

COOPERATIVE PURCHASING AGREEMENT

THIS COOPERATIVE PURCHASING AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2018, by and between The CITY OF COOLIDGE, ARIZONA, an Arizona municipal corporation (“City”) and WESTERN EMULSIONS, INC., an Arizona corporation (“Contractor”).

RECITALS

A. After a competitive procurement process, Pinal County Department of Public Works (“Pinal”) entered into Contract No. IFB PC-130118 dated August 7, 2013, (the “Pinal Contract”) with Contractor for the supply, delivery and application of pavement maintenance materials. A copy of the Pinal Contract is attached hereto as Exhibit A and incorporated herein by reference.

B. The City is permitted, pursuant to Article 22-9 of the City’s Procurement Code, to purchase such materials and services under the Pinal Contract and the Pinal 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 Pinal Contract; (ii) establishing the scope of work (“Work”) to be provided by Contractor as more particularly set forth in Section 2 below; and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Work.

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.** This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until August 6, 2018.
2. **SCOPE OF WORK:** Contractor agrees to perform the Work specifically set forth in Exhibit B, which is incorporated herein by reference.
3. **COMPENSATION:** In accordance with the terms and conditions of this Agreement, the City shall compensate the Contractor for its professional services as follows:

See Exhibit B

In no event, shall the total compensation under this Agreement exceed \$110,000.00. Exhausting the total amount payable for activities described in Section 2 above shall not relieve Contractor of its obligations to perform such services.

4. **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 work and materials included, copies of receipts or billings as requested and is subject to review and certification of the City's authorized representative prior to payment.

5. **ACCEPTANCE OF WORK:** The City or its designee shall have the right to reject all or any work product submitted under this Agreement which does not meet the required specifications. In the event of any such rejection, the Contractor agrees to promptly remedy any and all deficiencies. No compensation shall be due for any rejected work until such deficiencies have been corrected.

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 Coolidge
Attn: City Manager
130 W. Central Avenue
Coolidge, AZ 85128

If to Contractor:

Western Emulsions, Inc.
7165 N. Pima Canyon #151
Tucson, AZ 85718
Attn: Devin Crighton

7. **TERMINATION:**

7.1 Termination by the City for Cause. The City may terminate this Agreement if the Contractor (i) fails to fulfill in a timely and proper manner its obligations under this Agreement; or (ii) is otherwise guilty of substantial breach of a provision of the Agreement. In the event of such termination, Contractor shall deliver to City all work in any state of completion at the date of effective termination.

When any of the above reasons exist, the City may without prejudice to any other rights or remedies and after giving the Contractor ten (10) days written notice, terminate this Agreement with the Contractor.

When the City terminates the Agreement for one of the reasons stated above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by Contractor and the City may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

Upon the receipt of a notice of termination from the City, Contractor shall (i) promptly discontinue all services affected (unless the notice directs otherwise), and (ii) deliver or otherwise make available to the City copies of data, design calculations, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by Contractor in the performance of this Agreement.

7.2 Termination by the City for Convenience. The City may terminate this Agreement without cause by giving Contractor ten (10) days written notice. Such termination shall not prejudice any other right or remedy the City may have under this Agreement. If this Agreement is terminated without cause, Contractor shall be paid for work performed to the date of receipt of such termination notice.

8. **INSURANCE:**

8.1 General.

a. Insurer Qualifications. Without limiting any obligations or liabilities of the Contractor, the Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

b. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect the Contractor. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but have no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve the Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

c. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

d. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

e. Primary Insurance. The Contractor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an

Additional Insured.

f. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

g. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of the Contractor. The Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

h. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. The Contractor shall be solely responsible for any such deductible or self-insured retention amount.

i. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, the Contractor shall execute a written agreement with the Subcontractor containing the indemnification provisions and insurance requirements (unless waived by City in City's sole discretion) set forth herein protecting the City and the Contractor. The Contractor shall be responsible for executing the agreement with the Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

j. Evidence of Insurance. Prior to commencing any work or services under this Agreement, the Contractor shall furnish the City with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by Contractor's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a certificate of insurance is submitted as verification of coverage, the City shall reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the life of this Agreement, it shall be the Contractor's responsibility to forward renewal certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates of insurance shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

- (a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or

equivalent.

(b) Auto Liability - Under ISO Form CA 2048 or equivalent.

(c) Excess Liability - Follow Form to underlying insurance.

(2) The Contractor 's insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, including Workers' Compensation, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by the Contractor under this Agreement.

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

8.2 Required Insurance Coverage.

a. Commercial General Liability. The Contractor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$4,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury or death, personal injury, advertising injury and property damage. Coverage under the policy will be at least as broad as ISO policy fous CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials, volunteers and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

b. Vehicle Liability. The Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on the Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor 's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents,

representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

c. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor 's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

8.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the City.

9. **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.

10. **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 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.

11. **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 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 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.

12. **LICENSE:** Contractor represents and warrants that any license necessary to perform the work under this Agreement is current and valid. Contractor understands that the activity described herein constitutes "doing business in the "City of Coolidge" and Contractor agrees to obtain a business tax license pursuant to the City of Coolidge's City Code and keep such license current during the term of this Agreement. Any activity by subcontractors within the corporate city limits, will invoke the same business tax regulations on any subcontractors, and Contractor ensures its subcontractors will obtain any required business tax license.

13. **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

14. **CONFLICTING TERMS:** In the event of any inconsistency, conflict or ambiguity between the terms of this Agreement, the Pinal Contract or the Terms and Conditions set forth on 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 or the Pinal Contract (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 or under the Pinal Contract shall not alter or relive Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance 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.

WESTERN EMULSIONS, INC.,
an Arizona corporation

By: _____
Title: _____

CITY OF COOLIDGE
an Arizona municipal corporation

Jon Thompson
Mayor

ATTEST:

Norma Ortiz
City Clerk

APPROVED AS TO FORM:

Denis M. Fitzgibbons
City Attorney

EXHIBIT A

PINAL CONTRACT

EXHIBIT B

SCOPE OF WORK
&
COMPENSATION