

	<p style="text-align: center;">FIRST COOPERATIVE PURCHASING AGREEMENT BETWEEN CITY OF GOODYEAR AND SENERGY HOLDINGS, LLC. CON-15-3219</p>	<p style="text-align: center;">PROCUREMENT OFFICE 190 N. Litchfield Road P.O. Box 5100 Goodyear, AZ 85338 Phone: 623-882-7845 Fax: 623-882-7890</p>
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THIS FIRST COOPERATIVE PURCHASING AGREEMENT (“Agreement”) is entered into by and between the City of Goodyear, an Arizona municipal corporation (“City”) and Senergy Holding, LLC, an Arizona corporation (“Contractor”). City and Contractor will collectively be referred to as the “Parties” and individually as a “Party”.

RECITALS

WHEREAS, after completing a competitive procurement process, the State of Arizona, (“State”) entered into Contract No. ADSP014-052198, effective January 31, 2012, with three (3) subsequent amendments with amendment dates of 10/18/12, 11/18/13, and 11/18/14 collectively referred to as the “State Contract” with the Contractor to provide Bulk Fuel. A copy of the State Contract is attached hereto as **Exhibit A** and incorporated herein by reference.

WHEREAS, the City is permitted, pursuant § 3-4-9 of the City of Goodyear Code and § R3-4-9.01 of the City of Goodyear Procurement Regulations, to purchase materials, services or construction under the State Contract, at its discretion, and the State Contract permits its cooperative use by other political subdivisions, pursuant to Special Terms and Conditions, Item 4, Eligible Agencies.

WHEREAS, the City and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging a cooperative contractual relationship under the State Contract, (ii) establishing the terms and conditions by which the Contractor may provide the City Bulk Fuel, as more particularly set forth in Section 2 below (“Order”), and (iii) setting the aggregate amount to be expended pursuant to this Agreement related to the Order.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and any other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Contractor agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date last signed below and shall remain in full force and effect until January 30, 2016. Pursuant to Special Terms and Conditions, Item 2, Contract Extension, this contract may be extended or renewed for consecutive additional one (1) year periods, not to exceed a total of two (2), subject to appropriations and mutual agreement of the Parties. The City has no obligation to extend or renew this contract, and any decision to do so is at the sole discretion of the City.
2. Order. The Contractor shall provide Bulk Fuel, agreed to by the Parties consistent with the State of Arizona contract. For the purpose of this Agreement and the Order provided by the Contractor, the City is the Eligible Agency and State of Arizona (as such term is defined under the State

Contract) and is afforded all of the rights and responsibilities as the Eligible Agency under the State Contract and related Order.

3. Compensation. The City shall pay Contractor an aggregate amount not to exceed Purchase Order for the Order at the rates as set forth in the State Contract.
4. Payments. The City shall pay the Contractor monthly based upon the work performed and completed to date, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and the State Contract, and (ii) document and itemize all work completed to date. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. Additionally, invoices submitted without referencing both this Agreement and the State Contract will be subject to rejection and may be returned.
5. Conflict of Interest. This Agreement is subject to cancellation by the City pursuant to A.R.S. § 38-511.
6. Applicable Law; Venue. In the performance of this Agreement, Contractor shall abide by and conform to any and all laws of the United States, the State of Arizona and the City of Goodyear, including but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal, state and local laws, rules and regulations applicable to this Agreement. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the laws of the State of Arizona without regard to conflicts or choice of law provisions. Any action arising out of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa.
7. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Order, invoices and/or the State Contract, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the State Contract (collectively, "Unauthorized Conditions), other than the City's project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the City of any of the Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the State Contract shall not alter or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.
8. Indemnification; Insurance. To the extent provided under the State Contract, the City shall be afforded all of the rights, privileges, insurance coverage and indemnifications afforded to State, and such rights, privileges, insurance coverage and indemnifications shall inure and apply with equal effect to the City under this Agreement including, but not limited to the Contractor's obligation to provide the indemnification and insurance. In any event, the Contractor shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the cost of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever

(“Claims”), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by, in whole or in part, or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

IN WITNESS WHEREOF, the person signing this Agreement below, warrants that they have full authority to do so and that their signatures shall bind the parties for which they sign.

CITY OF GOODYEAR

SENERGY HOLDINGS, LLC.

By: _____
Jacque Behrens, CPPB

By: _____
David P. Lueth

Title: Procurement Manager

Title: President

Date: _____

Date: _____

ATTEST

By _____
Maureen Scott, City Clerk

APPROVED AS TO FORM

By _____
Roric Massey, City Attorney