

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
MICHAEL L. RIDDLE PAINTING, INC.
D/B/A RIDDLE PAINTING AND COATINGS**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of October 3, 2017, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and Michael L. Riddle Painting, Inc., an Arizona corporation, d/b/a Riddle Painting and Coatings (the "Contractor").

RECITALS

A. After a competitive procurement process, Mohave Educational Services Cooperative, Inc. ("Mohave") entered into Contract No. 15E-RIDDLE-0403, dated April 3, 2015, as amended by that Agreement to Amend, dated May 16, 2017, that Extension of Contract, dated March 9, 2017, that Agreement to Amend, dated September 6, 2016, that Agreement to Amend, dated June 14, 2016, and that Extension of Contract, dated March 16, 2016 (collectively, the "Mohave Contract"), for the Contractor to provide exterior/interior painting and other coating applications. A copy of the Mohave Contract is attached hereto as Exhibit A and incorporated herein by reference, to the extent not inconsistent with this Agreement.

B. The Town is permitted, pursuant to Section 3-3-27 of the Town Code, to make purchases under the Mohave Contract, at its discretion and with the agreement of the awarded Contractor, and the Mohave Contract permits its cooperative use by other public entities, including the Town.

C. The Town and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the Mohave Contract and this Agreement, (ii) establishing the terms and conditions by which the Contractor may provide the Town with exterior/interior painting services, as more particularly set forth in Section 2 below (the "Materials and Services") and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Materials and Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and 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 acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until May 30, 2018, unless terminated as otherwise provided in this Agreement or the Mohave Contract.

2. Scope of Work. Contractor shall provide to the Town the Materials and Services under the terms and conditions of the Mohave Contract and as more particularly set forth in the Quotation attached hereto as Exhibit B and incorporated herein by reference.

2.1 Inspection; Acceptance. All Materials and Services are subject to final inspection and acceptance by the Town. Materials failing to conform to the requirements of this Agreement and/or the Mohave Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Upon discovery of non-conforming Materials or Services, the Town may elect to do any or all of the following by written notice to the Contractor: (i) waive the non-conformance; (ii) stop the work immediately; or (iii) bring Materials or Service into compliance and withhold the cost of same from any payments due to the Contractor.

2.2 Cancellation. The Town reserves the right to cancel Work Orders within a reasonable period of time after issuance. Should a Work Order be canceled, the Town agrees to reimburse the Contractor, but only for actual and documentable costs incurred by the Contractor due to and after issuance of the Work Order. The Town will not reimburse the Contractor for any costs incurred after receipt of Town notice of cancellation, or for lost profits, shipment of product prior to issuance of Work Order or for anything not expressly permitted pursuant to this Agreement.

3. Compensation. The Town shall pay Contractor an amount not to exceed \$189,108.98 for the Materials and Services at the rates set forth in the Mohave Contract and as more particularly set forth in the Quotation.

4. Payments. The Town shall pay the Contractor monthly, based upon acceptance and delivery of Materials and/or Services performed and completed to date, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and the Mohave Contract and (ii) document and itemize all work completed to date. The invoice statement shall include a record of materials delivered, time expended and work performed in sufficient detail to justify payment. Additionally, invoices submitted without referencing this Agreement and the Mohave Contract will be subject to rejection and may be returned.

5. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 6 below, Contractor's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (i) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (ii) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 6 below. To the extent necessary for the Town to audit Records as set forth in this Section, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying

such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this Section. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

6. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

7. Israel. Contractor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

8. Conflict of Interest. This Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

9. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and a suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

10. Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town's then current fiscal year. The Town's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep Contractor informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. Contractor hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town's termination of this Agreement pursuant to this section.

11. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any Town-approved work orders, the Mohave Contract and invoices, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the Mohave Contract (collectively, the "Unauthorized Conditions"), other than the Town's project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the Town 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 or under the Mohave Contract shall not alter such terms and conditions or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

12. Rights and Privileges. To the extent provided under the Mohave Contract, the Town shall be afforded all of the rights and privileges afforded to Mohave and shall be "Mohave" (as defined in the Mohave Contract) for the purposes of the portions of the Mohave Contract that are incorporated herein by reference.

13. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 12 above, the Town shall be afforded all of the insurance coverage and indemnifications afforded to Mohave to the extent provided under the Mohave Contract, and such insurance coverage and indemnifications shall inure and apply with equal effect to the Town under this Agreement including, but not limited to, the Contractor's obligation to provide the indemnification and insurance. In any event, the Contractor shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

14. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town:	Town of Fountain Hills 16705 East Avenue of the Fountains Fountain Hills, Arizona 85268 Attn: Grady E. Miller, Town Manager
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With copy to: GUST ROSENFELD P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Attn: Andrew J. McGuire

If to Contractor: Michael L. Riddle Painting, Inc.
d/b/a Riddle Painting and Coatings
5922 North Black Canyon Highway
Phoenix, Arizona 85017-2118
Attn: Eddie Serna

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“Town”

TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation

Grady E. Miller, Town Manager

ATTEST:

Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 2017, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.

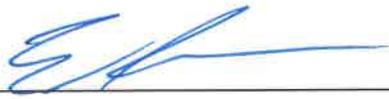
Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“Contractor”

MICHAEL L. RIDDLE PAINTING, INC.,
an Arizona corporation, d/b/a
RIDDLE PAINTING & COATINGS

By: 

Name: Eddie Serna

Title: Project Manager

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On Sept 6, 2017, before me personally appeared Eddie Serna, the Project Manager of MICHAEL L. RIDDLE PAINTING, INC., an Arizona corporation, d/b/a RIDDLE PAINTING & COATINGS, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.


Notary Public

(Affix notary seal here)

