

**FIRST AMENDMENT
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
SHADE N NET OF ARIZONA, INC.**

THIS FIRST AMENDMENT TO COOPERATIVE PURCHASING AGREEMENT (this "First Amendment") is entered into as of November 19, 2018, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and Shade N Net of Arizona, Inc., an Arizona corporation (the "Contractor").

RECITALS

A. After a competitive procurement process, Mohave Educational Services Cooperative, Inc. ("Mohave") entered into Contract No. 16D-SHADE-0401, dated April 1, 2016, as amended by that Agreement to Amend, dated June 14, 2016; that Agreement to Amend, dated September 6, 2016; and that Extension of Contract dated March 22, 2017 (collectively, the "Mohave Contract"), for the Contractor to provide pre-engineered fabric shade structures. All of the capitalized terms not otherwise defined in this First Amendment have the same meanings as defined in the Contract.

B. The Town and the Contractor entered into a Cooperative Purchasing Agreement dated November 6, 2016, based upon the Mohave Contract, as amended by that Contract Renewal dated April 24, 2017, and that Contract Renewal dated April 3, 2018 (the "Agreement"), for the Contractor to provide the Town with pre-engineered fabric shade structures (the "Services and Materials").

B. Pursuant to Section 11.3 of the Town Procurement Policy and 3-3-25 of the Town Code, emergency procurement may be utilized based upon a threat to the public health, welfare, property, or safety.

C. On November 6, 2018, the Town Council approved a motion to authorize the Town Manager to institute emergency procurement procedures in order to expedite the repairs to and restoration of Golden Eagle Park and the Town's storm water system in response to the October 2, 2018 storm event.

D. The Town has determined that it is necessary for the Contractor to perform additional repair services (the "Additional Services and Materials") on an emergency basis, and the Town and the Contractor desire to enter this First Amendment to provide for compensation to the Contractor for the Additional Services and Materials.

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. Compensation. The Town shall increase the compensation to Contractor by not more than \$95,000.00 for the Additional Services and Materials at the rates set forth in the Mohave Contract and incorporated herein by reference, resulting in an increase of the aggregate not-to-exceed compensation from \$29,997.00 to \$124,997.00.

2. 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 (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) 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

With copy to: Pierce Coleman PLLC
 4711 East Falcon Drive, Suite 111
 Mesa, Arizona 85215
 Attn: Aaron D. Arnson, Town Attorney

If to Contractor: Shade N Net of Arizona, Inc.
 5711 West Washington Street
 Phoenix, Arizona 85043
 Attn: Dean Swingle

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 (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) 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.

3. Effect of Amendment. In all other respects, the Agreement is affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

4. Non-Default. By executing this First Amendment, the Contractor affirmatively asserts that (i) the Town is not currently in default, nor has it been in default at any time prior to this First Amendment, under any of the terms or conditions of the Agreement and (ii) any and all claims, known and unknown, relating to the Agreement and existing on or before the date of this First Amendment are forever waived.

5. 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.

6. Conflict of Interest. This First Amendment and the Agreement may be cancelled by the Town pursuant to Ariz. Rev. Stat. § 38-511.

[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

12/5/18



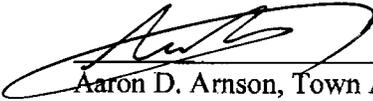
Grady E. Miller, Town Manager

ATTEST:



Elizabeth A. Burke, Town Clerk

APPROVED AS TO FORM:



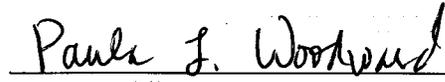
Aaron D. Arnson, Town Attorney

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On December 12, 2018, 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]

