

**ADDENDUM TO COOPERATIVE CONTRACT
FOR ASPHALT PATCHWORK MATERIAL, INSTALLATION,
MAINTENANCE AND REPAIR**

THIS ADDENDUM TO JOC STREET MAINTENANCE CONTRACT NO. 2014-006 (“Addendum”) is made and entered into this 7th day of October, 2014, by and between the City of Maricopa, Arizona, an Arizona municipal corporation (“City”), and Sunland, Inc.- Asphalt & Sealcoating, d/b/a Sunland Asphalt, an Arizona Corporation (“Contractor”), for asphalt patchwork material, installation, maintenance and repair within the City of Maricopa (“Project”).

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

WHEREAS, in procuring this material and 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 Contract known as JOC Street Maintenance Contract No. 2014-006, entered into between the City of Buckeye and Sunland Inc., on March 4, 2014, for street maintenance, repair, and minor construction work on an as-needed basis for a base period of one (1) year with the option to renew for four (4) additional one-year periods (“Contract”).

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

I. All reference to “CITY” in the Contract shall refer to the City of Maricopa, Arizona, an Arizona municipal corporation.

II. Article 2, Section 2 of the Contract shall be deleted in its entirety and replaced with the following:

(a) In no event, shall the total compensation under the Contract and Addendum exceed Seven Hundred Nine Thousand Sixty Two and 32/100 Dollars (\$709,062.32), which includes a total price of Six Hundred Sixteen Thousand Five Hundred Seventy Five and 93/100 Dollars (\$616,575.93) and a total contingency of Ninety Two Thousand Four Hundred Eighty Six and 39/100 Dollars (\$92,486.39). Exhausting the total amount payable for activities described in the Contract and Addendum shall not relieve Contractor of its obligations to perform such Work. Should City request additional materials or Work beyond that specified herein, Contractor shall charge, and City shall pay, a rate as mutually agreed upon in writing prior to Contractor providing the additional material or performing the additional Work. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.

(b) Contractor may not refuse any Delivery Order under this Contract properly issued by City, unless Contractor legitimately claims in writing that the scope of work is poorly defined or hazardous to health or safety.

III. Article 23, Section 1 of the Contract shall be deleted in its entirety and replaced with the following:

1. The terms and conditions of the Contract 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 Contract 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 Contract or this Addendum or to recover any damages for and on account of the breach of any term or condition in the Contract 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.

IV. Article 23 of the Contract shall be amended to include the following sections:

9. 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.

10. If any part, term or provision of the Contract 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.

V. Article 23, Section 4 of the Contract shall be deleted in its entirety and replaced with the following:

All notices to the other party required under this Contract 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
Attn: City Manager
39700 West Civic Center Plaza
Maricopa, AZ 85138

If to Contractor:

Sunland Asphalt
Attn: Justin Shawler
775 W. Elwood Street
Phoenix, AZ 85041

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

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:

Sunland, Inc.

By: _____

Title: _____

CITY OF MARICOPA

An Arizona municipal corporation

Christian Price
Mayor

ATTEST:

APPROVED AS TO FORM:

Vanessa Bueras,
City Clerk

Denis M. Fitzgibbons,
City Attorney