

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
L.N. CURTIS AND SONS, INC.**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of June 20, 2013, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and L.N. Curtis and Sons, Inc., a California corporation (the "Vendor").

RECITALS

A. After a competitive procurement process, Mohave Educational Services Cooperative, Inc. ("Mohave"), entered into Contract No. 11H-LNCS-1201 dated November 22, 2011, as extended (the "Mohave Contract"), for the Vendor to provide fire turnouts and fire related equipment. 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 3-3-13 of the Town Code, to make purchases under the Mohave Contract, at its discretion and with the agreement of the awarded Vendor, and the Mohave Contract permits its cooperative use by other public entities including the Town.

C. The Town and the Vendor desire to enter into this Agreement for the purpose of (i) acknowledging a cooperative contractual relationship between the Town and the Vendor, (ii) establishing the terms and conditions by which the Vendor may provide the Town with Drager self-contained breathing apparatus and cylinders, as more particularly set forth in Section 2 below (the "Equipment") and (iii) setting the maximum amount to be expended pursuant to this Agreement related to the Equipment.

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 acknowledged, the Town and the Vendor 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 December 1, 2013, unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement or the Mohave Contract.

2. Scope of Work. Vendor shall provide the Equipment under the terms and conditions of the Mohave Contract and as set forth in the Quotation attached hereto as Exhibit B and incorporated herein by reference.

3. Inspection; Acceptance. All Equipment is subject to final inspection and acceptance by the Town. Equipment failing to conform to the requirements of this Agreement and/or the Mohave Contract will be held at Vendor's risk and may be returned to the Vendor. If so returned, all costs are the responsibility of the Vendor. Upon discovery of non-conforming Equipment, the Town may elect to do any or all of the following by written notice to the Vendor: (A) waive the non-conformance; or (B) bring the Equipment into compliance and withhold the cost of same from any payments due to the Vendor.

4. Compensation. The Town shall pay Vendor an amount not to exceed \$74,127.26 for the Equipment at the unit rates as set forth in the Quotation attached hereto as Exhibit B and in the Mohave Contract.

5. Payments. The Town shall pay the Vendor, based upon acceptance and delivery of the Equipment, 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 Equipment delivered and accepted. The invoice statement shall include a record of Equipment delivered 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.

6. Records and Audit Rights. To ensure that the Vendor and its subcontractors are complying with the warranty under Section 7 below, Vendor'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 Vendor 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 Vendor'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 Vendor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 7 below. To the extent necessary for the Town to audit Records as set forth in this Section, Vendor 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 Vendor pursuant to this Agreement. Vendor 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 Vendor or its subcontractors reasonable advance notice of intended audits. Vendor 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.

7. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Vendor 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). Vendor'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.

8. Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Vendor certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this section the term “scrutinized business operations” shall have the meaning set forth in ARIZ. REV. STAT. §§ 35-391 or 35-393, as applicable. If the Town determines that the Vendor submitted a false certification, the Town may impose remedies as provided by law including terminating this Agreement.

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

10. 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.

11. Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Agreement for payment of funds by the Town shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The Town shall be the sole judge and authority in determining the availability of funds under this Agreement and the Town shall keep the Vendor fully informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is a current expense of the Town, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Town. If the Town Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the Town and the Vendor shall be relieved of any subsequent obligation under this Agreement.

12. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, 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 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 or relieve Vendor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

13. 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 Mohave Contract.

14. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 13 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 Vendor's obligation to provide the indemnification and insurance. In any event, the Vendor 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 Vendor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

[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

Kenneth W. Buchanan
Kenneth W. Buchanan, Town Manager

ATTEST:

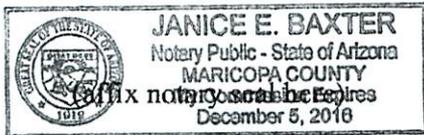
Bevelyn J. Bender
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on June 21, 2013, by Kenneth W. Buchanan, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, on behalf of the Town of Fountain Hills.

Janice E. Baxter
Notary Public in and for the State of Arizona



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

