

**JOB ORDER MASTER AGREEMENT
BETWEEN
THE CITY OF TOLLESON
AND
ACHEN-GARDNER CONSTRUCTION, L.L.C.**

THIS JOB ORDER MASTER AGREEMENT (this “Contract”) between the City of Tolleson, an Arizona municipal corporation, (the “City”), and Achen-Gardner Construction, L.L.C., an Arizona limited liability company, (the “Contractor”), (collectively, “the parties”), is hereby entered into and shall be effective on the last signature date set forth below.

RECITALS

A. After a competitive procurement process, the City of Buckeye, Arizona, and Contractor entered into a Job Order Contract, Contract No. 2025100, (the “Job Order Contract”), for JOC Water/Wastewater Pipeline Utility and Infrastructure, as issued by award of individual Job Orders (the “Project”). A copy of the Job Order Contract is on file with the City Clerk’s office and is incorporated herein by reference.

B. The City is permitted, pursuant to Section 3-5-7 of the City Code, to make purchases under the Job Order Contract, at its discretion and with the agreement of the awarded Contractor, and the Job Order 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 their cooperative contractual relationship under the Job Order Contract and this Agreement, (ii) establishing the terms and conditions by which the Contractor may provide the City with the required services, which may include design services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the “Services”) and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the 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 City and the Contractor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective on the last signature date set forth below and shall remain in full force and effect until September 2, 2025 (the “Term”), unless terminated as otherwise provided in this Agreement or the Job Order Contract.

2. Scope of Work. This is an indefinite quantity and indefinite delivery, i.e., as needed as determined by the City, Agreement for Services under the terms and conditions of the Job

Order Contract. The City does not guarantee that any minimum or maximum number of purchases will be made pursuant to this Agreement. Purchases will only be made when the City identifies a need and proper authorization, and documentation has been approved. For purchase(s) determined by the City to be appropriate for this Agreement, the Contractor shall provide the Services to the City in such quantities and configurations agreed upon between the parties, in a written invoice, quote, Purchase Order or other form of written agreement describing the work to be completed (each, a "Purchase Order"). Each Purchase Order approved and accepted by the parties pursuant to this Agreement shall (i) contain a reference to this Agreement and the Job Order Contract and (ii) be attached hereto as Exhibit A and incorporated herein by reference. Purchase Orders submitted without referencing this Agreement and the Job Order Contract will be subject to rejection.

2.1 Inspection; Acceptance. All Services are subject to final inspection and acceptance by the City. Services failing to conform to the requirements of this Agreement and/or the Job Order 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 Services, the City 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 the Services into compliance and withhold the cost of same from any payments due to the Contractor.

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

3. Compensation. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. The total Job Orders issued during a single fiscal year will not exceed \$1,500,000.00.

4. Payments. The City shall pay the Contractor based upon acceptance and delivery of 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 Job Order 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 Job Order 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 City, to the extent necessary to adequately permit 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 City 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 City 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 City to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this Section. The City 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 A.R.S. § 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 A.R.S. § 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 City.

7. Conflict of Interest. This Agreement may be canceled by the City pursuant to A.R.S. § 38-511.

8. 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.

9. Agreement Subject to Appropriation. The City 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 City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City 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 City shall be relieved of any subsequent obligation under this Agreement. The parties agree that the City has no obligation or duty of good

faith to budget or appropriate the payment of the City'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 City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Contractor informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. Contractor hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Agreement pursuant to this section.

10. Conflicting Terms. In the event of any inconsistency, conflict, or ambiguity among the terms of this Agreement, any City-approved Purchase Orders, the Job Order Contract, and invoices, the documents shall govern in the order listed herein.

11. Rights and Privileges. To the extent provided under the Job Order Contract, the City shall be afforded all of the rights and privileges afforded to City of Buckeye, Arizona, and shall be "City of Buckeye" or "City" (as defined in the Job Order Contract) for the purposes of the portions of the Job Order Contract that are incorporated herein by reference.

12. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 11 above, the City shall be afforded all of the insurance coverage and indemnifications afforded to the Lead Public Agency to the extent provided under the Job Order Contract, and such insurance coverage and indemnifications shall inure and apply with equal effect to the City 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 City and each council member, officer, employee or agent thereof (the City 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.

13. China. Pursuant to and in compliance with A.R.S. § 35-394, Contractor hereby agrees and certifies that it does not currently, and agrees for the duration of this Agreement that Contractor will not, use: (i) the forced labor of ethnic Uyghurs in the People's Republic of China; (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. Contractor also hereby agrees to indemnify and hold harmless the City, its officials, employees, and agents from any claims or causes of action relating to the City's action based upon reliance upon this representation, including the payment of all costs and attorney fees incurred by the City in defending such as action.

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 City: City of Tolleson
 9055 W. Van Buren Street
 Tolleson, Arizona 85353
 Attn: Crystal Zamora, City Clerk

With copy to: Pierce Coleman PLLC
 17851 N. 85th Street, Suite 175
 Scottsdale, Arizona 85255
 Attn: Justin Pierce, City Attorney

If to Contractor: Achen-Gardner Construction, L.L.C.
 2195 W. Chandler Blvd., Suite 200
 Chandler, Arizona 85224
 Attn: Dan Spitz, President

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.

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

“City”

CITY OF TOLLESON,
an Arizona municipal corporation

Reyes Medrano, Jr., City Manager

Date

ATTEST:

Crystal Zamora, City Clerk
APPROVED AS TO FORM:

Justin S. Pierce, City Attorney

“Contractor”

ACHEN-GARDNER CONSTRUCTION, L.L.C.,
an Arizona limited liability company

By: _____
Name: _____
Its: _____

Date

EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF TOLLESON
AND
ACHEN-GARDNER CONSTRUCTION, L.L.C.

[Purchase Orders]

See following pages (to be added subsequent to execution).
See following pages.