Repl pgs - #30

AUG 13 2015

CITY OF CHANDLER PURCHASE AGREEMENT WITH ARIZONA WATER WORKS SUPPLY FOR THE PURCHASE OF NON-POP VALVE LIDS CONTRACT NO.: WH6-890-3568

THIS AGREEMENT is made and entered into this ____ day of _____, 2015, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "City", and Arizona Water Works Supply, Inc., hereinafter referred to as "Contractor".

WHEREAS, Contractor represents that Contractor has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. AGREEMENT ADMINISTRATOR:

1.1. Agreement Administrator. Contractor shall act under the authority and approval of the Central Supply Supervisor or designee (Agreement Administrator), to provide the services required by this Agreement.

1.2. Key Staff. This Agreement has been awarded to Contractor based partially on the key personnel proposed to perform the services required herein. Contractor shall not change nor substitute any of these key staff for work on this Agreement without prior written approval by City.

1.3. Subcontractors. During the performance of the Agreement, Contractor may engage such additional Subcontractor as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with Contractor.

1.4. Subcontracts. Contractor shall not enter into any subcontract under this Agreement for the performance of this Agreement without the advance written approval of City. The subcontract shall incorporate by reference the terms and conditions of this Agreement.

2. SCOPE OF WORK/SPECIFICATIONS: After execution of this Agreement by both parties and upon City's Ordering Instructions, as defined in Subsection 2.1, Contractor shall provide non-pop valve lids (hereinafter the "Items") all as more specifically set forth in Exhibit A, attached hereto and made a part hereof by reference.

2.1. Ordering Instructions: Authorization for purchases under the terms and conditions of this Agreement will be made only upon issuance of a City Purchase Order, an Agreement Release Order or use of a City Procurement Card ("Ordering Instructions").

2.2 Advertising, Publishing and Promotion of Agreement. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Agreement without the prior written approval of the City.

2.3 Compliance with Applicable Laws. Contractor shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.

2.3.1. The Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("subcontractors") will comply with all Federal Immigration laws and

regulations that relate to the immigration status of their employees and the requirement to use E-Verify, hereinafter "Contractor Immigration Warranty".

2.3.2. A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement that is subject to penalties up to and including termination of the Agreement.

2.3.3. The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Agreement to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.

2.3.4. The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verification.

2.3.5. The provisions of this Article must be included in any Agreement the Contractor enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

2.4. Annual Usage Report. Contractor shall furnish City a usage report on an annual basis delineating the acquisition activity governed by this Agreement. The format of the report shall be approved by City and shall disclose the quantity and the dollar value of each Agreement Item by individual purchasing unit.

2.5. Catalogs/Agreement Price Listing. As applicable, the Contractor (s) shall be required to furnish, at no extra cost, City with copies of all catalogs showing unit prices as set forth in Exhibit B as requested by City.

2.6. New/Current Products. It is City's intent to procure materials of the latest technology. All products offered in response to this solicitation shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment, parts must be available for a minimum of five (5) years from bid date, and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.

2.7. New Products. If new products are announced by manufacturers of Item on this Agreement, Contractor shall notify the Agreement Administrator. If approved in writing for substitution for Item, Contractor may substitute the newer product as an add-on to the existing Agreement. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered if approved for substitution by the Agreement Administrator.

2.8 Packing and Shipping. The Contractor shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.

2.9. Delivery: All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. Contractor shall retain title and control of all goods until they are

delivered and accepted by City. All risk of transportation and all related charges shall be the responsibility of Contractor. All claims for visible or concealed damage shall be filed by Contractor. City will notify Contractor promptly of any damaged goods and shall assist Contractor in arranging for inspection.

2.10. Risk of Loss: Contractor shall bear all loss of conforming material covered under this Agreement until received by authorized personnel at the location designated in the Ordering Instructions or this Agreement. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with Contractor regardless of receipt.

2.11. Warranties:

2.11.1. **Liens:** Contractor warrants that the materials supplied under this Agreement are free of liens and shall remain free of liens.

2.11.2. **Quality:** Unless otherwise modified elsewhere in these terms and conditions, Contractor warrants that, for five (5) years after acceptance by City of the materials, they shall be:

2.11.3. Of a quality to pass without objection in the trade under the Agreement description;

2.11.4. Fit for the intended purposes for which the materials are used;

2.11.5. Within the variations permitted by the Agreement and are of even kind, quantity, and quality within each unit and among all units;

2.11.6. Adequately contained, packaged and marked as the Agreement may require; and

2.11.7. Conform to the written promises or affirmations of fact made by Contractor.

2.12. Fitness: Contractor warrants that any material supplied to City shall fully conform to all requirements of the Agreement and all representations of Contractor, and shall be fit for all purposes and uses required by the Agreement.

2.13. Inspection/Testing: The warranties set herein are not affected by inspection. testing of, or payment for the materials by City.

2.14. **Warranty (Equipment).** All equipment supplied under this Agreement shall be fully guaranteed by Contractor for a minimum period of five (5) years from the date of acceptance by City. Any defects of design, workmanship, or materials that would result in non-compliance with the Agreement specifications shall be fully corrected by Contractor (including parts and labor) without cost to City. The written warranty shall be included with the delivered products to the Agreement Administrator for relay to the City Department using the Item.

3. ACCEPTANCE AND DOCUMENTATION: Each task shall be reviewed and approved by the Agreement Administrator to determine acceptable completion.

3.1. Records. The Contractor shall retain and shall contractually require each Subcontractor to retain all data and other "records" relating to the acquisition and performance of the Agreement for a period of five years after the completion of the Agreement.

3.2. Audit. At any time during the term of this Agreement and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Agreement or Subcontract. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.3. **New/Current Products.** All equipment, materials, parts and other components incorporated in the Items provided pursuant to this Agreement shall be new, or the latest model and of the most suitable grade for the purpose intended.

3.4. **Property of City.** Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of City. Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. Contractor shall not use or release these materials without the prior written consent of City.

4. **PRICE:**

4.1. Upon issuance of the proper Ordering Instructions, Contractor will provide the Items (as specificed in Exhibit A) that City ordered. City shall pay to Contractor, for each Item so ordered, an amount not to exceed the per unit cost as shown on Exhibit B. This Agreement does not guarantee the purchase of any quantities of the Items specified in Exhibit A nor does it limit the City's ordering of more than the quantity estimated in the IFB/RFP except that City may not, without further City Council approval, order more than Eighty Thousand Dollars ($80,000) in the aggregate amount during the Term of this Agreement for the Items ordered.

4.2. **Taxes.** Contractor shall be solely legally responsible for any and all tax obligations, except transaction privilege taxes actually paid by Contractor, which may result from Contractor's performance of this Agreement. City shall have no legal obligation to pay any amounts for taxes, of any type, incurred by Contractor. The City will reimburse Contractor for privilege transaction taxes actually paid by Contractor. If Contractor obtains any refund of privilege transaction taxes paid, it will refund same to City.

4.3. **Payment.** A separate invoice shall be issued for each shipment of Items ordered in accordance with this Agreement, No payment will be issued prior to receipt of Items ordered and receipt of a correct invoice.

4.4. **IRS W9 Form.** In order to receive payment Contractor shall have a current I.R.S. W9 Form on file with City, unless not required by law.

4.5. **Price Adjustment in Extension Terms.** All prices offered herein shall be firm against any increase for the initial term of the Agreement. Prior to commencement of subsequent renewal terms, City may approve a fully documented request for a price adjustment. City shall determine whether any requested price increases for extension terms is acceptable to the City. If City approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon by the Parties a written Agreement Amendment shall be approved and executed by the Parties.

4.6. **Price Reduction.** Contractor shall offer City a price reduction for its services concurrent with a published price reduction made to other customers.

5. **TERM:**

5.1. The term of the Agreement is one year, commencing on September 1, 2015 and terminating at 11:59 p.m. on August 31, 2016 unless earlier terminated in accordance with the provisions herein. The City reserves the right, at its sole discretion, to extend the Agreement without competitive bidding for up to four additional terms of one year each.

6. **USE OF THIS AGREEMENT:** This Agreement does not provide that City will exclusively purchase the Items specified in Exhibit A from Contractor. In other words, City reserves the rights to obtain like Items from anothersource based on its sole discretion.

6.1. **Cooperative Use of Agreement.** In addition to the City of Chandler and with approval of the Contractor, this Agreement may be extended for use by other Arizona political subdivisions. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'.

If required to provide services on a school district property at least five (5) times during a month, Contractor shall submit a full set of fingerprints to the school of each person or employee who may provide such service. The District shall conduct a fingerprint of all Contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor shall comply with the governing body fingerprinting policies of each individual school district/public entity. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

Item

6. **CITY'S CONTRACTUAL REMEDIES:**

7.1. **Right to Assurance.** If the City in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Agreement, the Agreement Administrator may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the City's option, be the basis for terminating the Agreement in addition to any other rights and remedies provided by law or this Agreement.

7.2. **Stop Work Order.** The City may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop the provision of all or any part, of the Items prdered for period(s) of days indicated by the City after the Stope Work Order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Items covered by the Stop Work Order during the period so specified.

If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Agreement Administrator shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be amended in writing accordingly.

7.3. **Non-exclusive Remedies.** The rights and the remedies of the City under this Agreement are not exclusive.

7.4. **Nonconforming Tender.** Services and materials supplied under this Agreement shall fully comply with Agreement requirements and specifications. Services or materials that do not fully comply constitute a breach of Agreement.

7.5. **Right of Offset.** The City shall be entitled to offset against any sums due Contractor, any expenses or costs incurred by the City, or damages assessed by the City concerning the Contractor's non-conforming performance or failure to perform the Agreement, including City's expenses to procure the Items otherwise.

8. **TERMINATION:**

8.1. **Termination for Convenience:** City reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work.

8.2. **Termination for Cause:** City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

1) If Contractor fails to perform pursuant to the terms of this Agreement
2) If Contractor is adjudged a bankrupt or insolvent;
3) If Contractor makes a general assignment for the benefit of creditors;
4) If a trustee or receiver is appointed for Contractor or for any of Contractor's property;
5) If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
6) If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;

Where Agreement has been so terminated by City, the termination shall not affect any rights of City against Contractor then existing or which may thereafter accrue.

8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, City may cancel this Agreement after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is or becomes at any time while this Agreement or an extension of this Agreement is in effect, an employee of or a consultant to any other party to this Agreement. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.

8.4. **Gratuities.** City may, by written notice, terminate this Agreement, in whole or in part, if City determines that employment or a Gratuity was offered or made by Contractor or a representative of Contractor to any officer or employee of City for the purpose of influencing the outcome of the procurement or securing this Agreement, an amendment to this Agreement, or favorable treatment concerning this Agreement, including the making of any determination or decision about agreement performance. The City, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by Contractor.

8.5. **Suspension or Debarment.** City may, by written notice to the Contractor, immediately terminate this Agreement if City determines that Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of an agreement shall attest that the Contractor is not currently suspended or debarred. If Contractor becomes suspended or debarred, Contractor shall immediately notify City.

8.6. **Continuation of Performance Through Termination.** The Contractor shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

10. **DISPUTE RESOLUTION:**

10.1. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

10.2. **Jurisdiction and Venue.** The parties agree that this Agreement is made in and the Items shall be delivered in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

10.3. **Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees.

11. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or 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 (including claim adjusting and handling 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.

12. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the City		In the case of the Contractor	
Agreement Administrator:	Supply Supervisor	Firm Name:	Arizona Water Works Supply

Contact:	Jose Tapia	Contact:	James Kerwin
Mailing Address:	Mail Stop 901, PO Box 4008, Chandler, AZ 85244	Address:	1008 W. First St.
Physical Address:	Central Supply, Building I, 975 E. Armstrong Way	City, State, Zip	Tempe, AZ 85281
City, State, Zip	Chandler, AZ 85286	Phone:	480-966-5804
Phone:	480-782-2416	FAX:	480-967-7857
FAX:	480-782-2420		

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

14. CONFLICT OF INTEREST:

14.1. No Kickback. Contractor warrants that no person has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in Contractor's proposal to the City.

14.2. Kickback Termination. City may cancel any Agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a Contractor to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from City is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).

14.3. No Conflict: Contractor stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. GENERAL TERMS:

15.1. Ownership. All deliverables and/or other products of the Agreement (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by Contractor in performance of the Agreement) shall be the sole, absolute and exclusive property of City, free from any claim or retention of right on the part of Contractor, its agents, sub-contractors, officers or employees.

15.2. Entire Agreement. This Agreement, including all Exhibits attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.

15.3. Assignment: Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the City.

15.4. Amendments. The Agreement may be modified only through a written Agreement Amendment executed by authorized persons for both parties.

15.5. Independent Contractor. The Contractor under this Agreement is an Independent Contractor. Neither party to this Agreement shall be deemed to be the employee or agent of the other party to the Agreement.

15.6. No Parole Evidence. This Agreement is intended by the parties as a final and complete expression of their Agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

15.7. Authority: Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____, 2015.

FOR THE CITY OF CHANDLER

_____
Mayor

APPROVED AS TO FORM:

_____
City Attorney (rb)

ATTEST:

_____
City Clerk

SEAL

FOR THE CONTRACTOR

By: _____
Signature

ATTEST: If Corporation

_____
Secretary

3568

EXHIBIT A
SPECIFICATIONS

Non Pop Valve Lid Description	Unit Of Measure
VALVE BOX, LID, POLYMER, NON POP, W/DEBRIS SKIRT, # NPR600-COLOR (BLUE, RED, PURPLE, ETC.)	EA
VALVE BOX, LID, POLYMER, NON POP, W/DEBRIS SKIRT, # NPR600-BLACK	EA

EXHIBIT B
PRICE SCHEDULE

Item	Description	Unit of Measure	Unit Price
1	VALVE BOX, LID, POLYMER, NON POP, W/DEBRIS SKIRT, #NPR600-COLOR, (BLUE, RED, PURPLE, ETC.)	EA	$36.08
2	VALVE BOX, LID, POLYMER, NON POP, W/DEBRIS SKIRT, #NPR600-BLACK (BLACK)	EA	$33.99

Chandler • Arizona
Where Values Make The Difference

PURCHASING ITEM FOR COUNCIL AGENDA

1. Agenda Item Number: 30

2. Council Meeting Date: August 13, 2015

TO: MAYOR & COUNCIL

THROUGH: CITY MANAGER

3. Date Prepared: July 21, 2015

4. Requesting Department: Management Services

5. SUBJECT: Agreement for Purchase of Non-Pop Valve Lids

6. RECOMMENDATION: Staff recommends City Council approve Agreement No. WH6-890-3568, with Arizona Water Works Supply, Inc., for the purchase of non-pop valve lids in an amount not to exceed $80,000 for one year.

7. BACKGROUND/DISCUSSION: The City of Chandler has converted to polymer non-pop valve box lids to increase safety and reduce maintenance costs. The polymer non-pop valve box lids are superior to cast iron because they do not come out of the can and strike vehicles driving over them. Water Distribution is replacing all cast iron valve box lids that are currently in use with the polymer non-pop valve box lids during valve maintenance, as well as installing them on all new water line projects, resulting in savings on maintenance and inventory costs.

8. EVALUATION: On June 22, 2015, the City issued Invitation for Bid No. WH6-890-3568 for non-pop valve lids. The bid was advertised and all registered bidders were notified. The City received three bids, which are summarized below. Staff is recommending award to Arizona Water Works Supply, Inc., who submitted the lowest responsive bid. The agreement will have a one-year term with provisions to extend four additional one-year periods.

COMPANY NAME	COLOR NON-POP VALVE LIDS	BLACK NON-POP VALVE LIDS
Dana Kepner	$40.00 each	$38.00 each
Arizona Water Works	$36.08 each	$33.99 each
FWC Supply	$36.40 each	$34.32 each

The term of this agreement is September 1, 2015, through August 31, 2016, with the option of up to four one-year extensions.

9. FINANCIAL IMPLICATIONS:
Cost: $80,000

Funds for the purchase of non-pop valve lids will come from the Central Supply Inventory account (101.0000.1516). Individual cost centers will be charged for the supplies as they are issued from Central Supply.

10. PROPOSED MOTION: Move City Council approve Agreement No. WH6-890-3568, with Arizona Water Works Supply, Inc., for the purchase of non-pop valve lids in an amount not to exceed $80,000 for one year.

ATTACHMENT: Agreement

APPROVALS

11. Requesting Department
for CP
Christina Pryor, Purchasing & Materials Manager

12. Central Supply Supervisor
for JT
Jose Tapia

13. Department Head
Dawn Lang
Dawn Lang, Management Services Director

14. Acting City Manager
Marsha Reed
Marsha Reed

CITY OF CHANDLER PURCHASE AGREEMENT
WITH ARIZONA WATER WORKS SUPPLY FOR THE PURCHASE OF
NON-POP VALVE LIDS
CONTRACT NO.: WH6-890-3568

THIS AGREEMENT is made and entered into this ____ day of _____, 2015, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "City", and Arizona Water Works Supply, Inc., hereinafter referred to as "Contractor".

WHEREAS, Contractor represents that Contractor has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. AGREEMENT ADMINISTRATOR:

1.1. Agreement Administrator. Contractor shall act under the authority and approval of the Central Supply Supervisor or designee (Agreement Administrator), to provide the services required by this Agreement.

1.2. Key Staff. This Agreement has been awarded to Contractor based partially on the key personnel proposed to perform the services required herein. Contractor shall not change nor substitute any of these key staff for work on this Agreement without prior written approval by City.

1.3. Subcontractors. During the performance of the Agreement, Contractor may engage such additional Subcontractor as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with Contractor.

1.4. Subcontracts. Contractor shall not enter into any subcontract under this Agreement for the performance of this Agreement without the advance written approval of City. The subcontract shall incorporate by reference the terms and conditions of this Agreement.

2. SCOPE OF WORK/SPECIFICATIONS: After execution of this Agreement by both parties and upon City's Ordering Instructions, as defined in Subsection 2.1, Contractor shall provide non-pop valve lids (hereinafter the "Items") all as more specifically set forth in Exhibit A, attached hereto and made a part hereof by reference.

2.1. Ordering Instructions: Authorization for purchases under the terms and conditions of this Agreement will be made only upon issuance of a City Purchase Order, an Agreement Release Order or use of a City Procurement Card ("Ordering Instructions").

2.2 Advertising, Publishing and Promotion of Agreement . The Contractor shall not use, advertise or promote information for commercial benefit concerning this Agreement without the prior written approval of the City.

2.3 Compliance with Applicable Laws. Contractor shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.

2.3.1. The Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("subcontractors") will comply with all Federal Immigration laws and

regulations that relate to the immigration status of their employees and the requirement to use E-Verify, hereinafter "Contractor Immigration Warranty".

2.3.2. A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement that is subject to penalties up to and including termination of the Agreement.

2.3.3. The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Agreement to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.

2.3.4. The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verification.

2.3.5. The provisions of this Article must be included in any Agreement the Contractor enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

2.4. Annual Usage Report. Contractor shall furnish City a usage report on an annual basis delineating the acquisition activity governed by this Agreement. The format of the report shall be approved by City and shall disclose the quantity and the dollar value of each Agreement Item by individual purchasing unit.

2.5. Catalogs/Agreement Price Listing. As applicable, the Contractor (s) shall be required to furnish, at no extra cost, City with copies of all catalogs showing unit prices as set forth in Exhibit B as requested by City.

2.6. New/Current Products. It is City's intent to procure materials of the latest technology. All products offered in response to this solicitation shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment, parts must be available for a minimum of five (5) years from bid date, and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.

2.7. New Products. If new products are announced by manufacturers of Item on this Agreement, Contractor shall notify the Agreement Administrator. If approved in writing for substitution for Item, Contractor may substitute the newer product as an add-on to the existing Agreement. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered if approved for substitution by the Agreement Administrator.

2.8 Packing and Shipping. The Contractor shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.

2.9. Delivery: All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. Contractor shall retain title and control of all goods until they are

delivered and accepted by City. All risk of transportation and all related charges shall be the responsibility of Contractor. All claims for visible or concealed damage shall be filed by Contractor. City will notify Contractor promptly of any damaged goods and shall assist Contractor in arranging for inspection.

2.10. Risk of Loss: Contractor shall bear all loss of conforming material covered under this Agreement until received by authorized personnel at the location designated in the Ordering Instructions or this Agreement. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with Contractor regardless of receipt.

2.11. Warranties:

2.11.1. **Liens:** Contractor warrants that the materials supplied under this Agreement are free of liens and shall remain free of liens.

2.11.2. **Quality:** Unless otherwise modified elsewhere in these terms and conditions, Contractor warrants that, for five (5) years after acceptance by City of the materials, they shall be:

2.11.3. Of a quality to pass without objection in the trade under the Agreement description;

2.11.4. Fit for the intended purposes for which the materials are used;

2.11.5. Within the variations permitted by the Agreement and are of even kind, quantity, and quality within each unit and among all units;

2.11.6. Adequately contained, packaged and marked as the Agreement may require; and

2.11.7. Conform to the written promises or affirmations of fact made by Contractor.

2.12. Fitness: Contractor warrants that any material supplied to City shall fully conform to all requirements of the Agreement and all representations of Contractor, and shall be fit for all purposes and uses required by the Agreement.

2.13. Inspection/Testing: The warranties set herein are not affected by inspection. testing of, or payment for the materials by City.

2.14. **Warranty (Equipment).** All equipment supplied under this Agreement shall be fully guaranteed by Contractor for a minimum period of five (5) years from the date of acceptance by City. Any defects of design, workmanship, or materials that would result in non-compliance with the Agreement specifications shall be fully corrected by Contractor (including parts and labor) without cost to City. The written warranty shall be included with the delivered products to the Agreement Administrator for relay to the City Department using the Item.

3. ACCEPTANCE AND DOCUMENTATION: Each task shall be reviewed and approved by the Agreement Administrator to determine acceptable completion.

3.1. Records. The Contractor shall retain and shall contractually require each Subcontractor to retain all data and other "records" relating to the acquisition and performance of the Agreement for a period of five years after the completion of the Agreement.

3.2. Audit. At any time during the term of this Agreement and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Agreement or Subcontract. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.3. **New/Current Products.** All equipment, materials, parts and other components incorporated in the Items provided pursuant to this Agreement shall be new, or the latest model and of the most suitable grade for the purpose intended.

3.4. **Property of City.** Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of City. Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. Contractor shall not use or release these materials without the prior written consent of City.

4. PRICE:

4.1. Upon issuance of the proper Ordering Instructions, Contractor will provide the Items (as specificed in Exhibit A) that City ordered. City shall pay to Contractor, for each Item so ordered, an amount not to exceed the per unit cost as shown on Exhibit B. This Agreement does not guarantee the purchase of any quantities of the Items specified in Exhibit A nor does it limit the City's ordering of more than the quantity estimated in the IFB/RFP except that City may not, without further City Council approval, order more than Eighty Thousand Dollars ($80,000) in the aggregate amount during the Term of this Agreement for the Items ordered.

4.2. **Taxes.** Contractor shall be solely legally responsible for any and all tax obligations, except transaction privilege taxes actually paid by Contractor, which may result from Contractor's performance of this Agreement. City shall have no legal obligation to pay any amounts for taxes, of any type, incurred by Contractor. The City will reimburse Contractor for privilege transaction taxes actually paid by Contractor. If Contractor obtains any refund of privilege transaction taxes paid, it will refund same to City.

4.3. **Payment.** A separate invoice shall be issued for each shipment of Items ordered in accordance with this Agreement, No payment will be issued prior to receipt of Items ordered and receipt of a correct invoice.

4.4. **IRS W9 Form.** In order to receive payment Contractor shall have a current I.R.S. W9 Form on file with City, unless not required by law.

4.5. **Price Adjustment in Extension Terms.** All prices offered herein shall be firm against any increase for the initial term of the Agreement. Prior to commencement of subsequent renewal terms, City may approve a fully documented request for a price adjustment. City shall determine whether any requested price increases for extension terms is acceptable to the City. If City approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon by the Parties a written Agreement Amendment shall be approved and executed by the Parties.

4.6. **Price Reduction.** Contractor shall offer City a price reduction for its services concurrent with a published price reduction made to other customers.

5. TERM:

5.1. The term of the Agreement is one year, commencing on September 1, 2015 and terminating at 11:59 p.m. on August 31, 2016 unless earlier terminated in accordance with the provisions herein. The City reserves the right, at its sole discretion, to extend the Agreement without competitive bidding for up to four additional terms of one year each.

6. **USE OF THIS AGREEMENT:** This Agreement does not provide that City will exclusively purchase the Items specified in Exhibit A from Contractor. In other words, City reserves the rights to obtain like Items from anothersource based on its sole discretion.

6.1. **Cooperative Use of Agreement.** In addition to the City of Chandler and with approval of the Contractor, this Agreement may be extended for use by other Arizona political subdivisions. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'.

If required to provide services on a school district property at least five (5) times during a month, Contractor shall submit a full set of fingerprints to the school of each person or employee who may provide such service. The District shall conduct a fingerprint of all Contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor shall comply with the governing body fingerprinting policies of each individual school district/public entity. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

Item

6. **CITY'S CONTRACTUAL REMEDIES:**

7.1. **Right to Assurance.** If the City in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Agreement, the Agreement Administrator may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the City's option, be the basis for terminating the Agreement in addition to any other rights and remedies provided by law or this Agreement.

7.2. **Stop Work Order.** The City may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop the provision of all or any part, of the Items prdered for period(s) of days indicated by the City after the Stope Work Order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Items covered by the Stop Work Order during the period so specified.

If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Agreement Administrator shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be amended in writing accordingly.

7.3. **Non-exclusive Remedies.** The rights and the remedies of the City under this Agreement are not exclusive.

7.4. **Nonconforming Tender.** Services and materials supplied under this Agreement shall fully comply with Agreement requirements and specifications. Services or materials that do not fully comply constitute a breach of Agreement.

7.5. **Right of Offset.** The City shall be entitled to offset against any sums due Contractor, any expenses or costs incurred by the City, or damages assessed by the City concerning the Contractor's non-conforming performance or failure to perform the Agreement, including City's expenses to procure the Items otherwise.

8. TERMINATION:

8.1. **Termination for Convenience:** City reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work.

8.2. **Termination for Cause:** City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

1) If Contractor fails to perform pursuant to the terms of this Agreement
2) If Contractor is adjudged a bankrupt or insolvent;
3) If Contractor makes a general assignment for the benefit of creditors;
4) If a trustee or receiver is appointed for Contractor or for any of Contractor's property;
5) If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
6) If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;

Where Agreement has been so terminated by City, the termination shall not affect any rights of City against Contractor then existing or which may thereafter accrue.

8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, City may cancel this Agreement after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is or becomes at any time while this Agreement or an extension of this Agreement is in effect, an employee of or a consultant to any other party to this Agreement. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.

8.4. **Gratuities.** City may, by written notice, terminate this Agreement, in whole or in part, if City determines that employment or a Gratuity was offered or made by Contractor or a representative of Contractor to any officer or employee of City for the purpose of influencing the outcome of the procurement or securing this Agreement, an amendment to this Agreement, or favorable treatment concerning this Agreement, including the making of any determination or decision about agreement performance. The City, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by Contractor.

8.5. **Suspension or Debarment.** City may, by written notice to the Contractor, immediately terminate this Agreement if City determines that Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of an agreement shall attest that the Contractor is not currently suspended or debarred. If Contractor becomes suspended or debarred, Contractor shall immediately notify City.

8.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

8.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

9. FORCE MAJEURE: Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

10. DISPUTE RESOLUTION:

10.1. Arizona Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

10.2. Jurisdiction and Venue. The parties agree that this Agreement is made in and the Items shall be delivered in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

10.3. Fees and Costs. Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees.

11. INDEMNIFICATION: To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or 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 (including claim adjusting and handling 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.

12. NOTICES: All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the City	In the case of the Contractor
Agreement Administrator: Supply Supervisor	Firm Name: Arizona Water Works Supply

Contact:	Jose Tapia	Contact:	James Kerwin
Mailing Address:	Mail Stop 901, PO Box 4008, Chandler, AZ 85244	Address:	1008 W. First St.
Physical Address:	Central Supply, Building I, 975 E. Armstrong Way	City, State, Zip	Tempe, AZ 85281
City, State, Zip	Chandler, AZ 85286	Phone:	480-966-5804
Phone:	480-782-2416	FAX:	480-967-7857
FAX:	480-782-2420		

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

14. CONFLICT OF INTEREST:

14.1. No Kickback. Contractor warrants that no person has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in Contractor's proposal to the City.

14.2. Kickback Termination. City may cancel any Agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a Contractor to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from City is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).

14.3. No Conflict: Contractor stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. GENERAL TERMS:

15.1. Ownership. All deliverables and/or other products of the Agreement (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by Contractor in performance of the Agreement) shall be the sole, absolute and exclusive property of City, free from any claim or retention of right on the part of Contractor, its agents, sub-contractors, officers or employees.

15.2. Entire Agreement. This Agreement, including all Exhibits attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.

15.3. Assignment: Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the City.

15.4. Amendments. The Agreement may be modified only through a written Agreement Amendment executed by authorized persons for both parties.

15.5. Independent Contractor. The Contractor under this Agreement is an Independent Contractor. Neither party to this Agreement shall be deemed to be the employee or agent of the other party to the Agreement.

15.6. No Parole Evidence. This Agreement is intended by the parties as a final and complete expression of their Agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

15.7. Authority: Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____, 2015.

FOR THE CITY OF CHANDLER

_____
Mayor

APPROVED AS TO FORM:

_____
City Attorney (kb)

ATTEST:

_____
City Clerk

SEAL

FOR THE CONTRACTOR

By: _____
Signature

ATTEST: If Corporation

_____
Secretary

EXHIBIT A
SPECIFICATIONS

Non Pop Valve Lid Description	Unit Of Measure
VALVE BOX, LID, POLYMER, NON POP, W/DEBRIS SKIRT, # NPR600-COLOR (BLUE, RED, PURPLE, ETC.)	EA
VALVE BOX, LID, POLYMER, NON POP, W/DEBRIS SKIRT, # NPR600-BLACK	EA

EXHIBIT B
PRICE SCHEDULE

Item	Description	Unit of Measure	Unit Price
1	VALVE BOX, LID, POLYMER, NON POP, W/DEBRIS SKIRT, #NPR600-COLOR, (BLUE, RED, PURPLE, ETC.)	EA	$36.08
2	VALVE BOX, LID, POLYMER, NON POP, W/DEBRIS SKIRT, #NPR600-BLACK (BLACK)	EA	$33.99