

## COOPERATIVE PURCHASING AGREEMENT

THIS COOPERATIVE PURCHASING AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Douglas, an Arizona municipal corporation (“City”) and \_\_\_\_\_ (“Contractor”) for Preparation of \_\_\_\_\_ of \_\_\_\_\_  
(the “Services”)

### RECITALS

A. After a competitive procurement process, the City of Tucson entered into Contract No. 181820-02 effective through March 7, 2024 (the “Tucson Contract”), for on-call engineering services. A copy of the Tucson Contract and subsequent extensions is attached hereto as Exhibit A and incorporated herein by reference.

B. The City is permitted to purchase such materials under the Tucson Contract and the Tucson Contract permits its cooperative use by other public entities including the City.

C. The City and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging a cooperative contractual relationship under the Tucson Contract; and (ii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the purchase of uniforms.

### 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 acknowledge, the City and the Contractor hereby agree as follows:

1. **TERM OF AGREEMENT.** The term of this Agreement shall commence upon execution by both Parties and shall continue until December 31, 2023 or the completion of the Services, whichever occurs earlier.

2. **SERVICES.** Contractor agrees to perform the following services in connection with the Services:

See attached Exhibit B, which are incorporated into this Agreement

3. **COMPENSATION.** In accordance with the terms and conditions of this Agreement, City shall compensate Contractor as follows:

See attached Exhibit B, which is incorporated into this Agreement.

In no event shall the total compensation paid to Contractor under this Agreement \_\_\_\_\_ . Exhausting the total amount payable for activities described

in Section 1 above shall not relieve Contractor of its obligations to perform such services. Should City request additional services beyond those specified in Section 1, Contractor's Duties, Contractor shall charge, and City shall pay, a rate as mutually agreed upon in writing prior to Contractor performing the additional services.

4. **WARRANTY.** Contractor warrants to the City that: (1) Services furnished under this Agreement will be new and of good quality unless otherwise required or permitted by this Agreement; and (2) the Services will conform to the requirements of this Agreement.

5. **CONTRACTOR'S BILLING:** Payment shall be made by the City to the Contractor on the basis of invoices submitted which must include a detailed itemization of all products included, and is subject to review and certification of the City's authorized representative prior to payment.

6. **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 Douglas  
Attn: City Manager  
425 10<sup>th</sup> Street  
Douglas, AZ 85607

If to Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. **TERMINATION.** This Agreement may be terminated by either party upon thirty (30) days written notice. If this Agreement is terminated, Contractor shall be paid for Products provided to the date of receipt of such termination notice.

8. **RIGHT OF CITY TO CONTRACT WITH OTHERS.** Nothing in this Agreement shall imply City is obligated to obtain the services described herein with only this particular Contractor.

9. **UNCONTROLLABLE FORCES.** City and Contractor shall exert all efforts to perform their respective responsibilities under this Agreement. However, neither party shall hold the other party responsible for inability to render timely performance if such inability is a direct result of a force beyond its control, including but not limited to the following: strikes, lockouts, embargoes, failure of carriers, inability to obtain transportation facilities, acts of God or the public enemy, or other events beyond the control of the other or the other's employees and agents.

10. **WAIVER OF TERMS AND CONDITIONS.** The failure of City or Contractor to insist in any one or more instances on performance of any of the terms or conditions of this Agreement

or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

11. **INDEPENDENT CONTRACTOR.** Contractor shall at all times during Contractor's performance retain Contractor's status as independent contractor. Contractor's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Contractor.

12. **INDEMNIFICATION.** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the City and its elected and appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses, penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Contractor, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to , any injury or damages claimed by any of Contractor's and subcontractor's employees. This section shall survive the expiration or early termination of the Agreement.

13. **ARBITRATION.** The parties hereby agree to make a good faith effort to resolve any controversy or claim through informal negotiations. Any claim of controversy must first be presented in writing, with supporting documentation, to the agent of the other party. The recipient shall have seven (7) days to prepare and deliver a response. Thereafter, 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 Cochise, 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.

14. **GOVERNING LAW AND VENUE.** The terms and conditions of this Agreement 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 this Agreement, shall be tried in a court of competent jurisdiction in Cochise 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 this

Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, 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.

15. **NONASSIGNMENT.** Neither party to this Agreement shall assign its interest in the Agreement, either in whole or in part. Contractor shall not assign any monies due or to become due to it hereunder without the prior written consent of City.

16. **ISRAEL BOYCOTT:** Contractor shall not participate in, and agrees not to participate in during the term of this Agreement a boycott of Israel in accordance with A.R.S. §35-393.01

17. **CONFLICTING TERMS.** In the event of any inconsistency, conflict or ambiguity between the terms of this Agreement and the Tucson Contract, the terms of this Agreement shall govern.

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

19. **CONFLICT OF INTEREST.** The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this contract.

20. **AMERICANS WITH DISABILITIES ACT.** This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFF Parts 35 and 36. (Non-Discrimination: The Contractor shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans With Disabilities Act. The Contractor shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.)

21. **FEDERAL REGULATIONS.** Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Contractor acknowledges, by signature to this Agreement, that: Contractor is not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions; Contractor's principals are not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions.

22. **NO KICK-BACK CERTIFICATION.** Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has an interest, financially or otherwise, in the Contractor's firm. For breach or violation of this warranty, the City shall have the right to annul this Agreement without

liability, or at its discretion to deduct from the compensation to be paid Contractor hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

23. **CONFLICTING TERMS:** In the event of any inconsistency, conflict or ambiguity between the terms of this Agreement and the Tucson Contract or Exhibit B, the terms of this Agreement shall govern. Notwithstanding the foregoing, unauthorized exceptions, conditions limitations or provisions in conflict with the terms of this Agreement, the Tucson Contract or Exhibit B (collectively, "Unauthorized Conditions"), other than the City's specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the City of any work order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement, under the Tucson Contract or Exhibit B shall not alter or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

24. **FORCED LABOR OF ETHNIC UYGHURS PROHIBITED.** Pursuant to A.R.S. § 35-394, Consultant hereby certifies to the City as follows: that it is not currently using, and agrees for the duration of this Agreement to not use: (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors, or suppliers that use the forced labor of ethnic Uyghurs in the People's Republic of China. The Consultant further acknowledges and agrees that: (1) if the Consultant becomes aware during the term of this Agreement that it is not in compliance with this certification that the Consultant will notify the City within five (5) business days after becoming aware of the noncompliance; and (2) if the Consultant does not provide the City with a written certification that the Consultant has remedied the noncompliance within one hundred eighty (180) days after giving notice thereof, the same shall constitute a material breach of this Agreement, which shall then terminate automatically, except that if the Agreement termination date occurs before the end of the remedy period, this Agreement terminates on the Agreement's termination date. The City retains the legal right to inspect the records of the Consultant to ensure compliance with this certification for the duration of this Agreement.

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

SIGNATURES ON FOLLOWING PAGE

**Contractor**

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

**CITY OF DOUGLAS**  
An Arizona municipal corporation

\_\_\_\_\_  
Ana Urquijo  
City Manager

ATTEST:

\_\_\_\_\_  
Alma Andrade  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

# **EXHIBIT A**

## Tucson CONTRACT

## **EXHIBIT B**

### CONTRACTOR'S PROPOSAL