

Purchase Agreement for ARWEN Less Lethal Ammunition

This Agreement is entered into by the City of Tempe (the "City") and Police Ordnance Company Inc. ("Contractor"). This agreement has been assigned contract number 20-142-01 which should be referenced on any quotes or invoices.

The parties agree as follows:

1. **Products:** This contract shall provide for the purchase of less lethal ammunition to be utilized in the ARWEN launchers. The Products and Pricing are shown below:

ARWEN AR-1 Impact Baton, Standard Energy 74 meters per second.....\$24.99 each
ARWEN Value Impact Baton, Standard Energy, CSI Irritant.....\$33.71 each
ARWEN AR-PC-SE Propellant – Standard Energy, box of 50.....\$120.00 per box

The value of this contract over any annual period shall not exceed \$99,999. The City may add ammunition items to this contract that are solely available from the Contractor.
2. **Price:** Pricing shall be in accordance with the attached Notice of Award and shall be firm and unchanging for one year from date of award. Contractor may request price adjustment on the anniversary date of the agreement provided there is sufficient justification and documentation supporting the increase request. The City reserves the right to negotiate or decline any price adjustment request. Request for price increase must be made 30 days prior to expiration of the agreement. Freight charges may apply, however, shipments shall be FOB Destination to the following destination:

Tempe Police Department
SWAT Operations
120 East 5th Street
Tempe, AZ 85281
Attn: Andrew McCormick
3. **Term of Agreement:** The term of this Agreement shall commence on June 29, 2020 and continue for one year unless cancelled or extended as provided herein. The agreement may be mutually renewed for additional annual increments up to a maximum of four (4) years. The City may unilaterally extend this agreement for 90 days at its sole discretion.
4. **Agreement Termination:** At any time, this Agreement may be terminated for convenience without default by the City by providing a written 60-day notice of termination to the other party. The Contractor shall be reimbursed for any product or service expenses incurred through the date of termination.
5. **Default Provisions:** The Contractor shall be deemed in default under this Agreement upon the occurrence of any of the following events:
 - A. The Contractor provides equipment or services that does not meet the specifications of the Agreement and fails to cure such non-performance within 30 days (or sooner if deemed necessary by the City due to the circumstances of the default) after written notice from the City;
 - B. The Contractor fails to adequately perform the services set forth in the specifications of the Agreement and fails to cure such non-performance within 30 days (or sooner if deemed necessary by the City due to the circumstances of the default) after written notice from the City;
 - C. The Contractor fails to complete the work required or furnish the materials required within the time stipulated in the Agreement and fails to cure such non-performance within 30 days (or sooner if deemed necessary by the City due to the circumstances of the default) after written notice from the City;

- D. The Contractor fails to make progress in the performance of the Agreement and/or gives the City reason to believe that the Contractor will not or cannot perform to the requirements of the Agreement and fails to cure such non-performance within 30 days (or sooner if deemed necessary by the City due to the circumstances of the default) after written notice from the City.
- E. The Contractor fails to perform any other term or condition of this Agreement and fails to cure such non-performance within 30 days (or sooner if deemed necessary by the City due to the circumstances of the default) after written notice from the City

In case of default, the City may terminate the Agreement, in whole or in part, and/or may resort to any other remedy as provided by law. The City may also perform any test or analysis on materials (equipment/products) for compliance with the specifications of the Agreement. The Contractor shall pay the actual expense of testing if the results of any test or analysis indicate a material non-compliance with the specifications.

- 6. **Applicable Law:** This Agreement shall be governed by Arizona state, and the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this resultant Agreement or in statutes or ordinances pertaining specifically to the City. This Agreement shall be governed by State of Arizona law and suits pertaining to this Agreement may only be brought in courts located in Maricopa County, Arizona.
- 7. **Shipping Terms:** Prices shall be F.O.B. Destination to the delivery location(s) designated herein. Contractor shall retain title and control of all goods until they are delivered and the Agreement of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. The City will notify the Contractor promptly of any damaged materials and shall assist the Contractor in arranging for inspection.
- 8. **Warranties:** Contractor expressly warrants that all materials and/or goods delivered under the Contract shall conform to the specifications of this Contract, and be merchantable and free from defects in material and workmanship, and of the quality, size and dimensions specified herein. This express warranty shall not be waived by way of acceptance or payment by the City, or otherwise. Contractor expressly warrants the following:
 - A. All workmanship shall be finest and first-class;
 - B. All materials and goods utilized shall be new and of the highest suitable grade for its purpose; and
 - C. All services will be performed in a good and workmanlike manner. Contractor's warranties shall survive inspection, acceptance and/or payment by the City, and shall run to the City, its successors, agents and assigns.
- 9. **Infringement of Patent or Copyright:** The Contractor agrees to save, keep, hold harmless and fully indemnify the City and any of its officers and employees from any and all damages, costs, or expenses in law or equity, that may at any time arise out of or be set up for any infringement of the patent right, copyright, or trademark of any person, persons, or entity in consequences of use by the City, or by any of its officers, or agents or employees of Contractor supplied materials and of which the Contractor is not a patentee or signee or lawfully entitled to sell the same.

Contractor (Seller) agrees to indemnify and hold harmless the City (buyer) from any and all license, royalty and proprietary fees or costs, including legal costs, which may arise out of the City's (buyer's) purchase and use of goods supplied by Contractor (seller).

It is expressly agreed by seller that these covenants are irrevocable and perpetual.
- 10. **Insurance:**
 - A. **Insurance Required:** Prior to commencing services under this Contract, Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, subcontractors, or sub-subcontractors.

For Offerors with self-insurance, proof of self-insurance with minimum limits expressed below must be submitted on proper forms for evaluation prior to award of Contract.

A Contract Award Notice or Purchase Order will not be issued to a Vendor until receipt of all required insurance documents by the Procurement Office with such documents meeting all requirements herein. In addition, before any Contract renewal, all required insurance must be in force and on file with the Procurement Office. Contractor must submit required insurance within ten (10) calendar days after request by the Procurement Office or the award may be rescinded and another Vendor selected for award.

B. Minimum Limits of Coverage: Without limiting any obligations or liabilities, the Contractor, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance and with forms satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc., rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

i. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

a. Commercial General Liability

Commercial general liability insurance limit of not less than \$1,000,000 for each occurrence, with a \$2,000,000 general aggregate limit. The general aggregate limit shall apply separately to the services under this Contract or the general aggregate shall be twice the required per occurrence limit. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual coverage, including but not limited to the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office policy form CG0001 or its equivalent.

In the event the general liability policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance. In addition, the retro date shall be no later than the start date of the contract. The retro date shall be disclosed on the certificate of insurance.

Such policy shall contain a "severability of interests" provision.

b. Worker's Compensation

The Contractor shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of services; and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

In case services are subcontracted, the Contractor will require the subcontractor to provide worker's compensation and employer's liability to at least the same extent as provided by Contractor.

c. Automobile Liability

Commercial business automobile liability insurance with a combined single life or bodily injury and property damages of not less than \$1,000,000 per accident regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor services. Coverage will be at least as broad as coverage Code 1 "any auto". Insurance Service Office policy form CA0001 Y87 or any replacements thereof. Such coverage shall include coverage for loading and unloading hazards.

- C. **Additional Insured.** The insurance coverage, except for workers compensation and professional liability coverage, required by this Contract, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance afforded the Contractor shall be primary insurance. The additional insured wording on the commercial general liability policy will be at least as broad as Insurance Services Office policy forms CG2010 04/13 edition and CG2037 04/13 edition or their equivalent. The additional insured wording on the automobile liability policy will be at least as broad as Insurance Services Office policy form CA 20 48 or its equivalent. This provision and the naming of the city as an additional insured shall in no way be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(s).
- D. **Coverage Term.** All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted by the City. Failure to do so shall constitute a material breach of this Contract.
- E. **Primary Coverage.** Contractor's insurance shall be primary insurance to the City, and any insurance or self-insurance maintained by the City shall not contribute to it.
- F. **Claim Reporting.** Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.
- G. **Waiver.** The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the work or services of the Contractor.
- H. **Deductible/Retention.** The policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be disclosed by the contractor and shall not be applicable with respect to the coverage provided to the City under such policies. Contractor shall be solely responsible for deductible and/or self-insurance retention and the City, at its option, may require Contractor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
- I. **Certificates of Insurance.** Prior to commencing work or services under this Contract, Contractor shall furnish the City with certificates of insurance, or formal endorsements as required by the Contract, issued by the Contractor's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract number or name and shall provide for not less than thirty (30) days advance notice of cancellation, termination, or material alteration. Such certificates shall be sent directly to: Contract Administrator, City of Tempe, P. O. Box 5002, Tempe, AZ 85280.
- J. **Copies of Policies.** The City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the above policies and/or endorsements. The City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.
11. **Performance Standards:** Equipment shall operate in accordance with the performance criteria specified in the Contractor's literature, including the manufacturer's published specifications applicable to the equipment involved.
12. **Payments - After Acceptance of Delivery:** Payment in full shall be made to the Contractor within thirty (30) days after receipt and acceptance of delivery by the City and acceptance of an accurate invoice.
13. **Indemnification:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officer, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, services, or professional services of the Contractor, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions,

work, services, or professional services the Contractor may be legally liable in the performance of this Contract. Contractor's duty to hold harmless and indemnify the City, its agents, officers, officials and employees shall arise in connection with any claim for damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting from, or caused by any acts, errors, mistakes, omissions, work, services, or professional services in the performance of this Contract by Contractor or any employee of the Contractor or any other person (not the City) for whose acts, errors, mistakes, omissions, work, or services the Contractor may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. This provision shall survive the term of this Contract.

14. **Unauthorized Firearms & Explosives:** No person conducting business on City property shall carry a firearm or explosive of any type. This requirement shall also apply to persons who maintain a concealed weapons permit.
15. **Entirety of Agreement:** No prior stipulation, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the provisions of this Agreement.
16. **Construction:** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona and the City's Procurement Code.
17. **Antidiscrimination Policy:** Contractor agrees that it will comply with section 2-603(5) of the Tempe City Code ("TCC"), and will not refuse to hire or employ or bar or discharge from employment any person or discriminate against such person in compensation, conditions, or privileges of employment because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status. Contractor further agrees to provide a copy of its antidiscrimination policy to the Procurement Officer to demonstrate compliance with TCC section 2-603(5), or attest in writing to its compliance in accordance with the attached Affidavit of Compliance.
18. **Conflict of Interest:** This Agreement is subject to Section 38-511, Arizona Revised Statutes. This agreement may be canceled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City is an employee, consultant, or agent of any other party to this Agreement.
19. **Arbitration:** Notice is provided of Sections 12-1518 and 12-133. Arizona Revised Statutes.
20. **Dispute Resolution:** If a dispute arises under this Agreement, the parties agree to exhaust all applicable administrative remedies provided for under Arizona Law.
21. **Contractor's Records:** To the extent required by Section 35-214, Arizona Revised Statutes, Contractor agrees to retain all records relating to this Agreement. Contractor agrees to make those records available at all reasonable times for inspection and audit by the Auditor of the City of Tempe during the term of this Agreement and for a period of five (5) years after the completion of this Agreement.
22. **Availability of Funds for the Next Fiscal Year:** The City's obligation for performance of the Contract is contingent upon the availability of City, state and federal funds that are allocated or appropriated for payment obligations of the Contract. If funds are not allocated by the City or available for the continued use or purchase of services, work and/or materials set forth herein, the City may terminate the Contract. The City will use reasonable efforts to notify Contractor of such non-allocation affecting the obligations of the Contractor and/or City. The City shall not be penalized or adversely affected for exercise of its termination rights. Further, the City shall in no way be obligated or liable for additional payments or other damages as a result of such termination. No legal liability on the part of the City for any payment may arise for performance under this Contract.
23. **Employment Practices:** The Offeror expressly warrants that it has and will continue to comply in all respects with Arizona law concerning employment practices and working conditions, pursuant to A.R.S. § 23-211, *et seq.*, and all laws, regulations, requirements and duties relating thereto. Offeror further warrants that to the extent permitted by law, it will fully indemnify the City for any and all losses arising from or relating to any violation thereof.

24. **Employment Regulation Compliance:** Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Legal Arizona Workers Act (LAWA), and all amendments thereto, along with all attendant laws, rules and regulations. Contractor acknowledges that a breach of this warranty is a material breach of this Contract and Contractor is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.
25. **Contract Modifications:** This Agreement and resultant Contract may only be modified by a written contract modification issued by the Procurement Office and counter-signed by the Contractor. Contractors are not authorized to modify any portion of this Agreement or resulting Contract without the written approval of the Procurement Office and issuance of an official modification notice.
26. **Force Majeure:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under the Contract only in the event that and to the extent that such party's performance of the Contract is prevented by reason of force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, mobilization, labor disputes, civil disorders, fire, floods, lockouts, injunctions, failures or refusal to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
27. **No Waiver:** No breach of default hereunder shall be deemed to have been waived by the City, except by written instrument to that effect signed by an authorized agent of the City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after demand by the City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of the City. Acceptance by the City for any materials shall not bind the City to accept remaining materials, future shipments or deprive the City of the right to return materials already accepted. Acceptance by the City of delinquent or late delivery shall not constitute a waiver of a later claim for damages and/or bind the City for future or subsequent deliveries.
28. **Notices:** All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provision collectively called "Notices"), shall be in writing and shall be hand delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the party or parties to receive such notice as follows:

City of Tempe Procurement Office
Attn: Michael Greene
20 E. 6th Street (Second Floor)
P.O. Box 5002
Tempe, Arizona 85280

Police Ordnance Company, Inc.
Attn: Glenn Turpin
22 Riviera Drive, Markham, ON
Canada L3R 5M1

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, this the 30 day of June, 2020.

CITY OF TEMPE

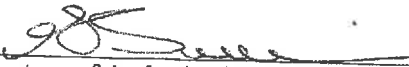


Procurement Administrator

6-30-2020

Date

CONTRACTOR (Police Ordnance Company, Inc.)



Signature of Authorized Person

Greg Sullivan

Printed or Typed Name of Authorized Person

July 3, 2020

Date