

**EXHIBIT
"A"**

**CITY OF ROUND ROCK AGREEMENT FOR
PURCHASE OF FACILITY MAINTENANCE, REPAIR,
AND OPERATION SUPPLIES AND SERVICES
WITH
WHITE CAP, LP**

THE STATE OF TEXAS	§	
	§	
CITY OF ROUND ROCK	§	KNOW ALL BY THESE PRESENTS:
	§	
COUNTY OF WILLIAMSON	§	
COUNTY OF TRAVIS	§	

THAT THIS AGREEMENT for the purchase of facility maintenance, repair, and operation (MRO) supplies and services (referred to herein as the "Agreement"), is made and entered into on this the _____ day of the month of _____, 2023 by and between the **CITY OF ROUND ROCK**, a Texas home-rule municipality, whose offices are located at 221 East Main Street, Round Rock, Texas 78664-5299 (referred to herein as the "City"), and **WHITE CAP, LP**, whose offices are located at 6250 Brook Hollow Parkway, Suite 100, Norcross, Georgia 30071 (referred to herein as "Vendor").

RECITALS:

WHEREAS, City desires to purchase facility maintenance, repair and operation (MRO) supplies and services; and

WHEREAS, City is a member of Sourcewell Cooperative and Vendor is an approved Sourcewell vendor; and

WHEREAS, the City desires to purchase certain goods and services from Vendor through Sourcewell Cooperative Contract No. 091422-WCP to receive pricing and services as set forth herein; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follow:

1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Vendor whereby City is obligated to buy specified services and Vendor is obligated to provide said services. The Agreement includes Vendor's discounts off price list (attached as Exhibit "A").

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods and Services** mean the specified supplies, materials, commodities, or equipment.

F. **Vendor** means White Cap, LP, its successors or assigns.

2.01 EFFECTIVE DATE, TERM

A. This Agreement shall be effective on the date this Agreement has been signed by each party hereto, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated or extended as provided herein.

B. This Agreement shall terminate November 8, 2026.

C. City reserves the right to review the relationship with Vendor at any time, and may elect to terminate this Agreement with or without cause or may elect to continue.

3.01 CONTRACT DOCUMENTS AND EXHIBITS

The goods and services which are the subject matter of this Agreement are described in Exhibit "A" and, together with this Agreement, comprise the Contract Documents. Any inconsistencies or conflicts in the contract documents shall be resolved by giving preference to the terms and conditions set forth in pages one (1) through nine (9) of this Agreement.

4.01 ITEMS

A. The goods and services which are the subject matter of this Agreement are described generally in the attached Exhibit "A."

B. This Agreement shall evidence the entire understanding and agreement between the parties and shall supersede any prior proposals, correspondence or discussions.

C. Vendor shall satisfactorily provide all deliverables described in Exhibit "A" within the contract term specified. A change in the Scope of Services or any term of this Agreement, including bonding requirements, must be negotiated and agreed to in all relevant details, and must be embodied in a valid Supplemental Agreement as described herein.

5.01 COSTS

A. City agrees to pay for supplies during the term of this Agreement at the pricing set forth at in Exhibit "A." Vendor specifically acknowledged and agrees that City is not obligated to use or purchase any estimated annual quantity of goods or services. Only if, and when needed by City, the costs listed on Exhibit "A" shall be the basis of any charges collected by Vendor.

B. The City shall be authorized to pay the Services Provider an amount not-to-exceed **Three Hundred Thousand and No/100 Dollars (\$300,000.00)** for the term of this Agreement.

6.01 INVOICES

All invoices shall include, at a minimum, the following information:

- A. Name and address of Vendor;
- B. Purchase Order Number;
- C. Description and quantity of items received or services provided; and
- D. Delivery or performance dates.

7.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the services as determined by City's budget for the fiscal year in question. City may effect such termination by giving Vendor a written notice of termination at the end of its then current fiscal year.

8.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Vendor will be made within thirty (30) days of the day on which City receives the performance, supplies, materials, equipment, and/or deliverables, or within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which

City receives a correct invoice for the performance and/or deliverables or services, whichever is later. Vendor may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b); however, this Policy does not apply to payments made by City in the event:

- A. There is a bona fide dispute between City and Vendor, a contractor, subcontractor or supplier about the goods delivered or the service performed that cause the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- D. Invoices are not mailed to City in strict accordance with instructions, if any, on the purchase order or the Agreement or other such contractual agreement.

9.01 GRATUITIES AND BRIBES

City may, by written notice to Vendor, cancel this Agreement without liability to Vendor if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Vendor or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Vendor may be subject to penalties stated in Title 8 of the Texas Penal Code.

10.01 TAXES

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Vendor's charges.

11.01 ORDERS PLACED WITH ALTERNATE SERVICES PROVIDERS

If Vendor cannot provide the goods or services as specified, City reserves the right and option to obtain the products from another supplier or suppliers.

12.01 CITY'S REPRESENTATIVE

City hereby designates the following representative authorized to act in its behalf with regard to this Agreement:

Joe Molina
Logistics Officer
Utilities and Environmental Services
3400 Sunrise Road
Round Rock, TX 78665
(512) 230-4496
jmolina@roundrocktexas.gov

13.01 INSURANCE

Vendor shall meet all City of Round Rock Insurance Requirements as set forth at: http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf.

14.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

15.01 DEFAULT

If Vendor abandons or defaults under this Agreement and is a cause of City purchasing the specified goods or services elsewhere, Vendor agrees that it may be charged the difference in cost, if any, and that it will not be considered in the re-advertisement of the service and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Vendor shall be declared in default of this Agreement if it does any of the following:

- A. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- B. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or
- C. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

16.01 TERMINATION AND SUSPENSION

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days' written notice to Vendor.

B. In the event of any default by Vendor, City has the right to terminate this Agreement for cause, upon ten (10) days' written notice to Vendor.

C. Vendor has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City, or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City's delivery of the referenced notice to Vendor, Vendor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Vendor shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Vendor that portion of the charges, if undisputed. The parties agree that Vendor is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

17.01 INDEMNIFICATION

Vendor shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Vendor, or Vendor's agents, employees or subcontractors, in the performance of Vendor's obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Vendor (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

18.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Vendor, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. In accordance with Chapter 2271, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel and will not boycott Israel during the term of this contract. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not boycott Israel and will not boycott Israel during the term of this Agreement.

C. In accordance with 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has a provision verifying that it: (1) does not have a practice, policy, guidance, or directive that

discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

D. In accordance with 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has a provision verifying that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not boycott energy companies, and it will not boycott energy companies during the term of this Agreement.

19.01 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

20.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

1. When delivered personally to the recipient's address as stated in this Agreement; or
2. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Vendor:

White Cap, LP
6250 Brook Hollow Parkway
Suite 100
Norcross, Georgia 30071

Notice to City:

City Manager
221 East Main Street
Round Rock, TX 78664

AND TO:

Stephanie L. Sandre, City Attorney
309 East Main Street
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Vendor.

21.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

22.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Vendor and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

23.01 DISPUTE RESOLUTION

City and Vendor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

24.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

25.01 MISCELLANEOUS PROVISIONS

Standard of Care. Vendor represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

Time is of the Essence. Vendor understands and agrees that time is of the essence and that any failure of Vendor to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Vendor shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this

Agreement. Where damage is caused to City due to Vendor's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

Force Majeure. Neither City nor Vendor shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given and all reasonable efforts undertaken to mitigate its effects.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, City and Vendor have executed this Agreement on the dates indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

White Cap, LP

By: Ben Mayo
Printed Name: BEN Mayo
Title: District Manager
Date Signed: 4-18-2023

Attest:

By: _____
Meagan Spinks, City Clerk

For City, Approved as to Form:

By: _____
Stephanie L. Sandre, City Attorney

Table 10: Payment Terms and Financing Options

Line Item	Question	Response
53	Describe your payment terms and accepted payment methods.	Net 30 Credit Terms or Cash Payments (Cash, Check, Credit card). We make it extremely easy for our Sourcwell members to set up new accounts whether they prefer credit or cash options. Many Sourcwell members are now also issuing White Cap BPAs (Blanket Purchase Agreements) for day-to-day business tied to our Sourcwell contract.
54	Describe any leasing or financing options available for use by educational or governmental entities.	White Cap does not normally provide any financing or leasing options with exception of a few manufacturer programs. We actively promote our Sourcwell partner NCL Government Capital for this requirement.
55	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	White Cap is attaching a standard quote form, a standard order form, and a standard proof of delivery form that we are currently using with our Sourcwell customers. Please note that the Sourcwell member name and number along with our contract number is clearly listed for any audit purposes.
56	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcwell participating entities for using this process?	Yes. No additional cost to our valued Sourcwell members.

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcwell Price and Product Change Request Form.

Line Item	Question	Response
57	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcwell discounted price) on all of the items that you want Sourcwell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	We are offering Sourcwell members a White Cap list less discount price offering for our entire catalog. We feel that this pricing model is the most clear, easiest to use and certainly the best value for our Sourcwell members. This model also allows White Cap to be able to better manage our contract pricing through high inflationary periods like we are experiencing today.
58	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	Discounts range from 0% up to 45% off of White Cap's list price for our Sourcwell members.
59	Describe any quantity or volume discounts or rebate programs that you offer.	Any quantity or volume discounts would be reviewed on a case by case basis since we are offering deeply discounted pricing already to Sourcwell members. We are not offering a rebate program to Sourcwell members since we are incurring the administrative fee.
60	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	At White Cap, we pride ourselves on being able to "go the extra mile" for our customers and find them what they need to get the job done even if it means sourcing beyond our large selection of stocked product. Due to our buying power and relations with our primary manufacturers, we are able to do this as another value add for the customer and make our company a one stop shop. For "sourced" products, we would supply a quote for each such individual request.
61	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	There are no additional costs associated with our response.

62	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	<p>NA -There are no travel expense, delivery or shipping* as an additional cost to the Sourcewell members. Prepaid freight will be offered on all standard stocked items shipped via ground transportation. For standard stock product, our delivery commitment within a 35 mile range from a stocking location to our customers is typically next day delivery.</p> <p>*Other freight charges will be incurred for services such as expedited delivery, air freight, freight collect, sourced or special orders, export orders, hazardous materials, buyer's carrier, shipments outside the contiguous U.S. or other special handling by the carrier.</p>
63	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	<p>White Cap has 4 branches throughout Hawaii in Honolulu, Kahului, Hilo and Kailua-Kona. We have 40+ branches in Canada under the Brafasco trade name. Hawaii and Canada dictate their own pricing and freight terms.</p> <p>Our company does not have any physical branches in Alaska, but we service the area on a regular basis from our State of Washington branches. Some additional freight charges may apply when shipping to Alaska or other US Territories*.</p> <p>*Other freight charges will be incurred for services such as expedited delivery, air freight, freight collect, sourced orders, export orders, hazardous materials, buyer's carrier, shipments outside the contiguous U.S. or other special handling by the carrier.</p>
64	Describe any unique distribution and/or delivery methods or options offered in your proposal.	<p>For standard, stock product our delivery commitment within a 35 mile range from a stocking location to our customers is typically next day delivery. In this scenario, we will be using our own fleet of delivery trucks owned by our company which we feel is somewhat unique and sets us apart from our competition. Normal, standard transit times apply should we have to send via an alternate carrier method (UPS, FedEx, etc.) or freight line. We also have a centralized logistics team that handles any special requests and negotiates freight rates so we can pass these savings onto our customers.</p>

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
65	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	<p>White Cap has special pricing heavily discounted up to 45% off of what we normally offer as our market price on all our stocked product categories. This pricing has been very popular with our Sourcewell customers. Also, we are able to go lower if need for large buys but of course never higher than our contract pricing. Our existing Sourcewell pricing file is attached.</p>