

PURCHASE AGREEMENT

This purchase Agreement (“Agreement”) is entered into and effective between the CITY OF GLENDALE, an Arizona municipal corporation (“City”) and SWHP, LLC a(n) Arizona, limited liability company (“Vendor”) as of the 28th day of January, 2025 (“Effective Date”).

RECITALS

- A. City intends to purchase F500 Encapsulating Agent necessary for fire fighter personnel for the benefit of the public and with public funds (the “Equipment”);
- B. Vendor desires to provide City with the Equipemnt subject to manufacturer’s warranty consistent with industry-best practices and the standards set forth in this Agreement; and
- C. City and Vendor desire to memorialize their agreement with this document.

AGREEMENT

The parties hereby agree as follows:

1. **Schedule.** The periodic purchase of the Equipment will be undertaken in an as needed basis. Nevertheless, this Agreement terminates two (2) years from the effective date with the option to renew for three (3), one-year periods.
2. **Compliance.** Vendor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or express, genetic characteristics, familial status, U.S. military veteran status or any disability. Vendor will require any Sub-contractor (if any) to be bound to the same requirements as stated within this section. Vendor, and on behalf of any subcontractors, warrants compliance with this section.
3. **Compensation for the Equipment.**
 - 3.1 Compensation. Vendor’s compensation for the Project, including those furnished by its Subconsultants, if any, will not exceed \$180,000.00 as specifically detailed in **Exhibit D** (“Compensation”)
 - 3.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.
 - a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
 - b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Vendor without prior written authorization from the City.
 - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the

provisions of this Agreement shall take priority and govern the conduct of the parties.

4. **Billings and Payment.**

4.1 Payment.

- a. Vendor will send one invoice once the Equipment is shipped. The City will process and remit payment within 30 days.

4.2 Review and Withholding. City's Project Manager will timely review and certify Payment Invoice.

5. **Conflict.** Vendor acknowledges this Agreement is subject to A.R.S. § 35-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

6. **Insurance.** For the duration of the term of this Agreement, Vendor shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Vendor, its agent(s), representative(s), employee(s) and any subcontractors.

6.1 **Minimum Scope and Limit of Insurance.** Coverage must be at least as broad as:

- a. Commercial General Liability (CGL): insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

7. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Vendor warrants its compliance and that of its Subconsultants with all federal immigration laws and regulations that relate to their employees and compliance with E-verify requirements under A.R.S. § 23-214(A). The Vendor or Subconsultant's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Vendor and Subconsultant warrant to keep their respective papers and record open for random inspection during normal business hours by the other party. The Vendor and Subconsultant shall cooperate with the City's random inspections,

including granting the City entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

8. **No Boycott of Israel.** To the extent of A.R.S. § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.

9. **Notices.**

9.1 Representatives.

- a. Vendor. Venfor's representative (the "Vendor's Representative") authorized to act on Vendor's behalf with respect to the Project, and his or her address for Notice delivery is:

SWHP, LLC
c/o Earl Johnson
20118 N. 67th Ave., Suite 300-237
Glendale, AZ 85308

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
c/o Eric Keppler, Deputy Chief
11550 W. Glendale Ave., 2nd Floor
Glendale, AZ 85307

With required copy to:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

- c. Concurrent Notices.
1. All notices to City's representative must be given concurrently to City Manager and City Attorney.
 2. A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and City Attorney.
 3. City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Vendor identifying the designee(s) and their respective addresses for notices.

10. **Entire Agreement; Survival; Counterparts; Signatures.**

10.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Vendor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreement as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts, if any, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

10.2 Interpretation.

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

10.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

10.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.

10.5 Remedies. All rights and remedies provided in the Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

10.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.

10.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

11. Term.

11.1 The term of this Agreement commences upon the effective date and continues for two (2) years from the effective date with the option to renew for three (3), one-year periods. There are no automatic renewals.

11.2 Extension for Procurement Processes. Upon the expiration of the Term of this Agreement, including the initial term and any renewals, at the City's sole discretion, this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City to complete its procurement process to select a vendor to provide the services/materials similar to those provided under this Agreement.

12. **Dispute Resolution.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

13. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

| | |
|-----------|---------------|
| Exhibit A | Project |
| Exhibit B | Scope of Work |
| Exhibit C | Schedule |
| Exhibit D | Compensation |

[SIGNATURES ON FOLLOWING PAGE]

The parties enter into this Agreement effective as of the date shown above.

City of Glendale,
an Arizona municipal corporation

By: Kevin R. Phelps
Its: City Manager


ATTEST:

Julie K. Bower
City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

SWHP, LLC,
an Arizona limited liability company



By: Earl Johnson
Its: Authorized Representative

EXHIBIT A
Purchase Agreement

PROJECT

Periodic purchase of F500 Encapsulating Agent on an as needed basis at fire suppression for a variety of multi-class hazard fires.

EXHIBIT B
Purchase Agreement

SCOPE OF WORK

The Periodic purchase for F500 Encapsulating Agent used for fire suppression for a variety of multi-class hazard fires on an as needed basis.

EXHIBIT C
Purchase Agreement

SCHEDULE

Upon execution of this agreement, equipment will be ordered at the convenience of the City and shipped to Facility.

EXHIBIT D
Service Agreement

COMPENSATION

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Vendor for full completion of all work required by the Project during the entire term of the Project must not exceed \$180,000.00 for the five-year term.

DETAILED PROJECT COMPENSATION

Contractor will be compensated for the purchase of equipment F500 Encapsulating Agent. See attached quote for one pallet.