
- B. The parties desire to further define their respective rights and obligations with respect to the contract price, contract term, non-discrimination and legal compliance.
- C. The parties intend that the following sections shall be integrated into the Contract in place of the former similarly identified section, if any, and that this Addendum be given the full force and effect of law as the Contract.

Now therefore, in consideration of the mutual promises and covenants as more

particularly set forth below, the parties do hereby amend the Contract to read as follows:

I. Contract Price. The maximum annual Contract Price shall be \$4,000,000.

II. Contract Term. The Contract time shall be extended through January 22, 2010, or until the additional \$4,000,000 has been expended by the City pursuant to the original Contract, which ever occurs first, with an option by the City to renew for a second twelve (12) month period or the balance of the maximum Contract amount or as otherwise specified.

III. Non-Discrimination and Legal Compliance. City is an equal opportunity, affirmative action employer. Contractor hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, gender or veteran status. Contractor covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity. The Contractor agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this clause.

In addition, Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Arizona Fair and Legal Employment

Act, including any amendments thereto along with all laws, rules and regulations attendant thereto. Contractor acknowledges that a breach of this warranty is a material breach of this Contract and Contractor is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

Contractor represents and warrants to City that neither Contractor nor any affiliate or representative of Contractor (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order No. 13224, 66 Fed.Reg. 49079 ("Order"); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering. In addition, Contractor certifies that it does not have a scrutinized business operation in either Iran or Sudan.

IV. All other provisions of the original Contract where not inconsistent with this Addendum shall remain binding on the parties hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Addendum this _____
day of _____, 2009.

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

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

CONTRACTOR
Cactus Transport, Inc.

Name

Title

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

Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist