COOPERATIVE PURCHASING PROGRAM AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND THE CITY OF RICHLAND, WASHINGTON

THIS AGREEMENT is made and entered into by and between the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation located in Denton and Collin Counties, Texas (hereinafter referred to as "Plano"), and the **CITY OF RICHLAND**, a political subdivision of the State of Washington located in Benton County, Washington (hereinafter referred to as "Richland").

WHEREAS, this Agreement is authorized by Subchapter F, Chapter 271 of the Texas Local Government Code; and

WHEREAS, Section 271.102 of the Texas Local Government Code, authorizes local governments to participate in cooperative purchasing programs with other local governments to purchase goods or services off contracts currently existing between another local government and a vendor, and such process satisfies the state law competitive bid requirements; and

WHEREAS, each party has and will on an annual basis obtain competitive bids for the purchase of goods and services; and

WHEREAS, Plano and Richland desire to enter into a cooperative purchasing program which will allow each party to purchase goods and services under each other's competitively bid contracts pursuant to Subchapter F, Chapter 271 of the Texas Local Government Code; and

NOW, THEREFORE, Plano and Richland, for the mutual consideration hereinafter stated, agree as follows:

I.
EFFECTIVE DATE/TERM

This Agreement shall be effective upon execution by the parties. This Agreement shall continue in effect on an annual basis, unless one of the parties indicates in writing to the other party their intent to terminate this Agreement pursuant to **Section IV** before the end of the contract year in question.

II.
DUTIES OF PLANO

Plano agrees to participate in the Richland cooperative purchasing program, and agrees that it will buy goods and services from those vendors that Richland solicits for competitive bids. Plano also agrees to prepare, execute, and administer its own contract for the goods or services in question

with the vendor at the prices bid and accepted by Richland, and Richland shall not be a party to the agreement between vendor and Plano. Richland shall have no obligations for payment to vendor for any services or goods incurred by any party other than Richland. Any payments owed the vendor for services or goods shall be paid directly by Plano. Plano will be responsible for the vendor's compliance with provisions relating to the quality of items and terms of delivery, warranty enforcement, and any other terms or conditions of its agreement with the vendor.

III.
DUTIES OF RICHLAND

Richland agrees to participate in the Plano cooperative purchasing program, and agrees that it will buy goods and services from those vendors that Plano solicits for competitive bids. Richland also agrees to prepare, execute, and administer its own contract for the goods or services in question with the vendor at the prices bid and accepted by Plano, and Plano shall not be a party to the agreement between vendor and Richland. Plano shall have no obligations for payment to vendor for any services or goods incurred by any party other than Plano. Any payments owed the vendor for services or goods shall be paid directly by Richland. Richland will be responsible for the vendor's compliance with provisions relating to the quality of items and terms of delivery, warranty enforcement, and any other terms or conditions of its agreement with the vendor.

IV.
TERMINATION

This Agreement may be terminated at any time, with or without cause, by either party giving thirty (30) days advance written notice to the other party.

V.
NOTICE

Notice as required by this Agreement shall be in writing delivered to the parties by facsimile or certified mail at the addresses listed below. Each party shall notify the other in writing within ten (10) days of any change in the information listed in this paragraph.

PLANO

Diane Palmer-Boeck
Director of Procurement and Project Management
1520 K Avenue, Suite 370
Plano, Texas 75074
Telephone: (972) 941-7557
Facsimile: (972) 461-6826

RICHLAND

Cathy Robinson
Purchasing Manager
505 Swift Blvd., MS - 11
Richland, Washington 99352
Telephone: (509) 942-7710

VI.
HOLD HARMLESS; MUTUAL RESPONSIBILITY

Each party does hereby agree to waive all claims against, release, and hold harmless the other party and its respective officials, officers, agents, employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorneys fees, including all expenses of litigation or settlement, or causes of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this contract.

Plano and Richland agree and acknowledge that this Agreement does not create a joint venture, partnership, or joint enterprise, and that each party is not an agent of the other entity and that each party is responsible in accordance with the laws of the State of Texas for its own negligent or wrongful acts or omissions and for those of its officers, agents or employees in conjunction with the performance of services covered under this Agreement, without waiving any governmental immunity available to Plano or Richland under Texas law and without waiving any defenses of Plano or Richland under Texas law. The provisions of this section are solely for the benefit of Plano and Richland and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

VII.
ENTIRE AGREEMENT

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Agreement. This Agreement cannot be modified without written supplemental agreement executed by both parties.

VIII.
VENUE; GOVERNING LAW

Exclusive venue in the event litigation is required to enforce rights or responsibilities under this Agreement shall be in Collin County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

IX.
SEVERABILITY

The provisions of this Agreement are severable. In the event that any paragraph, section, subdivision, sentence, clause, or phrase of this agreement shall be found to be contrary to the law, or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of this Agreement. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice of its intent to terminate.

X.
AUTHORITY TO SIGN / CITY COUNCIL AUTHORIZATION

The undersigned officers and agents of the parties to this Agreement are duly authorized officials and possess the requisite authority to execute this Agreement on behalf of the parties hereto. Richland has executed this Agreement pursuant to the duly authorized Richland City Council Ordinance No. 48-15 § 1 dated September 1, 2015. Plano has executed this Agreement pursuant to the duly authorized Plano City Council Resolution No. 2016-6-5(R) dated June 13, 2016.

XI.
ASSIGNMENT AND SUBLETTING

The parties agree that the rights and duties contained in this Agreement will not be assigned or sublet without the prior written consent of both parties.

XII.
INTERPRETATION OF AGREEMENT

This is a negotiated Agreement. If any part of this Agreement is in dispute, the parties stipulate that the Agreement shall not be construed more favorably for either party.

XIII.
REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver of those rights or of any breach of this Agreement.

XIV.
CAPTIONS

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

XV.
COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Agreement is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Agreement to be executed.

XVI.
EFFECTIVE DATE

This Agreement shall be effective from and after the date of execution by the last signatory hereto as evidenced below.

IN WITNESS WHEREOF, the parties have executed this Agreement by signing below.

CITY OF RICHLAND, WASHINGTON

Date: 6/9/17

By: Cathy Robinson
Cathy Robinson, CPPB, CPPO
PURCHASING MANAGER

APPROVED AS TO FORM:

By: Heather Kintzley
Richland, CITY ATTORNEY

CITY OF PLANO, TEXAS

Date: 6/13/2017

By: Kellie D. Pendleton
for Diane Palmer-Boeck
DIRECTOR OF PROCUREMENT
AND PROJECT MANAGEMENT

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF WASHINGTON §
§
COUNTY OF BENTON §

This instrument was acknowledged before me on the 9 day of June, 2017 by **CATHY ROBINSON, Purchasing Manager** of the **CITY OF RICHLAND, WASHINGTON**, a political subdivision of the State of Washington located in Benton County, Washington, on behalf of said political subdivision.

MARIA HOPKINS
COMMISSION EXPIRES
NOTARY PUBLIC
05-15-18
STATE OF WASHINGTON

Maria Hopkins
Notary Public, State of Washington

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 13 day of June, 2017 by **DIANE PALMER-BOECK, Director of Procurement and Project Management** of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

COREY BRANT ISAACS
Notary Public, State of Texas
My Commission Expires
December 16, 2018

Notary Public, State of Texas