

**ADDENDUM TO SERVICES AGREEMENT FOR SLURRY SEAL  
AND MICRO SEAL MATERIALS AND INSTALLATION**

THIS ADDENDUM TO AGREEMENT ("Addendum") is made and entered into this 21<sup>st</sup> day of February, 2012, by and between the City of Maricopa, ARIZONA, an Arizona municipal corporation ("City"), and Southwest Slurry Seal, Inc, an Arizona corporation, ("Contractor"), for slurry seal and micro seal materials and installation.

WHEREAS, City desires to retain a contractor to furnish Work and to make payment for the same in accordance with the terms and conditions set forth in the Agreement as modified by this Addendum, including all attachments, which are incorporated herein by mutual agreement of the parties; and

WHEREAS, in procuring this Work, City has complied with the cooperative purchasing procedures set forth in Section 3-223 of the City of Maricopa's City Code; and

WHEREAS, the parties now desire to amend the Agreement known as Agreement No: ST2-745-3068 entered into between the City of Chandler and Southwest Slurry Seal, Inc. for slurry seal and micro seal material and installation ("Agreement").

NOW, THEREFORE, City agrees to retain and does hereby retain Contractor and Contractor agrees to provide the Work required according to the terms and conditions and for the consideration hereinafter set forth in the Agreement which shall be amended as follows:

1. All reference to "CITY" in the Agreement shall refer to the City of Maricopa, Arizona, an Arizona municipal corporation.

2. The following shall be added to Paragraph 1.3 of the Agreement, Subcontractors:

Contractor agrees that it is as fully responsible to City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Contractor. Nothing contained in the Agreement or this Addendum shall create any contractual relations between any subcontractor and City.

3. Paragraph 2 of the Agreement, Scope of Work, shall be deleted in its entirety and replaced with the following:

**CONTRACTOR'S WORK:** The term "Work" means Slurry Seal and Micro Seal Materials and Installation as required by the Agreement and this Addendum, and includes all other labor, materials, equipment and services provided by the Contractor to fulfill the Contractor's obligations. Contractor agrees to perform the following Work in connection with the Project:

See attached Exhibit B to the Agreement, which is incorporated into this Addendum. Bid Bond (Exhibit D1 to the Agreement), Performance Bond (Exhibit D2 to the Agreement), and Payment Bond (Exhibit D3 to the Agreement) are incorporated herein by reference.

4. Paragraph 4 of the Agreement, Price, shall be deleted in its entirety and replaced with the following:

COMPENSATION: In accordance with the terms and conditions of the Agreement and this Addendum, City shall compensate Contractor for its Work as follows:

See attachment Exhibit C to the Agreement, which is incorporated into this Addendum.

In no event, shall the total compensation under this contract exceed TWO HUNDRED TWO THOUSAND ONE HUNDRED SEVENTY FOUR and 60/100 Dollars (\$202,174.60), which includes a price of One Hundred Seventy Five Thousand Eight Hundred Four and 00/100 Dollars (\$175,804) and a contingency of Twenty Six Thousand Three Hundre Seventy and 60/100 (\$26,370.60). Exhausting the total amount payable for activities described in herein shall not relieve Contractor of its obligations to perform such Work. Should City request additional Work beyond that specified herein, Contractor shall charge, and City shall pay, a rate as mutually agreed upon in writing prior to Contractor performing the additional Work.

Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.

5. Paragraph 10.1 of the Agreement, Alternative Dispute Resolution, shall be deleted in its entirety and replaced with the following:

ARBITRATION: In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Contractor and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and Contractor shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the City and Contractor. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

6. Paragraphs 10.2 and 10.3, Arizona Law and Jurisdiction and Venue, shall be deleted in its entirety and replaced with the following:

GOVERNING LAW AND VENUE: The terms and conditions of the Agreement and this Addendum shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in the Agreement or this Addendum shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of the Agreement or this Addendum or to recover any damages for and on account of the breach of any term or condition in the Agreement or this Addendum, it is mutually agreed that the prevailing party in such

action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

7. Paragraph 13 of the Agreement, Notices, shall be deleted in its entirety and replaced with the following:

NOTICES: All notices to the other party required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

If to City:

City of Maricopa  
City Manager  
P.O. Box 610  
Maricopa, AZ 85239

If to Contractor:

Southwest Slurry Seal, Inc.  
Attn: Richard Francis  
22855 North 21<sup>st</sup> Avenue  
Phoenix, AZ 85027

8. The following provisions shall be added to the Agreement:

A. SUPERVISION AND CONSTRUCTION PROCEDURES: The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

B. SAFETY PRECAUTIONS AND PROGRAMS: The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Agreement and this Addendum. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

C. LABOR AND MATERIALS: Unless otherwise provided in this Addendum, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work. The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

D. PERMITS FEES AND NOTICES: The Contractor shall obtain and pay for all permits and fees, licenses, and inspections necessary for proper execution and completion of the Work. The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without notice of the City, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the City in writing of any known inconsistencies in the Agreement or this Addendum with such governmental laws, rules and

regulations.

E. CONTRACTOR'S STANDARD OF PERFORMANCE: While performing the Work, Contractor shall exercise the reasonable care and skill customarily exercised by reputable members of Contractor's profession practicing in the Phoenix Metropolitan Area, and shall use reasonable diligence and best judgment while exercising its skill and expertise. Contractor shall be responsible for all errors and omissions Contractor commits in the performance of the Agreement and this Addendum that are a breach of this standard.

F. CONTRACTOR WARRANTY: The Contractor warrants to the City that: (1) materials and equipment furnished under this Agreement will be new and of good quality unless otherwise required or permitted by the Agreement or this Addendum, (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Agreement and this Addendum.

G. SEVERABILITY: If any part, term or provision of the Agreement or this Addendum shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

9. All other terms and conditions of the Agreement are to continue in full force and effect as stated and agreed to in the Agreement.

IN WITNESS WHEREOF, the parties have caused this Addendum to be signed by their duly authorized representatives as of the day and year first above written.

**CONTRACTOR:**

Southwest Slurry Seal, Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF MARICOPA**

An Arizona municipal corporation

\_\_\_\_\_  
Anthony Smith  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Vanessa Bueras,  
City Clerk

\_\_\_\_\_  
Denis M. Fitzgibbons,  
City Attorney