



CITY OF PHOENIX

AVIATION DEPARTMENT

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**INVITATION FOR BID
AVN IFB 23-004(AT)**

**MAINTENANCE AND REPAIR OF VEHICLE BARRIERS, SECURITY GATES,
AND CABLE BARRIERS - REQUIREMENTS CONTRACT**



TABLE OF CONTENTS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

TABLE OF CONTENTS

SOLICITATION RESPONSE CHECK LIST.....3
SECTION I – INSTRUCTIONS..... 4
SECTION II – STANDARD TERMS AND CONDITIONS.....17
SECTION III – SPECIAL TERMS & CONDITIONS..... 35
SECTION IV – INSURANCE AND INDEMNIFICATION..... 53
SECTION V – SCOPE.....57
SECTION VI –SUBMITTALS..... 66
SECTION VII – EXHIBITS.....78



SOLICITATION RESPONSE CHECK LIST

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

Please read before continuing to the offer document. This list may not include every requirement; the purpose is to assist vendors, but vendors are expected to read and comply with the entire solicitation.

SOLICITATION RESPONSE CHECK LIST

Check off each of the following as the necessary action is completed.

- All forms have been completed and signed, including Solicitation Disclosure form.
- All Submittals are included.
- Reviewed and verified prices offered.
- Checked price extensions and totals.
- Included any required drawings or descriptive literature.
- If required, checked and included the amount of the offer surety.
- Reviewed the insurance requirements, if any, to assure compliance.
- Included the specified number of copies of the offer as indicated in Submittal section.
- Included signed addenda, if any.
- Addressed the mailing envelope to the Procurement Officer on the solicitation front page, at the address listed.
- The mailing envelope clearly shows your company name and address, the solicitation number, solicitation title and the offer opening date.

Mail the response timely – City must receive offers no later than the date and time indicated in the Schedule of Events or addenda.



SECTION I – INSTRUCTIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

1. DESCRIPTION:

- 1.1. The City of Phoenix, Aviation Department (“City”, “Aviation Department”) invites sealed offers from qualified vendors for the installation, inspection, repair, and maintenance of vehicle barriers, turnstiles, security gates, gate operating systems, controls, bollards, cable barriers, and their supporting infrastructure at Phoenix Sky Harbor International Airport, Deer Valley Airport and Goodyear Airport (collectively referred to as “Airports”) on an “as-needed” basis, for a five (5)-year period commencing on or about **January 1, 2023**, in accordance with the specifications and provisions contained herein.
- 1.2. The Aviation Department is a 24-hour-a-day/7-days-a-week/365-days-a-year operation and subject to Federal Aviation Administration (FAA) security mandates. The Contractor and its employees will be required to work and operate a motor vehicle within the secured areas of the Airport. All staff working under this contract must pass a Security Threat Assessment and Criminal Background Check as well as take the Airfield Driver Training Program and pass an interactive test to obtain the Airfield Driving permit endorsement on their security badge.
- 1.3. This solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800-367-8939 for assistance.
- 1.4. Notwithstanding the foregoing, this Agreement will terminate upon the earliest occurrence: by reaching the end of the term including any extensions exercised, or termination pursuant to the provisions of this Agreement.

2. CITY’S VENDOR SELF-REGISTRATION AND NOTIFICATION:

Vendors must be registered in the City’s procurePHX Self-Registration System at <https://www.phoenix.gov/procure> to respond to solicitations and access procurement information. The City may, at its sole discretion, reject any offer from an Offeror who has not registered.



SECTION I – INSTRUCTIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

3. SCHEDULE OF EVENTS:

Table with 3 columns: ACTIVITY (All times are local Phoenix time), DATE, and LOCATION. Rows include Solicitation Issue Date, Pre-Offer Conference, Site Visit, Written Inquiries Due Date, and Offer Due Date with specific dates and submission instructions.

The City reserves the right to change dates and/or locations as necessary, and the City does not always hold a Pre-Offer Conference or Site visit.

4. MINIMUM QUALIFICATIONS:

4.1. LICENSE: Offerors must possess a valid license for either a C-14 – Fencing license or a CR-14 – Fencing specialty dual license from the Arizona Registrar of Contractors (ROC). The license must be maintained and be in good standing for the life of the contract. A copy of the required License must be submitted at the time of bid submittal. Submittals received without the required License will be considered non-responsive.

NOTE: If the ROC changes the type(s) of license(s) required to provide this service, the Offeror will be required to obtain said license(s). Failure to obtain and maintain the required license(s) required by the ROC throughout the term of the contract will be deemed a material breach.

4.2. Offeror must be licensed for and active in the business of providing vehicle barrier, turnstile, and security gate operating system services for a minimum of five (5) consecutive years within the last ten (10) years. This includes the installation, inspection, repair and maintenance of vehicle barriers, turnstiles, security gates, cable barriers, and their associated operating systems. The “Experience” qualification will also be verified through the references provided in the References in Section VI-Submittals of this solicitation.



SECTION I – INSTRUCTIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

- 4.3.** The Aviation Department is subject to Federal Aviation Administration (FAA) security mandates. The Contractor and its employees will be required to work and operate a motor vehicle within the secured areas of the Airport. All staff working under this contract must pass a Security Threat Assessment and Criminal Background Check as well as take the Airfield Driver Training Program and pass an interactive test to obtain the Airfield Driving permit endorsement on their security badge.
- 4.4.** Offeror must provide an Executive Summary, not to exceed two (2) pages (double-sided), describing how the company meets these minimum qualifications, to include:
- 4.4.1.** Describe company's experience (including years of experience) in the installation, inspection, repair and maintenance of vehicle barriers, turnstiles, security gates, and cable barriers, and their associated operating systems. in a facility(ies) and/or environment that operates 24/7, 365 days per year.
- 4.4.2.** List all contracts Offeror has had and/or currently having that is related to the service scope of this Solicitation. Offeror must include each contract period and service scope/activities provided for each contact.
- 4.5. SERVICE REPRESENTATIVE:** Offeror must assign a service representative who will be the Airport's primary contact under this contract.
- 4.5.1.** Offeror's assigned service representative must have a minimum of five (5) years' experience installing, inspecting, repairing, and maintaining vehicle barriers, turnstiles, security gates, cable barriers, and their associated operating systems.
- 4.5.2.** A copy of a resume (not to exceed two (2) pages, (double-sided) for the proposed service representative must be submitted at time of bid submittal.
- 4.5.3.** Offeror's assigned service representative may not be changed during the course of the solicitation process, including the time up to contract award. After contract award, the assigned service representative may only be changed with the **Aviation Department Representative (ADR)**'s approval. A resume of the proposed replacement service representative must be submitted to the ADR for prior approval.



SECTION I – INSTRUCTIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

5. OBTAINING A COPY OF THE SOLICITATION AND ADDENDA:

Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/>. Internet access is available at all public libraries. Any interested offerors without internet access may obtain this solicitation by calling the Procurement Officer or picking up a copy during regular business hours at the City of Phoenix Aviation Department, Contracts & Services Division, 2485 East Buckeye Road, Phoenix, AZ 85034. It is the Offeror's responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their offer.

6. PREPARATION OF OFFER:

Submittals shall be received on or before the offer due date and time specified above in Section 3, Schedule of Events.

- 6.1.** All forms provided in Submittal Section must be completed and submitted with the offer. The signed and completed Solicitation Disclosure form must be included or your offer may be deemed non-responsive.
- 6.2.** It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of the offer must be initialed in original ink by the authorized person signing the offer. No offer will be altered, amended or withdrawn after the specified offer due date and time. The City is not responsible for Offeror's errors or omissions.
- 6.3.** All time periods stated as a number of days will be calendar days.
- 6.4.** It is the responsibility of all Offerors to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:
 - 6.4.1.** Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
 - 6.4.2.** Study and carefully correlate Offeror's knowledge and observations with the solicitation and other related data.
 - 6.4.3.** Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in or between the solicitation and other related documents.



SECTION I – INSTRUCTIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

- 6.4.4.** The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.
- 6.4.5.** Offerors are reminded that the specifications stated in the solicitation are the minimum level required and that offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Offers offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.
- 6.4.6.** Offer responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products offered. Offers submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.
- 6.4.7.** Prices will be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price will prevail unless obviously in error.

7. EXCEPTIONS:

Offeror must not take any exceptions to any terms, conditions or material requirements of this solicitation. Offers submitted with exceptions may be deemed non-responsive and disqualified from further consideration in the City's sole discretion. Offerors must conform to all the requirements specified in the solicitation. The City encourages Offerors to send inquiries to the procurement officer rather than including exceptions in their Offer. See Inquiries and Schedule of Events.

8. INQUIRIES:

All questions that arise relating to this solicitation should be directed via email to the Procurement Officer and must be received by the due date indicated in the Schedule of Events. The City will not consider questions received after the deadline.



SECTION I – INSTRUCTIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

No informal contact initiated by Offerors on the proposed service will be allowed with members of City's staff from date of distribution of this solicitation until after the resulting Contract(s) are awarded or responses are rejected, and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation. All questions concerning, or issues related to this solicitation must be presented **in writing**.

The Procurement Officer will answer written inquiries in an addendum and publish any addendums on the Procurement Website.

9. ADDENDA:

The City of Phoenix will not be responsible for any oral instructions made by any employees or officers of the City of Phoenix regarding this solicitation. Any changes will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the offer submittal.

10. BUSINESS IN ARIZONA:

The City will not enter contracts with Offerors (or any company(ies)) not granted authority to transact business, or not in good standing, in the state of Arizona by the Arizona Corporation Commission, unless the offeror asserts a statutory exception prior to entering a contract with the City.

11. LICENSES:

If required by law for the operation of the business or work related to this Offer, Offeror must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

12. CERTIFICATION:

By signature in the offer section of the Offer and Acceptance page(s), Offeror certifies:

- The submission of the offer did not involve collusion or other anti-competitive practices.
- The Offeror must not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.

13. SUBMISSION OF OFFER – HARD COPY SUBMISSION:

Offers must be in possession of the Aviation Department on or prior to the exact time and date indicated in the Schedule of Events. Late offers will not be considered. The prevailing clock will be the City Aviation City Department's clock.



SECTION I – INSTRUCTIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

Offers must be submitted in a sealed envelope and the following information should be noted on the outside of the envelope:

- 13.1. Offeror's Name
- 13.2. Offeror's Address (as shown on the Certification Page)
- 13.3. Solicitation Number
- 13.4. Solicitation Title
- 13.5. Offer Opening Date

All offers must be completed in ink or typewritten. Unless submitted electronically Include the number of copies that are required as indicated in the Submittal section.

For "In-Person" and "via Carrier (i.e. USPS, FedEx, UPS, etc.)" Delivery: Offers will be received at the Aviation Headquarters Building located at 2485 East Buckeye Road, Phoenix AZ 85034 in the LOBBY during normal business hours (8:00 am – 5:00 pm Local Phoenix, AZ Time). Offer should be clearly identified outside of the package as designated above.

If you are using a third-party shipping company (USPS, FedEx, UPS, etc.) to submit via Carrier delivery, please make sure to confirm with the third-party delivery service provider that the delivery will not be affected by changes resulting from COVID-19. The Offeror is responsible for managing potential delays due to COVID-19. The City does not make exceptions for delays caused by the Carrier. It is Offeror's responsibility to ensure that the Offer is timely submitted.

14. **SUBMISSION OF OFFER – ELECTRONIC BID SUBMISSION:**

Due to the COVID-19 pandemic, the City of Phoenix Aviation Department is accepting electronic Offers for this solicitation, in addition to other methods of submitting sealed offer packages (hard copies). Offerors are responsible for submitting the electronic offer on or before the Solicitation Deadline.

For "Electronic" Submittal: Offers must be submitted via email to avn.procurephx@phoenix.gov AND amy.m.turner@phoenix.gov . Due to file size limitations of 100mb for electronic transmission (for sending or receiving), offers sent by email may need to be sent in parts with multiple emails. The date and time on the email(s) as received/stamped by the City's inbox will provide proof of submission and verification whether the Offer (including all parts if sent in multiple emails) was received on or prior to the Solicitation Deadline. The solicitation number and title **"AVN IFB 23-004 Maintenance and Repair of Vehicle Barriers"** must be included on the subject line of the email when submitting your Offer.



SECTION I – INSTRUCTIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

Offeror may submit electronic signatures on documents that do not require notarization. Please ensure that electronically signed documents are submitted in separate pdf files. The City does not accept electronic signatures for notarized documents, including bonds, guaranties, powers of attorney or affidavits. These documents must be submitted in paper form (hard copy) with original or “wet-signatures” at time of the Solicitation Deadline and submission must comply with the requirements in Paragraph 13.

It is the responsibility of the Offeror to ensure that the Offer is timely, including confirming that there are no technical reasons that any Offer submitted electronically may be delayed

15. **WITHDRAWAL OF OFFER:**

At any time prior to the solicitation due date and time, an Offeror (or designated representative) may withdraw the offer by submitting a request in writing and signed by a duly authorized representative.

16. **OFFER RESULTS:**

Due to the national COVID-19 pandemic emergency and in compliance with the Center of Disease Control and Prevention (CDC) and the Arizona Department of Health Services recommendations for health, safety, and social distancing, all Aviation Department public openings will be held via remote telephone and video access until further notice.

The bid openings will take place on their designated date and time indicated in the Schedule of Events, through remote video and telephone conference with the link and dial-in phone number below:

Meeting Link:

<https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=m4e82cfee53b7f371090264ab8a6a3bcc>

Join by phone: +1-415-655-0001 US Toll

Access code: 2450 279 0498

The name of each Offeror, and the price may be read and/or viewed. Offers are not available for public inspection until after the City has posted the award recommendation on the City’s website.



SECTION I – INSTRUCTIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

The City will post a preliminary offer tabulation on the City's website: <https://solicitations.phoenix.gov/Awards>, within five calendar days of the offer opening. The City will post the information on the preliminary tabulation as it was read during the offer opening. The City makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the City has reviewed the offers, the City will post an award recommendation on the website. The City will not provide any further notification to unsuccessful Offerors.

17. PRE-AWARD QUALIFICATIONS:

17.1. Minimum Qualification: Offeror must have met all minimum qualifications outlined in this solicitation satisfactorily.

17.2. Upon notification of an award the Offeror will have **20** calendar days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this solicitation. Insurance requirements are non-negotiable.

18. AWARD OF CONTRACT:

18.1. Unless otherwise indicated, award(s) will be made to the **lowest grand total in paragraph 7, Bid Price Schedule in Section VI, Submittals**, and the most responsive, responsible Offeror(s) who are regularly established in the service, or providing the goods, contained in this solicitation and who have demonstrated the ability to perform in an acceptable manner.

18.2. Factors that may be considered by the City include:

18.3. Technical capability of the Offeror to accomplish the scope of work required in the Solicitation. This may include performance history on past and current government or industrial contracts; and,

18.4. Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation; and,

18.5. Safety record, including complaints or investigations; and,

18.6. Offeror history of complaints, and termination for convenience or cause, litigation or lawsuits.

18.7. Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.



SECTION I – INSTRUCTIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

18.8. A response to a solicitation is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City’s solicitation. Offers do not become contracts until they are executed by the Deputy Aviation Director or Department Director. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.

19. CITY’S RIGHT TO DISQUALIFY FOR CONFLICT OF INTEREST:

The City reserves the right to disqualify any Offeror based on any real or apparent conflict of interest that is disclosed by the offer submitted or any other data available to the City. This disqualification is at the sole discretion of the City. Any Offeror submitting an offer herein waives any right to object now or at any future time, before any agency or body, including but not limited to, the City Council of the City of Phoenix or any court.

20. SOLICITATION TRANSPARENCY POLICY:

20.1. Commencing on the date and time a solicitation is published, potential or actual offerors or respondents(including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under Arizona Statutes, until the resulting contract(s) are awarded to all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or similar solicitation

20.2. As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff.

20.3. Offerors may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

20.4. With respect to the selection of the successful Offerors, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.



SECTION I – INSTRUCTIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

20.5. This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. **OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED.** After official Notice is received by the City for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.

20.6. “To discuss” means any contact by the Offeror, regardless of whether the City responds to the contact. Offerors that violate this policy will be disqualified until the resulting contract(s) are awarded, or all offers, or responses are rejected, and the solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

21. PROTEST PROCESS:

21.1. Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an addendum to the solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City’s best interests to set new deadlines, amend the solicitation, cancel or re-bid.

21.2. Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.

21.3. Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.

21.4. Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The City will post recommendations on the City’s website to award the contract(s) to an Offeror(s). Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the City’s full and final discretion.

21.5. All protests will be in writing, filed with the Procurement Officer identified in the solicitation and include the following:



SECTION I – INSTRUCTIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

- 21.5.1.** Identification of the solicitation number;
- 21.5.2.** The name, address and telephone number of the protester;
- 21.5.3.** A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
- 21.5.4.** The form of relief requested; and
- 21.5.5.** The signature of the protester or its authorized representative.

21.6. The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is complete. All protests and appeals must be submitted in accordance with the City's Procurement Code, (Phoenix City Code, Ch. 43) and any protests or appeals not submitted within the time requirements will not be considered. Protests must be filed with the Procurement Officer.

22. PUBLIC RECORD:

All Offers submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to Arizona State law. If an Offeror believes that a specific section of its Offer response is confidential, the Offeror will isolate the pages marked confidential in a specific and clearly labeled section of its Offer response. An Offeror may request specific information contained within its Offer is treated by the Procurement Officer as confidential provided the Offeror clearly labels the information "confidential." To the extent necessary for the evaluation process, information marked as "confidential" will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Offerors as "confidential" available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify the Offeror in writing of any request to view any portion of its Offer marked "confidential." The Offeror will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Offeror does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

23. LATE OFFERS:

Late Offers Late Offers must be rejected, except for good cause. If a late Offer is submitted, the Department will document the date and time of the submittal of the late Offer, keep the Offer and notify the Offeror that its Offer was disqualified for being late.



SECTION I – INSTRUCTIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

24. RIGHT TO DISQUALIFY:

The City reserves the right to disqualify any Offeror who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The City further reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest that is disclosed by the Offeror submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of a solicitation response, the Offeror waives any right to object now or at any future time, before any agency or body including, but not limited to, the City Council of the City or any court as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City. The City reserves the right to replace the disqualified Offeror.

25. CONTRACT AWARD:

The City reserves the right to award a contract by individual line items, by group, all or none, or any other combination most advantageous to the City. The City reserves the right to multiple award.

26. DETERMINING RESPONSIVENESS AND RESPONSIBILITY:

26.1. Offers will be reviewed for documentation of any required qualifications, and completeness and compliance with the solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

26.2. Responsiveness: Nonresponsive Offers will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers will render an Offer nonresponsive.

26.3. Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the Offeror, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible Offeror. Responsibility includes the Offeror's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.

27. EQUAL LOW OFFER:

Contract award will be made by putting the names of the tied vendors in a cup for a blind drawing limited to those bidders with tied offers. If time permits, the offerors involved will be given an opportunity to attend the drawing. The drawing will be witnessed by at least three persons, and the contract file will contain the names and addresses of the witnesses.



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

- Shall, Will, Must:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of Offer as non-responsive.
- Should:** Indicates something that is recommended but not mandatory. If the Contractor fails to provide recommended information, the City may, at its sole option, ask the Contractor to provide the information or evaluate the offer without the information.
- May:** Indicates something that is not mandatory but permissible.

For purposes of this solicitation, the following definitions will apply:

- "A.R.S." Arizona Revised Statute
- "Buyer" or "Procurement Officer" City of Phoenix staff person responsible for the solicitation. The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor's performance under this contract.
- "City" The City of Phoenix
- "Contractor" The individual, partnership, or corporation who, as a result of the competitive process, is awarded a contract by the City of Phoenix.
- "Contract" or "Agreement" The legal agreement executed between the City of Phoenix, AZ and the Contractor.
- "Days" Means calendar days unless otherwise specified.
- "Deputy Aviation Director" The contracting authority for the City of Phoenix, AZ, authorized to sign contracts and amendments thereto on behalf of the City of Phoenix, AZ.



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

“Employer”	Any individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and employs one or more employees in this state. Employer includes this state, any political subdivision of this state and self-employed persons. In the case of an independent contractor, employer means the independent contractor and does not mean the person or organization that uses contract labor. (A.R.S. 23-211).
Good Cause	Substantial grounds or evidence based upon facts not in dispute as determined by the Procurement Officer that the failure by an aggrieved party, an offeror or a respondent to submit a timely offer, response, protest or appeal was beyond its control due to misinformation relayed in writing by a City employee.
“Offer”	Means a response from a supplier, contractor or service provider to a solicitation request that, if awarded, binds the supplier, contractor or service provider to perform in accordance with the contract. Same as bid, proposal, quotation or tender.
“Offeror”	Any Vendor, Seller or Supplier submitting a competitive offer in response to a solicitation from the City. Same as Bidder or Proposer.
“Solicitation”	Means an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Quotations (RFQ), Request for Qualifications (RFQu) and request for sealed bids, or any other type of formal procurement which the City makes public through advertising, mailings, or some other method of communication. It is the process by which the City seeks information, proposals, bids or quotes from suppliers.
“Suppliers”	Firms, entities or individuals furnishing goods or services to the City.
“Vendor or Seller”	A seller of goods or services.



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

2. CONTRACT INTERPRETATION:

- 2.1. APPLICABLE LAW:** This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.
- 2.2. CONTRACT ORDER OF PRECEDENCE:** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:
- 2.2.1.** Special terms and conditions
 - 2.2.2.** Standard terms and conditions
 - 2.2.3.** Amendments
 - 2.2.4.** Statement or scope of work
 - 2.2.5.** Specifications
 - 2.2.6.** Attachments
 - 2.2.7.** Exhibits
 - 2.2.8.** Instructions to Contractors
 - 2.2.9.** Other documents referenced or included in the Solicitation
- 2.3. ORGANIZATION – EMPLOYMENT DISCLAIMER:** The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the agreement are considered to be City's employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons and will save and hold the City harmless with respect thereto.
- 2.4. SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.
- 2.5. NON-WAIVER OF LIABILITY:** The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

2.6. PAROL EVIDENCE: This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

3. CONTRACT ADMINISTRATION AND OPERATION:

3.1. RECORDS: All books, accounts, reports, files and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Phoenix office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements vendor has in place.

3.2. DISCRIMINATION PROHIBITED: Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended.

Any contractor, in performing under this contract, will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age or disability nor otherwise commit an unfair employment practice. The supplier and/or lessee will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this agreement entered into by supplier/lessee.

3.3. EQUAL EMPLOYMENT OPPORTUNITY AND PAY: In order to do business with the City, Contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Contractor will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

- 3.3.1. For a Contractor with 35 employees or fewer:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, Contractor agreements or subleases of this agreement entered into by supplier/lessee.
- 3.3.2. For a Contractor with more than 35 employees:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-Contractor agreements or subleases of this Agreement entered into by supplier/lessee. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

- 3.3.3. Documentation:** Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
- 3.3.4. Monitoring:** The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.
- 3.4. LEGAL WORKER REQUIREMENTS:** The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:
- 3.4.1.** Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.
- 3.4.2.** A breach of a warranty under paragraph 1 will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
- 3.4.3.** The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.
- 3.5. HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS:** The Contractor's products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City.

At the request of City representatives, the Contractor will provide the City:

- 3.5.1.** Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract.
- 3.5.2.** A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

- 3.5.3.** The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement. The City further reserves the right to make unannounced inspections of the Contractor's facilities (during normal business hours).
- 3.6. COMPLIANCE WITH LAWS:** Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance.
- Because the contractor will be acting as an independent contractor, the City assumes no responsibility for the Contractor's acts. Exhibit A incorporated by reference.
- 3.7. LAWFUL PRESENCE REQUIREMENT:** Pursuant to A.R.S. §§ 1-501 and -502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. In the event the prevailing responder is unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder. The law does not apply to fictitious entities such as corporations, partnerships and limited liability companies
- 3.8. CONTINUATION DURING DISPUTES:** Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.
- 3.9. EMERGENCY PURCHASES:** The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

4. COSTS AND PAYMENTS:

- 4.1. GENERAL:** Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Offer.
- 4.2. PAYMENT DEDUCTION OFFSET PROVISION:** Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.
- 4.3. LATE SUBMISSION OF CLAIM BY CONTRACTOR:** The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.
- 4.4. DISCOUNTS:** Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.
- 4.5. NO ADVANCE PAYMENTS:** Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.
- 4.6. FUND APPROPRIATION CONTINGENCY:** The Vendor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Vendor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.
- 4.7. MAXIMUM PRICES:** The City will not be invoiced at prices higher than those stated in any contract resulting from this Offer. Contractor certifies, by signing this Offer that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Offer and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

4.8. F.O.B. POINT: All prices are to be quoted F.O.B. delivered, unless specified elsewhere in this solicitation.

5. CONTRACT CHANGES:

5.1. CONTRACT AMENDMENTS: Contracts will be modified only by a written contract amendment signed persons duly authorized to enter into contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, will affect or modify any of the terms or obligations contained or to be contained in the contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.

5.2. ASSIGNMENT - DELEGATION: No right or interest in this contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.

5.3. NON-EXCLUSIVE CONTRACT: Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source when necessary.

6. RISK OF LOSS AND LIABILITY:

6.1. TITLE AND RISK OF LOSS: The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.

6.2. ACCEPTANCE: All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.

6.3. FORCE MAJEURE: Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition.



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

If either party is delayed at any time in the progress of the work by force majeure, the delayed party will notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be hand-delivered or mailed certified-return receipt and will make a specific reference to this provision, thereby invoking its provisions. The delayed party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.

- 6.4. LOSS OF MATERIALS:** The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the project manager.
- 6.5. CONTRACT PERFORMANCE:** Contractor will furnish all necessary labor, tools, equipment, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor.

The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the work to its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

- 6.6. DAMAGE TO CITY PROPERTY:** Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City.

Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

7. CITY'S CONTRACTUAL RIGHTS:

- 7.1. Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made, and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.
- 7.2. **NON-EXCLUSIVE REMEDIES:** The rights and remedies of the City under this Contract are non-exclusive.
- 7.3. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE BREACH:** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.
- 7.4. **ON TIME DELIVERY:** Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.
- 7.5. **DEFAULT:** In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.
- 7.6. **COVENANT AGAINST CONTINGENT FEES:** Seller warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.
- 7.7. **COST JUSTIFICATION:** In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

7.8. WORK PRODUCT, EQUIPMENT AND MATERIALS: All work product, equipment, or materials created or purchased under this contract belongs to the City and must be delivered to the City at City’s request upon termination of this contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this contract that are “works for hire” within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

8. CONTRACT TERMINATION:

8.1. GRATUITIES: The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

8.2. CONDITIONS AND CAUSES FOR TERMINATION:

8.2.1. This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

8.2.2. The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:

- In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
- In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

- In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality.
- Contractor fails to furnish the required service and/or product within the time stipulated in the contract;
- In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or give the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.

8.3. CONTRACT CANCELLATION: All parties acknowledge that this contract is subject to cancellation by the City of Phoenix pursuant to the provision of Section 38-511, Arizona Revised Statutes.

9. STATE AND LOCAL TRANSACTION PRIVILEGE TAXES:

In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden and legal liability to remit taxes are on the vendor that is conducting business in Arizona and the City of Phoenix. Any failure by the Contractor to collect applicable taxes from the City will not relieve the Contractor from its obligation to remit taxes. It is the responsibility of the prospective bidder to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your offer. You may also find information at <https://www.phoenix.gov/finance/plt> or <https://www.azdor.gov/Business.aspx>. Once your offer is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City, the Contractor agrees to remit any overpayments back to the City for miscalculations on taxes included in an offer price.

10. TAX INDEMNIFICATION:

Contractor will pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor and require the same of all subcontractors. Contractor will hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation, and require the same of all subcontractors.



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

11. TAX RESPONSIBILITY QUALIFICATION:

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest). Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in Arizona statutes relative to State Transaction Privilege Taxes or Use Taxes. Contractor agrees to provide written authorization to the City Finance Department and to the Arizona State Department of Revenue to release tax information relative to Arizona Transaction Privilege Taxes or Arizona Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

12. NO ISRAEL BOYCOTT:

By entering into this contract, the Contractor certifies that they are not currently engaged in and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel.

13. ATTORNEY FEES:

In any contested action related to or arising out of this Contract, the prevailing party shall recover its attorney fees, court costs, and other expenses from the other party. Where there are no competing claims, "prevailing party" means the party that substantially obtained the relief sought. Where there are competing claims, the prevailing party is the net winner or the party who prevailed in a totality of the litigation.

14. HEADINGS:

Headings for articles, sections, and paragraphs are for reference only and do not limit the content or scope of any provision of this Contract.

15. NATIONAL EMERGENCY:

This Contract is subject to the right of the United States to control, operate, and regulate the Airport and to use of the Airport during the time of war or national emergency.

16. NO IMPAIRMENT OF TITLE:

The Contractor and its agents, employees, and contractors shall not cause or allow any person or entity to cause any lien, cloud, charge, or encumbrance to be filed, recorded, or imposed on the Airports or any portion thereof.



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

17. NO PERSONAL LIABILITY:

The City's officers, officials, agents, and employees are not personally liable to the Contractor for any default or breach of this Contract by the City, are not liable for any amount that may become due to the Contractor and are not obligated to perform under any provision of this Contract.

18. SUCCESSORS AND ASSIGNS:

This Contract binds the parties and their owners, officers, directors, managers, members, agents, employees, representatives, trustees, executors, personal representatives, and successors.

19. TERMINATION FOR NON-APPROPRIATION OF FUNDS:

This Contract is contingent on the appropriation of adequate funds by the Phoenix City Council for each fiscal year during the term of this Contract. If adequate funds are not appropriated, then this Contract shall terminate on June 30 of the last fiscal year for which funds were appropriated. The termination shall be without penalty or any liability by the City.

20. BREACH AND REMEDIES FOR BREACH:

The occurrence of any of the following events shall be deemed a material breach of this Contract by Contractor:

- Contractor fails to pay any amount when due and the failure continues for ten (10) days after notice from the City.
- Except for the non-monetary events of breach listed below, Contractor fails to perform any non-monetary obligation under this Contract and the failure continues for ten (10) days after notice from the City.
- Contractor fails to procure and maintain the insurance coverages required under this Contract and the failure continues for one (1) day after notice from the City.
- Contractor breaches any other lease, contract, agreement, or permit it has with the City.
- Contractor files a voluntary petition in bankruptcy; is adjudicated bankrupt or insolvent; takes the benefit of any law applicable to bankrupt or insolvent debtors; files a petition or is seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief; seeks or acquiesces to the appointment of a trustee, receiver, or liquidator of all or a substantial part of Contractor's assets; or makes any general assignment for the benefit of creditors.



SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

- Contractor violates any federal, state, or local law, rule, regulation, or ordinance related to this Contract and the violation continues for ten (10) days after notice from the City.

Upon the occurrence of any breach by Contractor, the City may elect to do any or all the following at one time or over a period of time:

- File a civil action or actions to, among other things, enforce this Contract and recover all amounts due, all attorney fees, court costs, and other expenses incurred.
- Exercise any and all remedies allowed at law or in equity.
- Recover all attorney fees, court costs, and other expenses incurred, whether or not a civil action or other judicial proceeding is filed.

The City's exercise of any remedy does not terminate and shall not be construed to terminate this Contract. Termination of this Contract must be evidenced by a writing signed by the City for that purpose. The foregoing list of remedies is not exhaustive, and the rights and remedies of the City under this Contract are non-exclusive.

21. CLAIMS AGAINST THE CITY:

Contractor shall comply with the procedures set forth in Chapter XVIII, § 14 of the Charter of the City of Phoenix (claims or demands against the City) and A.R.S. § 12-821 and § 12-821.01 (notice of claim statutes) for presenting claims or demands against the City. Nothing in this Contract constitutes a contractual term that requires a dispute resolution process, an administrative claims process, or review process, as those terms are used in A.R.S. § 12-821.01(C), so as to affect the date on which a cause of action accrues under A.R.S. § 12-821.01(A) and (B).

22. DELINQUENT ACCOUNT FEE:

Any amount that is not paid by Contractor when due is deemed delinquent. If the delinquent amount remains unpaid for ten (10) days, then a delinquent account fee of eighteen percent (18%) per annum shall be assessed according to Phoenix City Code § 4-7. Delinquent account fees shall be computed and accrued on a daily basis and assessed until the account balance, including delinquent account fees, is paid in full. Delinquent account fees are due from Contractor upon demand by the City.



SECTION II – STANDARD TERMS AND CONDITIONS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

23. ENTIRE AGREEMENT:

This Contract constitutes the entire agreement between the parties and supersedes all prior written and oral agreements, understandings, discussions, proposals, negotiations, communications, representations, and correspondence related to this Contract. The parties are not bound by any obligation not provided for in this Contract. Contractor certifies that it was not induced to enter into this Contract by any misrepresentation, undue influence, or coercion by the City or any of its officers, officials, agents, or employees. The Exhibits attached to this Contract are material parts of this Contract and are incorporated herein by this reference.

24. FAIR INTERPRETATION:

Contractor agrees that the rule that ambiguous or vague language in a contract is construed against the drafter is waived and does not apply to this Contract. Contractor agrees that this Contract shall be interpreted fairly and not against the City simply because the City drafted this Contract.

25. NO THIRD-PARTY BENEFICIARIES:

Except as expressly provided in this Contract, nothing contained herein creates or may be construed to create any right or privilege in any person or entity that is not a party to this Contract.

26. NOTICE:

All notices, consents, approvals, and other communications (notices) between the City and Contractor that are required to be given under this Contract shall be in writing and given by (A) personal delivery, (B) email with return receipt requested (read receipt), (C) facsimile transmittal with delivery confirmation, (D) prepaid delivery to any commercial air courier or express delivery service, or (E) registered or certified mail, postage prepaid and return receipt requested, through the United States Postal Service.

Notices to the City shall be sent to:

City of Phoenix Aviation Department
Aviation Headquarters Building
ATTN: Contracts & Services Division
2485 East Buckeye Road
Phoenix, Arizona 85034
Facsimile: 602-273-2080

Notice to Contractor shall be sent to the person at the mailing address, email address, or fax number listed by Contractor in its Offer in Section VI – Submittals of this Contract.



SECTION II – STANDARD TERMS AND CONDITIONS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

Notice given in compliance with this Section is deemed received (A) on the day it is personally delivered, (B) on the day it is sent by email, (C) on the day it is sent by facsimile transmittal, (D) two (2) days after it is deposited with any commercial air courier or express delivery service, or (E) five (5) days after it is sent by registered or certified mail as provided above. Any time period stated in a notice shall commence on the date the notice is deemed received. Actual receipt is not required.

If notice is sent by email or facsimile transmittal, then a paper copy shall be sent by prepaid regular first-class mail through the United States Postal Service to the Party at the address listed above. Duplicate notice is merely a courtesy and does not change or extend the effective date of the notice. The failure to receive the duplicate notice does not affect the validity of the notice sent by email or facsimile transmittal.

27. TITLE VI SOLICITATION NOTICE:

The City of Phoenix, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

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SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

1. **FREE ON BOARD (FOB):**

Prices quoted shall be FOB destination and delivered, as required, to the following point(s):

- Phoenix Sky Harbor International Airport and surrounding airport properties
- Deer Valley Airport
- Goodyear Airport

2. **PRICE:**

2.1. All prices submitted shall be firm and fixed for the initial one (1) year of the contract. Thereafter, price increases will be considered annually, not to exceed 5% annually, provided the adjustments are submitted in writing with 30 days' notice to the Procurement Officer. Price increase requests shall be accompanied with written documentation to support the increase, such as a letter from the manufacturer, published price index, applicable change in law, etc. Price decrease requests do not require supporting documentation and are allowed at any time during the contract term.

2.2. The ADR will be the sole judge in determining the allowable increase amount. Price increases agreed to by any staff other than the Deputy Aviation Director or Department Director are invalid. The Contractor acknowledges and agrees to repay all monies paid because of a requested price increase unless the increase was specifically approved, in writing, by the Deputy Aviation Director or Department Director.

3. **METHOD OF ORDERING:**

Contractor shall deliver items and/or services only upon receipt of a written purchase order. All Contractor invoices and packing/delivery tickets must include the City of Phoenix purchase order number.

4. **METHOD OF INVOICING:**

Invoice must be emailed in .pdf format to invoices@phoenix.gov (with a copy to the ADR) and **must** include the following:

- City purchase order number or shopping cart number
- Items listed individually by the written description and part number.
- Unit price, extended and totaled.
- Quantity ordered, back ordered, and shipped.
- Applicable tax
- Invoice number and date.
- Delivery address.



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

- Payment terms.
- FOB terms.
- Remit to address

5. METHOD OF PAYMENT:

Payment to be made from Contractor's invoice and a copy of the signed delivery/service ticket submitted to cover items received and accepted during the billing period.

6. DELIVERY/SERVICE TICKET:

Contractor shall provide a packing list or service ticket for items delivered to the City or services provided to the City. Tickets should include the following and a legible copy shall be provided to the City:

- Date
- City purchase order number
- Itemized list of materials which were delivered, including quantity
- A unique identification number and Contractor name
- Itemized list of costs of equipment shipping/freight for pass through costs
- Signature of City employee who accepted for the materials/services

7. PARTIAL PAYMENTS:

Partial payments are not authorized on individual purchase orders. Payment will be made upon final delivery and acceptance of all goods and services on the purchase order.

8. SUPPLIER PROFILE CHANGES:

It is the responsibility of the Contractor to promptly update their profile in procurePHX at www.phoenix.gov/procure. If Contractor's legal identify has changed, the Procurement Officer must be notified immediately. Failure to do so may result in non-payment of invoices and contract termination.

9. AUTHORIZED CHANGES:

The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within thirty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the Deputy Aviation Director or Department Director prior to the institution of the change.



SECTION III - SPECIAL TERMS AND CONDITIONS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

10. SUSPENSIONS OF WORK:

The Procurement Officer and the project manager reserve the right to suspend work wholly or in part if deemed necessary for the best interest of the City. This suspension will be without compensation to the Contractor, other than to adjust the contract completion/delivery requirements.

11. HOURS OF WORK:

All work under this contract shall be coordinated with the ADR. Any changes to the established schedule must have prior written approval by the City's project manager.

12. POST AWARD CONFERENCE:

A post-award conference will be held by the Procurement Officer or project manager prior to commencement of any work on the project. The purpose of this conference is to discuss critical elements of the work schedule and operational problems and procedures.

13. PERFORMANCE INTERFERENCE:

Contractor shall notify the Aviation Department contact immediately of any occurrence and/or condition that interferes with the full performance of the contract and confirm it in writing within 24 hours.

Department Contact: Rusty Farnsworth or Julian Marquez
Phone: 602-850-1589 602-626-0288

14. COOPERATIVE AGREEMENT:

In addition to the City and with approval of the Contractor, this contract may be extended for use by other municipalities and government agencies in the State of Arizona. A current listing of eligible entities may be found at www.mesaaz.gov/business/purchasing/save Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective entity. Orders placed by other agencies and payment thereof will be the sole responsibility of that entity. The City shall not be responsible for any disputes arising out of transactions made by other entities who utilize this solicitation responsible for any disputes arising out of transactions made by other entities who utilize this solicitation.



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

15. ADVERTISING:

Except as required by law, Contractor shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party any information or documents concerning this Agreement, the Technology Assets, or any part thereof without the prior written consent of the City. The name of any City site on which services are performed by the Contractor pursuant to this Agreement shall not be used in any advertising or other promotional context by Contractor without the prior written consent of the City. Please refer to the Department's Contractor Communication Procedures <https://www.skyharbor.com/business/TenantsAndContractors/ContractorCommunicationProcedures>

16. EXCLUSIVE POSSESSION:

All services, information, computer program elements, reports, and other deliverables which may be created under this contract are the sole property of the City of Phoenix and will not be used by the Contractor or any other person except with prior written permission by the City.

17. STRICT PERFORMANCE:

Failure of either party to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract, or by law, will not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

18. LICENSES AND PERMITS:

Contractor will keep current Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.

19. MISCELLANEOUS FEES:

Additional charges for fuel surcharges, delivery charges, dealer prep, environmental fees, waste disposal, shop supplies, set-up, freight and/or shipping and handling, etc. will not be paid. These costs must be incorporated in the pricing provided in the bid price schedule.

Labor rates (Shop and On-site) shall be charged as a flat hourly rate and are allowed only in performance of services under this agreement. Travel hours and other incidental fees will not be permitted under this agreement. Labor hours will be from "check-in" to "check-out" at the worksite.

20. DELIVERY:

All deliveries shall be made between the hours of 6 a.m. and 4:30 p.m., local time, Monday through Friday, excluding City holidays.



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

21. SINGLE SOURCE FOR WARRANTY WORK:

Contractor shall be fully responsible for all warranty work. In addition, Contractor shall have or establish a single local Phoenix source that will accomplish or coordinate any necessary warranty work. Contractor shall respond to requests for repairs within 24 hours after a verbal request by the City.

22. WARRANTY:

All equipment supplied under this contract shall be fully guaranteed by the contractor for a minimum period of two (2) years from the date of acceptance by the City. Any defects of design, workmanship, or materials that would result in non-compliance with the contract specifications shall be fully corrected by the contractor (including parts and labor) without cost to the City.

Warranty work requirements shall be performed by a technician on-site with a guaranteed response time of 48 hours. City acceptance will be determined by the date of actual installation and start-up. Since some of the items will be inventoried for emergency purposes, the City will notify the Contractor of actual start-up date which will be within one year of item receipt.

23. INDUSTRY STANDARDS:

23.1. It is intended that the manufacturer in the selection of components will use material and design practices that are the best available in the industry for the type of operating conditions to which the item will be subjected. Component parts shall be selected to give maximum performance, service life and safety and not merely meet the minimum requirements of this specification. All parts, equipment and accessories shall conform in strength, quality of material and workmanship to recognized industry standards.

23.2. The term "heavy duty" if used in these specifications shall mean that the item to which the term is applied shall exceed the usual quantity, quality, or capacity supplied with standard production items and it shall be able to withstand unusual straining, exposure, temperature, wear and use.

23.3. The City reserves the right to waive minor variations if, in the opinion of the Department of Aviation ADR, the basic unit meets the general intent of these specifications.

23.4. The product offered shall not include a major component that is of a prototype nature or has not been in production for a sufficient length of time to demonstrate reliability.



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

23.5. If the specifications stated herein for component items do not comply with legal requirements, the Contractor shall so notify the City prior to the Offer opening due date.

24. INSPECTION AND ACCEPTANCE:

Each product delivered shall be subject to complete inspection by the City prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to the specifications, mechanical integrity, quality, workmanship and materials. Ten business days will be allowed for this process. If delivered items are unacceptable and returned to the Contractor prior to acceptance, an additional five business days will be allowed for inspection when subsequent delivery occurs. It shall be the Contractor's responsibility to pick up unacceptable products, correct the deficiencies, and return the product following the corrections.

25. NEW EQUIPMENT:

All items offered shall be new equipment supplied from the manufacturer. Offers for remanufactured/refurbished equipment will be considered as non-responsive and rejected.

26. SUBSTITUTION OF SPECIFIED ITEMS:

Whenever in the specifications any item or process is requested or identified by manufacturer name, proprietary name, or patent such specifications shall be used to facilitate descriptions of the item or process and shall be followed by the words "or equal". The Contractor may offer any item or process that is equal in every respect. However, if the item or process delivered is not, in the opinion of the City of Phoenix, equal in every respect to the specifications, then the Contractor must furnish the item or material with one that is equal, in the opinion of the City.

27. REPAIR AND REPLACEMENT PARTS GUARANTEE:

Following the expiration of any express or implied warranty applicable to those goods, furnished to the City under this contract, Contractor agrees to supply the City (as well as its agents, representatives, Contractors, and hires) with in-stock repair and replacement parts carrying a full manufacturer's warranty at a cost that shall not exceed the cost it would charge if it were contracted to service or install those repair and replacement parts.

28. COMMUNICATION IN ENGLISH:

It is mandatory that the Contractor's lead person assigned to any City facility can speak, read, and write in English to effectively communicate with City staff.



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

29. CONTRACTOR ASSIGNMENTS:

The Contractor hereby agrees that any of its employees who may be assigned to a City site to satisfy obligations under this contract shall be used exclusively for that purpose during the hours when they are working in areas covered by this contract and shall perform no work at other City facilities. If other services, in addition to or separate from, the services specified herein, may be deemed necessary by the Deputy Aviation Director or Department Director or his authorized representative, the Contractor may be requested to perform the additional or special service.

30. TYPES OF WORK SUPERVISION:

The Contractor shall provide onsite supervision and appropriate training to assure competent performance of the work. Contractor or authorized agent will make sufficient daily routine inspections to ensure the work is performed as required by this contract.

31. LIQUIDATED DAMAGES:

If the Contractor fails to deliver the supplies or perform the services within the time specified in its contract, or any extension thereof, the actual damages to the City for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, the Contractor shall pay to the City as fixed, agreed and liquidated damages for each calendar day of the delay, the amount of \$500. The City may terminate this contract in whole or in part as provided in the "Default" provision. In that event, the Contractor shall be liable for such liquidated damages accruing until the City may reasonably obtain delivery or performance of similar supplies and services. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond its control and without fault or negligence, as determined by the City. The Deputy Finance Director or Department Director will be the sole judge in determining the liquidated damages.

32. EQUIPMENT INSTALLATION:

All equipment shall be completely assembled and installed by the Contractor and ready for use on the Aviation Department's property.

33. EVALUATION LITERATURE:

Bids submitted for products considered by the Contractor to be equal or better than the products specified herein must be submitted with technical literature and/or product brochures for the City's use to evaluate the offered products. Complete specifications, literature, illustrations, blueprints, photos etc. describing the offered product shall be included with the Offer. Contractor shall indicate any variation between the product offered and the literature submitted.



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

34. MANUALS:

All complete operating manuals and parts manuals are to be furnished upon delivery at no additional cost to the City. Manuals and other materials shall show all vehicle barrier and security gate specifications and mechanical troubleshooting in paper and electronic media.

35. NEW EQUIPMENT:

All items offered shall be new equipment supplied from the manufacturer. Offers for remanufactured/refurbished equipment will be considered as non-responsive and rejected.

36. PRODUCT DISCONTINUANCE:

The City may award contracts for products and/or models of equipment because of this solicitation. If a product or model is discontinued by the manufacturer, the City, in its sole discretion, may allow the Contractor to provide a substitute for the discontinued item. Contractor shall request permission to substitute a new product or model and will provide the following:

- A formal announcement from the manufacturer that the product or model has been discontinued.
- Documentation from the manufacturer that names the replacement product or model.
- Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation
- Documentation that provides clear and convincing evidence that the replacement will be compatible with all functions or uses of the discontinued product or model.
- Documentation from the manufacturer confirming that the price for the replacement item will be the same as the discontinued item.
- The ADR will be the sole judge in determining the allowable substitute, new product or model change for discontinued item.

37. OVER THE COUNTER PURCHASES:

37.1. To support daily operations, Contractor must be a local stocking distributor and able to supply material on a walk-in, over-the-counter basis. Most purchases will be this type. Orders may be called in or e-mailed for will-call pickup or delivery by the Contractor. Contractor must have a purchase order number or shopping cart number before releasing materials.



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

37.2. Contractor must maintain a record of the full name of the person picking up materials and their city department. The city employee receiving the goods must sign for all items picked up, using a complete signature and shall obtain an itemized receipt, packing slip, or delivery ticket. The receipt, packing slip, or delivery ticket number must be referenced on the final invoice.

37.3. Contractor must be capable of retrieving information relating to invoices utilizing the purchase order number or shopping cart number given at the time the order was placed.

38. PALLET CHARGE:

All pallets supplied shall be non-refundable, no-deposit.

39. PRE-DELIVERY INSPECTION:

Onsite inspection of the first unit may be required before delivery. The City reserves the right to inspect the first unit at the factory. This pre-delivery inspection does not constitute final acceptance of the product.

40. REMOVAL AND TRADE IN OF EQUIPMENT:

Trade-in equipment offered in this solicitation will be as-is, where-is with no warranty either express or implied as to current condition. All costs, labor, and equipment required for the removal will be the responsibility of the Contractor.

41. REPAIR AND REPLACEMENT PARTS GUARANTEE:

Following the expiration of any express or implied warranty applicable to those goods, furnished to the City under this contract, Contractor agrees to supply the City (as well as its agents, representatives, Contractors, and hires) with in-stock repair and replacement parts carrying a full manufacturer's warranty at a cost that shall not exceed the cost it would charge if it were contracted to service or install those repair and replacement parts.

42. REPLACEMENT PARTS AVAILABILITY:

A response to this solicitation shall constitute a guarantee by the Contractor that a stock of replacement parts for the specified equipment is locally available. Captive parts must be available within 48 hours following the placement of an order. Contractor shall provide parts delivery, to include deliveries on Saturday. If special handling and/or freight are required, the Contractor will assume all charges.

43. SAMPLES:

Upon request, Contractors are required to furnish a sample of the goods to be supplied. Any sample submitted shall create an express warranty that the whole of the goods shall conform to the sample submitted. All samples become the property of the City unless designated otherwise by the Contractor.



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

44. START-UP SUPPLIES:

All necessary supplies excluding paper for initial operation shall be provided with the equipment at the time of installation by the Contractor at no additional cost to the City.

45. SUBSTITUTION OF SPECIFIED ITEMS:

Whenever in the specifications any item or process is requested or identified by manufacturer name, proprietary name, or patent such specifications shall be used to facilitate descriptions of the item or process and shall be followed by the words “or equal”. The Contractor may offer any item or process that is equal in every respect. However, if the item or process delivered is not, in the opinion of the City of Phoenix, equal in every respect to the specifications, then the Contractor must furnish the item or material with one that is equal, in the opinion of the City.

46. TRAINING:

The Aviation Department Representative (ADR) may request a proposal for training on gate operations or barrier maintenance/repairs. Content and time to be determined. All new installations or replacements using equipment/models not already in use by the Aviation Department must include four (4) hours of operation and maintenance training.

47. FINAL INSPECTION AND APPROVAL:

The Contractor will request the City’s project manager to conduct a site inspection after the project is complete. City’s project manager will prepare a “punch-list” during the inspection and will forward a copy to the Contractor.

After the “punch-list” items have been corrected, the Contractor will request a final inspection with the project manager. Final project approval is contingent upon the City project manager’s final inspection and written approval.

48. PRE-CONSTRUCTION CONFERENCE:

A pre-construction conference will be held by the City’s project manager prior to commencement of any work on the project. The purpose of this conference is to discuss critical elements of the work schedule and operational problems and procedures.

49. SERVICE LOCATIONS:

To minimize the City’s transportation and handling costs, the Contractor’s location(s) will be a factor in the City’s award decision.



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

50. SPECIFICATIONS:

The specifications and/or drawings associated with this project are intended to generally describe a complete installation. Any additional materials or labor required for the complete project as intended shall be provided by the Contractor, even if it has not been detailed in this document.

51. AVIATION SECURITY PROCEDURES FOR CONTRACTOR AND SUBCONTRACTOR WORKER BACKGROUND SCREENING

51.1. CONTRACT WORKER BACKGROUND SCREENING

Contractor agrees that all Contract Workers that Contractor allows to perform work under this Contract shall be subject to background and security checks and screening (Background Screening). Contractor must pay for the cost of all Background Screenings, unless otherwise provided in the Scope of Work. Contractor agrees that Background Screenings required by this Section is necessary to preserve and protect public health, safety, and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Contract. The City does not warrant or represent that the minimum requirements are sufficient to protect Contractor from any liability that may arise out of Contractor's work under this Contract or Contractor's failure to comply with this Section. Therefore, in addition to the Background Screening measures set forth below, Contractor and its Contract Workers shall take such other reasonable, prudent, and necessary measures to further preserve and protect public health, safety, and welfare when providing work under this Contract.

51.2. As used in this Section, "Contract Worker" means a person performing work for the City, including (1) a person or entity that has a contract with the City, (2) a worker of a person or entity that has a contract with the City, (3) a worker of a subcontractor of a person or entity that has a contract with the City, and (4) a worker of a tenant of the City. (City of Phoenix A.R. 4.45)

51.2.1. Legal Worker Background Check: Pursuant to Arizona Revised Statutes (A.R.S.) § 41-4401, Contractor must verify the legal Arizona worker status of each Contract Worker. Contractor must conduct, and all Contract Workers must pass a background check for their real identity and legal name prior to performing any work under this Contract.

51.2.2. City Rights Regarding Security Inquiries: In addition to a Legal Worker Background Check, the City reserves the right to require Contractor to:

- Have a Contract Worker provide fingerprints and execute any document that is necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) or Phoenix City Code § 4-22 or both;



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

- Act on newly acquired information, whether or not the information should have been previously discovered;
- Unilaterally change its standards and criteria related to the acceptability of Contract Workers; and
- Object, at any time and for any reason, to a Contract Worker performing work under this Contract, including supervision and oversight services.

51.3. Contractor Certification: By entering into this Contract, Contractor certifies that Contractor has read the Background Screening requirements and criteria in this Section, understands them, and that all Background Screening information furnished to the City is accurate, complete, and current. A Contract Worker that is rejected for work under this Contract shall not perform any work under any other contract or engagement Contractor has with the City without the City's prior written approval.

51.4. Contractor's Contracts and Subcontracts: Contractor shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for work performed under this Contract, including supervision and oversight services.

51.5. Materiality of Background Screening Requirements and Indemnity: The Background Screening requirements of this Section are material to the City's decision to enter into this Contract. Any breach of this Section by Contractor shall be deemed a material breach of this Contract. In addition to any other indemnification provision in this Contract, Contractor shall defend, indemnify, and hold harmless the City from and against any and all claims, actions, liabilities, damages, losses, and expenses (Claims) arising out of this Background Screening Section, including the Contractor's disqualification of any Contract Worker or the City's failure to enforce this Section.

51.6. Continuing Duty and Audit: Contractor's obligation to ensure that all Contract Workers pass a Background Screening pursuant to Section shall continue throughout the entire term of this Contract. Contractor shall immediately notify the City of any change to a Contract Worker's Background Screening. Contractor shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Contractor's compliance with this Section.



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

52. CONTRACT WORKER ACCESS CONTROLS AND AIRPORT SECURITY BADGE REQUIREMENTS:

Contractor shall not allow a Contract Worker to begin work under this Contract until Contractor has completed the Background Screening required by the City and the City has issued the appropriate airport security badge to the Contract Worker. The airport security badge will grant the Contract Worker unescorted access authority only to the area or areas of the Airport that the Contract Worker must enter in order to perform work under this Contract. When a Contract Worker's work in any area ends, the Contract Worker's access authority to that area ends. Any Contract Worker that attempts to enter a restricted area or sterile area, as those terms are defined below, of the Airport without proper authority is an immediate breach of this Contract.

53. SECURITY IDENTIFICATION DISPLAY AREA (SIDA) BADGE PROCESS:

Each Contract Worker that needs unescorted access authority to a restricted or sterile area of the Airport in order to perform work under this Contract must receive a security identification display area (SIDA) badge from the Aviation Department's Public Safety and Security Division's Badging Office. Contractor must make arrangements with the City to have each Contract Worker proceed to the Badging Office for processing. The Badging Office will not issue a SIDA badge until the Contract Worker passes a fingerprint-based criminal history background check (CHRC) required by federal law (49 C.F.R. § 1542.209) and § 4-22(C) of the Phoenix City Code and passes a security threat assessment as mandated by the TSA through a security directive (49 C.F.R. § 1542.303). The Contract Worker shall comply with all requirements of and furnish all information requested by the Badging Office. Contractor shall pay for all fees associated with SIDA badging process, unless otherwise provided in the Scope of Work. Fees will be assessed according to § 4-22(D) of the Phoenix City Code. Current badging procedures and fees are available for review at <https://www.skyharbor.com/security/BadgingInformation>.

As used in this Section, "restricted area" means the secured area and SIDA area of the Airport. "Secured area" means the part of the Airport in which certain federal security measures are implemented and where airlines enplane and deplane passengers and load baggage. "SIDA area" means the secured area and other areas designated by the Aviation Department, which include air operation areas, ground transportation areas, and the Rental Car Center security doors. "Sterile area" means the part of the Airport that provides passengers access to board aircraft and is controlled by the TSA or the airline by screening of persons and property. See § 4-22 of the Phoenix City Code and Rules 05-01 and 05-09 of the Aviation Department Rules and Regulations for a complete definition of the foregoing terms.



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

54. RISK-BASED BACKGROUND CHECK PROCESS:

The City has established two levels of risk for Contract Worker background checks: standard risk and maximum risk. If the Scope of Work changes, the City may change the level of risk, which may require Contractor conduct additional investigations and incur additional costs in order to process a background check and obtain the required airport security badge. Contract Workers who receive a SIDA badge are exempt from a standard and maximum risk background check.

55. A STANDARD RISK BACKGROUND CHECK is required for all non-exempt Contract Workers performing work under this Contract.

As used in this Section, “background check” means the fact-gathering process described in City of Phoenix A.R. 4.45 that is conducted to obtain information regarding a Contract Worker’s legal Arizona eligibility, criminal history, driving history, certifications, and other matters that may affect the Contract Worker’s ability or fitness to perform work under this Contract.

55.1. Before any work is performed under this Contract, Contractor shall provide the City with a list of its Contract Workers.

55.2. If any dispute arises related to a background check process or criminal history check information, then Contractor and the affected Contract Worker will resolve the dispute. The City will not get involved in resolving any such dispute.

55.3. In making the determination whether information in a background check renders the Contract Worker disqualified, Contractor should be guided by the following principles and guidelines:

55.3.1. Disqualification should not be based solely on a criminal conviction, unless the conviction related to performance under this Contract.

55.3.2. Arrests that did not result in a conviction being entered or charges being filed may not be considered.

55.3.3. Not all criminal convictions or other negative information obtained in a background check will disqualify a Contract Worker from working under this Contract.

55.3.4. Contractor must evaluate the relevance of the information to the work the Contract Worker will perform under this Contract.

55.3.5. Contractor must consider the following factors in determining whether negative background information disqualifies a Contract Worker:

- Duties of the position
- Time, nature, and number of negative events and convictions



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

- Attempts and extent of rehabilitation efforts
- The relation between the duties of the position and the nature of the crime committed

55.4. The analysis of whether any information in a background check is a potentially disqualifying factor involves looking at the requirements of the Contract, the Scope of Work, where the work will be performed, the need for access to restricted areas, and the type of persons or places the Contract Worker will encounter. Contractor should review the background check results and determine whether the nature of the conviction or crime reported would create a risk to the City based on the Contract's requirements.

55.4.1. For a Contract Worker requiring a standard risk background check, potentially disqualifying convictions include a record of theft, identity theft, computer fraud or abuse, burglary, arson, crimes against property, violent crimes, or other crimes involving dishonesty, or embezzlement.

55.4.2. For a Contract Worker requiring a maximum risk background check, potentially disqualifying convictions include a record of child molestation, assault, sexual assault, crimes against a person, public indecency, drug offenses, forgery, theft, burglary, arson, crimes against property, violent crimes, crimes for financial gain, identity theft, computer fraud or abuse, and embezzlement.

55.5. If a background check shows that the disposition of an arrest is unknown, then Contractor must determine the disposition of the arrest.

55.6. Contractor will obtain a Contract Worker disclosure from each Contract Worker who will perform work under this Contract. Contractor will provide the Contract Worker disclosures to the City upon request. "Contract Worker disclosure" means an affidavit by a Contract Worker disclosing his or her prior criminal record. The Contract Worker disclosure must list all criminal convictions, including the nature of the crime, the date of the conviction, and the location where the crime and conviction occurred. The Contract Worker disclosure also grants to the City the right to review the background check results. (City of Phoenix A.R. 4.45)

55.7. In a standard risk background check, Contractor must review the results of the background check and decide if a Contract Worker should be disqualified for work under this Contract. Contractor must engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker. After Contractor has made its decisions, a list of names of qualified Contract Workers will be provided to the City.

55.8. In a maximum risk background check, Contractor must conduct the same review as in a standard risk background check. However, when submitting its list of



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

qualified Contract Workers, Contractor must also submit the results of the background checks to the City for review. After its review, the City will either approve or deny each Contract Worker.

55.8.1. If the City approves a Contract Worker, then the City will notify Contractor of that fact and the Aviation Department will issue the appropriate airport security badge to the Contract Worker.

55.8.2. If the City denies a Contract Worker, then the City will notify Contractor of that fact and Contractor will reevaluate the Contract Worker to determine whether the person should be disqualified. If Contractor believes there are extenuating circumstances that suggest that the Contract Worker should not be disqualified, then Contractor will discuss those circumstances with the City. The City will review the matter and its decision on disqualification is final.

55.8.3. The City may set up a secure folder or drop box for confidential materials related to maximum risk background checks. The City will not keep records related to maximum risk background checks after they are reviewed.

55.9. If Contractor is a sole proprietor, Contractor must submit to the City a copy of his or her own background check and a background check for all business partners, member, and employees that will work under this Contract and for whom the background check requirements of City of Phoenix A.R. 4.45 apply.

55.10. Contractor shall determine whether a Contract Worker is disqualified from performing work under this Contract.

56. STANDARD RISK BACKGROUND CHECK:

56.1. A standard risk background check must be conducted for the term of this Contract or five (5) years, whichever is shorter. Contractor shall conduct a standard risk background check on all Contract Workers whose work under this Contract requires:

- An airport security badge or key for access to City facilities,
- Access to sensitive information, confidential records, personal identifying information, or restricted City information, or
- Unescorted access to City facilities during normal and non-business hours.

“Personal identifying information” is defined by City of Phoenix A.R. 4.45.

56.2. Scope of the Standard Risk Background Check: The standard risk background check conducted by Contractor must be based on the real identity and legal name of the Contract Worker and include felony and misdemeanor records checks from



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

any county in the United States, the state of Arizona, and any other jurisdiction where the Contractor Worker has lived at any time in the last seven (7) years.

57. AIRPORT SECURITY BADGE HANDLING PROCEDURES:

Contractor will comply with the following airport security badge handling procedures:

57.1. Key Access Procedures. If a Contract Worker requires keyed access to enter a City facility, then a separate key will be issued, and Contractor must complete a return form and submit it to the City for each key issued.

57.2. Stolen or Lost Badges or Keys. Contractor shall immediately report any lost or stolen airport security badge or key to the City. A new airport security badge application or key issue form must be completed and submitted along with payment of the applicable fee prior to issuance of a new airport security badge or key.

57.3. Return of Badges or Keys. All airport security badges and keys are the property of the City and must be returned to the Badging Office within one (1) business day after the Contract Worker's access to a City facility is no longer required under this Contract. Contractor shall collect a Contract Worker's airport security badge and all keys (1) when the Contract Worker's employment is terminated, (2) when the Contract Worker's services are no longer required at a City facility, or (3) when this Contract terminates, is cancelled, or expires, whichever occurs first.

57.4. Employee Identification and Access. Contract Workers must have an airport security badge and some form of verifiable company identification in their possession at all times while working under this Contract, unless otherwise provided in the Scope of Work. Contract Workers are strictly prohibited from entering any area of the Airport that is not authorized by the airport security badge or key issued to them by the Badging Office. The Aviation Department will determine who will have access to the Airport. Contract Workers access authority is only valid during their scheduled hours. Contractor shall provide the City with updates and changes in personnel as they occur.

57.5. Badge Fees. Contractor shall pay the airport security badge fees set forth in § 4-11(D) of the Phoenix City Code.

58. CONTRACTOR'S BREACH:



SECTION III - SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

Contractor agrees that the access control, airport security badge, and key requirements in this Section are necessary to preserve and protect public health, safety, and welfare. Therefore, Contractor shall be deemed in immediate breach of this Section upon the occurrence of any of the following:

- A Contract Worker gains access to a City facility or a restricted or secured area of the Airport without the proper airport security badge or key
- A Contract Worker uses another person's airport security badge or key to gain or attempt to gain access to a City facility or a restricted or secured area of the Airport
- A Contract Worker begins work under this Contract without passing the appropriate Background Screening and being issued the proper airport security badge or key
- A Contract Worker or Contractor submits false, incomplete, or misleading Background Screening information or submits any false, incomplete, or misleading information in an attempt to improperly obtain an airport security badge or key
- Contractor fails to collect and timely return a Contract Worker's airport security badge or key to the City within three days of the (1) date the Contract Worker's employment terminates, (2) the date the Contract Worker is assignment to another City facility, or (3) when this Contract terminates, is cancelled, or expires, whichever occurs first

59. LIQUIDATED DAMAGES AND REMEDIES FOR BREACH:

In addition to any other remedy available to the City at law or in equity, including the right to terminate this Contract, Contractor shall be liable for and shall pay to the City a stipulated damage in the amount of \$1,000 for each breach of this Section and for each time a Contract Worker entered a restricted or secured area of the Airport without proper authority. Contractor agrees that the stipulated damage amount is not a penalty but is a reasonable estimate of the actual harm to the City caused by a breach and that the harm was very difficult to estimate at the time this Contract was entered into.

60. CONTRACTOR CERTIFICATION:

Contractor certifies to the City that Contractor has read the foregoing Background Screening requirements and that all Background Screening Information Contractor furnished to the City is accurate, complete, and current. Contractor further certifies to the City that Contractor has satisfied all Background Screening requirements and verified the legal worker status of each Contract Worker as required under this Section.



SECTION IV - INSURANCE AND INDEMNIFICATION

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

1. INDEMNIFICATION CLAUSE:

Contractor (“Indemnitor”) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever (“Losses”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors (“Indemnitor’s Agents”) arising out of or in connection with this Agreement. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amount arising out of or recovered under any state’s Workers’ Compensation Law or arising out of the failure of Indemnitor or Indemnitor’s Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor’s duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee’s own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Agreement, Indemnitor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to any work performed by Indemnitor or Indemnitor’s Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Agreement.

2. INSURANCE REQUIREMENTS:

- 2.1.** Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontractors. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.
- 2.2.** The City in no way warrants that the limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors and Contractor may purchase additional insurance as they determine necessary.



SECTION IV - INSURANCE AND INDEMNIFICATION

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

2.3. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met.

2.3.1 Commercial General Liability – Occurrence Form: Policy must include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	\$5,000,000
Products – Completed Operations Aggregate	\$5,000,000
Personal and Advertising Injury	\$5,000,000
Each Occurrence	\$5,000,000

- The policy must be endorsed to include the following additional insured language: “The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor.”
- Policy must not contain any exclusions for operations on or near airport premises.

2.3.2 Automobile Liability: Bodily Injury and Property Damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$5,000,000
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- The policy must be endorsed to include the following additional insured language: “The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor.”
- Policy must not contain any exclusions for operations on or near airport premises.

2.3.3 Worker’s Compensation and Employers’ Liability:

Workers’ Compensation	Statutory
Employer’s Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000



SECTION IV - INSURANCE AND INDEMNIFICATION

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

- Policy must contain a waiver of subrogation against the City of Phoenix.
- This requirement does not apply when a contractor or subcontractor is exempt under A.R.S. §23-902(E), **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

3. NOTICE OF CANCELLATION:

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to:

City of Phoenix, Aviation Department
Contracts and Services Division
2485 E. Buckeye Road
Phoenix, AZ 85034-4301
Amy.m.turner@phoenix.gov

4. ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

5. VERIFICATION OF COVERAGE:

Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be sent directly to **City Department Representative's Name and Address listed below**. The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to review complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**



SECTION IV - INSURANCE AND INDEMNIFICATION

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

The **initial certificates** required by this Contract shall be sent directly to:

City of Phoenix, Aviation Department
Contracts and Services Division
2485 E. Buckeye Road
Phoenix, AZ 85034-4301

All subsequent and renewal certificates of insurance and endorsements shall be sent directly to:

City of Phoenix, Aviation Department
c/o EXIGIS Insurance Compliance Services
P.O. Box 4668 – ECM #35050
New York, NY 10163-4668
Email: certificates-cityofphoenix@riskworks.com

6. SUBCONTRACTORS:

Contractor's certificates shall include all subcontractors as additional insureds under its policies **OR** Contractor shall be responsible for ensuring and verifying that all subcontractors have valid and collectable insurance. At any time throughout the life of the contract, the City of Phoenix reserves the right to require proof from the Contractor that its subcontractors have insurance coverage. All subcontractors providing services included under this Contract's Scope of Services are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Contractor may, on behalf of its subcontractors, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Contractor assumes liability for all subcontractors with respect to this Contract.

7. APPROVAL:

Any modification or variation from the insurance coverages and conditions in this Contract must be documented by an executed contract amendment.

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SECTION V – SCOPE OF WORK

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

SECTION V – SCOPE

1. INTRODUCTION:

The City of Phoenix, Aviation Department (“City”, “Aviation Department”) invites sealed offers from qualified vendors for the installation, inspection, repair, and maintenance of vehicle barriers, turnstiles, security gates, gate operating systems, controls, bollards, cable barriers, and their supporting infrastructure at Phoenix Sky Harbor International Airport, Deer Valley Airport and Goodyear Airport (collectively referred to as “Airports”) on an “as-needed” basis, for a five (5)-year period commencing on or about January 1, 2023, in accordance with the specifications and provisions contained herein.

The Aviation Department is a 24-hour-a-day/7-days-a-week/365-days-a-year operation and subject to Federal Aviation Administration (FAA) security mandates. The Contractor and its employees will be required to work and operate a motor vehicle within the secured areas of the Airport. All staff working under this contract must pass a Security Threat Assessment and Criminal Background Check as well as take the Airfield Driver Training Program and pass an interactive test to obtain the Airfield Driving permit endorsement on their security badge.

2. AVIATION DEPARTMENT REPRESENTATIVE (ADR):

The Aviation Department Representatives (ADR) for this contract will be **Rusty Farnsworth, (602) 850-1589** and **Julian Marquez, (602) 626-0288**. The ADR or his designee will coordinate all work and will be the sole judge concerning acceptability and quality of work. The ADR or his designee will be consulted on any concerns and issues arising during the performance.

3. APPLICABLE LAWS AND STANDARDS:

The Contractor must comply with the following laws and stand

- 3.1. All City, State and Federal laws, building codes, accepted industry standards, and best workmanship practices in all tasks performed.
- 3.2. Aviation Department guidelines as they pertain to insurance and security.
- 3.3. Occupational Safety and Health Act (OSHA)
- 3.4. American Society for Testing and Materials (ASTM)
- 3.5. National Fire Protection Association (NFPA)
- 3.6. National Electrical Code, latest editions (NEC)
- 3.7. Federal Aviation Administration (FAA) Security Mandates



SECTION V – SCOPE OF WORK

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

4. DEFINITIONS:

- 4.1. **Airports** – Includes Phoenix Sky Harbor International Airport and surrounding airport properties, Deer Valley Airport and Goodyear Airport.
- 4.2. **Emergency** – is defined by the ADR.
- 4.3. **Equipment** – The entire operable assembly.
- 4.4. **Initial Notification** – shall refer to the ADR contacting the Contractor or the Contractor’s answering service, voice mail or email.
- 4.5. **On-site** – the time the technician(s) arrive at the location to sign in.
- 4.6. **Part(s)** – Component of a piece of equipment.
- 4.7. **Specialized equipment** – Any specialized tools and/or equipment not considered standard to the trade. Examples would be lifts or crane services.

5. ADDITIONS, DELETIONS, OR REPLACEMENTS:

Aviation Department may add or delete equipment/locations. If equipment is added, the Contractor shall perform repairs or maintenance service as requested. The ADR will advise the Contractor of such additions or deletions of any equipment/locations with 30-days’ notice. All fees shall be in accordance with the existing fees in effect.

6. SPECIALIZED EQUIPMENT:

The Contractor is expected to have tools and/or equipment considered standard to the trade available and at **no extra cost** to the City. The Contractor may be reimbursed for the rental of any specialized equipment (that has been pre-approved by the ADR) required to complete a job. The reimbursement will be for the actual cost to the Contractor. Documentation of the cost must be included with the final invoice and there will be **no mark-up** permitted on rental equipment costs.

7. EQUIPMENT/SYSTEM TYPE:

7.1. VEHICLE BARRIER SYSTEMS:

7.1.1. There are currently twenty-nine (29) Hy-Security M-50 Drop Arm Barriers with Smart Touch Controllers in use throughout the Airports.

7.1.2. There are four (4) light duty gate arms in use throughout the Airports.

7.2. **TURNSTILES:** There are currently nine (9) Alvarado brand turnstiles in use throughout the Airport.



SECTION V – SCOPE OF WORK

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

- 7.3. SECURITY GATES AND OPERATING SYSTEMS:** The Aviation Department utilizes automatic operators to open, close, and secure the gates in the closed position. Current parts and equipment in use throughout the Airport is Hy-Security.
- 7.4. CABLE BARRIERS:** The Aviation Department utilizes Brifen USA cable barriers throughout the Airport.
- 7.5. TRAFFIC CONTROL SPIKES:** The Aviation Department utilizes traffic control spikes at the RCC to control the direction and flow of traffic.

8. GENERAL REQUIREMENTS:

The Contractor must:

- 8.1.** Provide services to any system currently in use or may be installed in the future and includes the maintenance, replacement, and/or installation of protective bollards or other equipment protection systems. The vehicle sensors and safety loops connected to the gate or barrier are also included; however, this does not include any maintenance or repair on the Access Control Monitoring System (ACAMS),
- 8.2.** Provide staff that will be required to work and operate a motor vehicle within the secured areas of the Airport. All staff working under this contract must pass a Security Threat Assessment and Criminal Background Check as well as take the Airfield Driver Training Program and pass an interactive test to obtain the Airfield Driving permit endorsement on their security badge.
- 8.3.** Provide all labor, supervision, material(s), equipment, tools, transportation and methods of communication and, if required, additional miscellaneous services necessary to meet requirements of specified services throughout the terms of the contract.
- 8.4.** Supply equipment and training for Lock Out/Tag Out procedures, in accordance with City of Phoenix, OSHA, NFPA regulations and the NEC. The City reserves the right to request documentation of all training records for contract and subcontracted staff 30 days after contract award.
- 8.5.** Ensure all welding is completed by a certified welder. The City reserves the right to request documentation of all training records for contract and subcontracted staff after contract award.
- 8.6.** Be responsible to provide all lift equipment necessary to remove/replace the drop arm as needed.



SECTION V – SCOPE OF WORK

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

- 8.7. Follow all state and federal laws/guidelines and Aviation Department Guidelines as they pertain to the transportation, disposal, and containment of hydraulic fluids.
- 8.8. Provide manufacturer's recommended maintenance and repair schedule of all Airport turnstiles.
- 8.9. Maintain a valid license as required and be in good standing throughout of the contract term and furnish and install:
 - 8.9.1. an entire vehicle barrier system assembly and associated operator, turnkey, when the repair costs are deemed unreasonable, or the equipment has exceeded its useful life.
 - 8.9.2. an entire gate operation system assembly (gate, track and supporting infrastructure), the associated operator, and bollards, turnkey, when the repair costs are deemed unreasonable, the equipment has exceeded its useful life, or excessive damage requires the removal of the existing components and the installation of the new components or systems.
 - 8.9.3. In addition, Contractor must be able to maintain, troubleshoot, or replace the electrical supply back to the nearest electrical disconnecting device as well as any back-up, emergency power supply systems.

9. SERVICE REQUIREMENTS:

The Contractor must:

- 9.1. Be responsible to obtain all required permits necessary to perform the work.
- 9.2. **TRAVEL TIME:** Travel time to and from job site shall **not** be reimbursable. All mileage and travel costs including per diem shall be included in the hourly rate quoted for labor in for this solicitation.
- 9.3. Reimbursable labor hour(s) shall begin when the technician arrives and signs in at the designated sign in location and terminate when the technician signs out at the designated location.
- 9.4. All repair work shall be performed by qualified tradesmen and in the best workman-like manner as known to the trade. All work will be inspected by the ADR prior to being returned to service.



SECTION V – SCOPE OF WORK

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

9.5. Repairs completed under this contract will be billed and paid for time and materials only. Prior to the commencement of any repair or project, the Contractor shall obtain approval from the ADR prior to initiating any work. An itemized cost estimate detailing necessary parts, including discounts, and labor charges for all work/repair must be submitted to the ADR for approval within 24-hours of request. All emergency repairs will be quoted verbally to expedite the return of equipment back to service.

9.5.1. The ADR will provide the Contractor with a Purchase Order (PO) number. This is the approval for the Contractor to begin the repair or commence a project.

9.5.2. At the completion of the repair or project, the Contractor shall provide the ADR with a detailed invoice listing the actual parts used, their list price, discount off the list price, and the actual hours worked. The invoice must include a PO number and match line item descriptions as stated in the PO. The failure to provide the documents listed above will result in a delay in payment until the document is corrected.

9.5.3. In the case of an emergency repair, the Contractor may complete the necessary repairs required to place the equipment back in service as soon as possible on verbal approval from the ADR. The ADR will provide the PO number as soon as practical.

9.6. The Contractor shall identify a 24-hour phone number for the primary and secondary contact personnel that will ensure response to meet the emergency needs of the Aviation Department. This shall be a qualified company representative able to respond within the required time.

9.7. SERVICE COMPLETION: All services shall be completed within three (3) business days after receipt of the PO number. Such schedule shall include time for obtaining necessary materials and/or equipment. The Contractor shall be responsible to obtain ADR's approval should the completion schedule exceed three (3) business days.

10. RESPONSE TIME:

10.1. EMERGENCY SERVICE:

10.1.1. Initial Response: Upon initial notification by ADR, Contractor's initial response shall be (via telephone or email) within 30 minutes.

10.1.2. On-site response (physical presence) shall be within two (2) hours.



SECTION V – SCOPE OF WORK

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

10.1.3. Emergency work shall be performed during normal working hours whenever possible; however, services shall be performed on a 24-hour, 7 days per week and 365 days per year basis.

10.2. NON-EMERGENCY SERVICE:

10.2.1. Initial Response: Upon initial notification by ADR, Contractor's initial response shall be (via telephone or email) within thirty (30) minutes.

10.2.2. Contractor shall coordinate with ADR for the repair or service schedule.

11. PARTS:

11.1. Parts necessary for completing repair(s) or maintenance shall require pre-approval from ADR prior to purchase and installation. All required parts shall be delivered to City of Phoenix, Aviation Department, Facilities & Services Division, 2515 E. Buckeye Road, Phoenix, AZ 85034 within 24 hours of ordering. Parts available in the Phoenix Metro area shall be delivered within four (4) hours.

11.2. All parts must be original equipment manufacturer (OEM) of the piece of equipment being repaired/maintained.

11.2.1. Aftermarket parts or parts manufactured by other than the OEM will only be allowed when the OEM part is no longer available, or an extended order lead time will cause the equipment to be out of service for an extended period of time.

11.2.2. All non-OEM parts must be pre-approved by the ADR prior to ordering or installation. Failure to use the OEM part or request prior approval will result in the contractor removing the unapproved part and installing the correct OEM part at no additional cost to the City.

11.3. In case parts are required for emergency use and will not be available within the timeframe required, Contractor must consult with ADR on the shipping method prior to ordering. Approved shipping and handling costs will be reimbursed by the City at actual cost. No mark-up for shipping and handling is allowed. Contractor shall provide original invoice including shipping and handling for acquired parts to be reimbursed.

11.4. DELIVERY TIME: All deliveries shall be made between the hours of 6:00 AM and 5:00 PM, local Phoenix time Monday through Friday, excluding City holidays.



SECTION V – SCOPE OF WORK

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

11.5. Parts Pricing:

11.5.1. No Tax Advice Provided and Legal Liability: The state and local transaction privilege tax burden is on the person who is conducting business in Arizona and the City of Phoenix. The legal liability to remit the tax is on the person conducting business in Arizona. Any failure by the Contractor to collect applicable taxes from the City will not relieve the Contractor from its obligation to remit taxes. The City will not provide tax advice or guidance.

11.5.2. Maintenance, Repair, Replacement and/or Alternation (MRR): Materials supplied for maintenance, repair, replacement and/or alteration purposes to existing property are considered MRR activities and excluded from the prime contracting classification. MRR contractors are required to pay retail TPT on their materials whether at the point of sale or after, unless a statutory deduction applies. The invoice to the City must not separately include tax as a line item (if tax is included as a line item on the invoice, it must be remitted to the Department of Revenue). Rather, the tax paid on the materials must be treated as an ordinary cost of doing business. No additional tax should be charged on these parts. The price of the materials invoiced to the City must have taxes included.

11.5.3. Construction: The taxability for construction activities must be consistent with Arizona Revised Statutes 42-5075.

12. INSPECTION AND TESTING REQUIREMENT:

At the ADR's discretion, the Contractor may be required to perform an inspection of the vehicle barrier systems throughout the Airports. These inspections may be as frequent as monthly. The Contractor will be compensated for the inspections at the hourly labor rate.

12.1. The inspections must be completed as per manufacturer's guidelines.

12.2. Any code required inspections or tests must be scheduled, completed, and documented by the Contractor as detailed by the governing code.

12.3. The Contractor will document the inspections and provide the ADR with a detailed report of the results from the inspections within five (5) days of the completion of the inspection.

12.4. Provide a quotation for needed repairs documented as a result of the inspection for ADR's approval. The quotation must accompany the inspection report.



SECTION V – SCOPE OF WORK

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

13. REPORTING:

- 13.1. All repairs, tests, or scheduled inspections shall be completed and documented as per manufacturers guidelines. Inspection results must be provided to the ADR within five (5) business days of the completion of the task.
- 13.2. The Contractor shall maintain a file documenting all work completed throughout the life of the contract. An electronic copy of this file must be provided to the ADR annually or as requested.

14. ADDITIONAL WORK:

The ADR may request proposals for other work not specified within this contract. Invoicing and cost will be based on the contracted hourly labor rate and parts/equipment costing. A subcontractor may be utilized in this case as well. Costs will be per the terms of the agreement.

15. SUBCONTRACTING:

- 15.1. The Contractor must obtain approval from the ADR prior to any subcontracting work being performed. The Aviation Department reserves the right to check the subcontractor's background and make a determination to approve or reject the use of the submitted subcontractor(s).
- 15.2. The Contractor may be required to subcontract for proprietary items and/or other services. The Contractor shall be responsible for all payments to the subcontractor including but not limited to labor, parts and materials incurred from subcontracting the services to other companies/vendors.
- 15.3. All subcontract work will be paid to the Contractor at **actual cost** as stated on the Price Schedule of this Contract. There will be **NO markup** on subcontracting. The original invoice from the subcontractor **must** be submitted with the billing invoice for payment.
- 15.4. Subcontractors providing service under this contract shall meet the same service requirements and provide the same quality of service required of the Contractor.
- 15.5. No subcontract under this Contract shall relieve the primary contractor of responsibility of service. The Contractor shall manage all schedules, quality, performance and project management for subcontractors. The Contractor shall be held solely responsible and accountable for the service and/or repairs for which the Contractor has subcontracted.



SECTION V – SCOPE OF WORK

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

- 15.6.** The Contractor will be responsible for escorting the subcontractor when working in the restricted areas of the airport.
- 15.7.** The City of Phoenix reserves the right to have the Contractor remove the subcontractor or any of subcontractor's staff deemed unsatisfactory.
- 15.8.** The Contractor is responsible to ensure that any and all sub-contractors possess all valid certifications and/or licenses as required by federal, state or local laws to perform any work related to this contract prior to the start of work.

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SECTION VI – SUBMITTALS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

1. **SUBMISSION OF OFFER – [Hard Copy Submission](#):**
 - 1.1. Refer to “SUBMISSION OF OFFER” paragraph 13 under the “SECTION I – INSTRUCTIONS” of this solicitation document.
 - 1.2. Please submit **one original, 1 copy**, and **two (2) electronic copy** (portable drive or CD) of the Submittal Section and all other required documentation.
 - 1.3. **Please submit only the Submittal Section, do not submit a copy of the entire solicitation document.** This offer will remain in effect for a period of 180 calendar days from the opening date, and is irrevocable unless it is in the City’s best interest to release offer(s)

2. **SUBMISSION OF OFFER – [Electronic Submission](#):**
 - 2.1. Refer to “SUBMISSION OF OFFER” paragraph 14 under the “SECTION I – INSTRUCTIONS” of this solicitation document.
 - 2.2. **Electronic Bid Submission via email:** Offers is to be submitted electronically via email to the following email addresses:
 - amy.m.turner@phoenix.gov
 - and**
 - avn.procurephx@phoenix.gov

The email subject line must include IFB number and title. For example: **AVN IFB 23-004 – Maintenance and Repair of Vehicle Barriers, Security Gates and Cable Barriers.**

3. OFFER SUBMITTAL FORMAT:

The written offer should be:

- Typewritten for ease of evaluation;
- Signed by an authorized representative of the Offeror;
- Submitted with contact information for the individual(s) authorized to negotiate with the City;
- For hard copy submissions-submitted in a binder, preferably using double-sided copying and at least 30% post-consumer content paper;
- For hard copy submissions-submitted with a table of contents and tabbed per the following major sections:

- Tab 1 License Documentation**
- Tab 2 Executive Summary- Company History and Experience**
- Tab 3 Assigned Service Representative Resume**
- Tab 4 Submittals Section**
- Tab 5 Signed Addenda, if applicable**



SECTION VI – SUBMITTALS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

4. COSTS AND PAYMENTS:

4.1. **PAYMENT TERMS & OPTIONS:** Vendors must choose an option, if a box is not checked, the City will **default to 0% - net 45 days:**

Contractor offers a prompt payment discount of either _____% - 30 days or 0% – 45 days - to apply after receipt of invoice or final acceptance of the products (invoice approval), whichever date is later, starts the 30 days. If no prompt payment discount is offered, the default is 0%, net 45 days; effective after receipt of invoice or final acceptance of the products, whichever is later. **Payment terms offering a discount will not be considered in the price evaluation of your offer.**

Contractor may be paid immediately upon invoice approval, if enrollment is made to the Single Use Account (SUA) Program, administered by the City’s servicing bank (“Bank”). By checking this box, the vendor accepts transaction costs charged by their merchant bank and agrees not to transfer to the City those extra charges. The City will not pay an increase in our services for the SUA charges; if an audit uncovers an upcharge for the SUA charges the vendor will owe the City all costs. The vendor may opt-out of the SUA program once, but then may not rejoin during the same contract term. **For more information about the SUA program or to enroll, send email to mailbox.sua@phoenix.gov.**

5. **OFFER:**

All offers shall be firm and fixed for a period of 180 calendar days from the solicitation opening date. Pass-through offer adjustments will be accepted after that date provided said adjustment(s) are submitted in writing with thirty days’ advance notice and are accompanied by written documentation of a manufacturer's offer increase. Offer adjustment requests shall be sent to: Contracts & Services Division at 2485 East Buckeye Road, Phoenix AZ 85034.



SECTION VI – SUBMITTALS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

6. CATALOGS AND PRICE LISTS:

Contractor must provide with its submittal the date of the current manufacturer's price list and must identify the catalog that will be in effect at the commencement of the contract and from which the discounts offered will be evaluated. City's Finance Procurement Division must be informed 30 days in advance of any new price list or catalogs and the respective date(s). Any terms and conditions contained in the parts price list(s) or product catalog(s) submitted shall not take precedence over the City's terms and conditions specified herein. All invoices must include the manufacturer's part number, list price and discount percentage, net price extended and totaled. The City reserves the right to request a hard copy of the manufacturer's documented price listing for any item(s) invoiced.

6.1. DISCOUNT: All discounts offered shall be firm and fixed for the specified contract period. Discounts offered must be expressed as a single percentage (%) figure for each contract item. Offers containing chain or multiple discounts may be considered non-responsive.

6.2. DISCOUNT FROM PUBLISHED PRICE LISTS: Solicitations shall be submitted on the basis of a discount from a manufacturer's most recent Published Price List(s). Such Published Price List(s) must be common to, and accepted by, the industry in general. The lists must be printed, properly identified, and dated as to issuance and effectiveness.

Revised Published Price Lists may be used as a means of price adjustment. However, all offers are to be firm for a period of **240** days after the solicitation opening date and Revised Price Lists will not be accepted by the City until after that date. Revised Published Price Lists will be accepted only in the event of an industry-wide price change, as evidenced by the issuance of revised price lists, by the manufacturer. Price adjustments will not be made for changes in freight costs.

Revised Published Price(s) will not become effective until revised list(s) are submitted to the City under Contractor cover letter identifying the applicable contract agreement number. Contractor cover letter and pricing list(s) must be date, signed, and submitted to Procurement Officer.

Two (2) copies of revised price list will be required.



SECTION VI – SUBMITTALS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

7. ALL OR NONE BID PRICE SCHEDULE:

7.1. LABOR RATES

Table with 5 columns: Item No., Description, Estimated Hours, Hourly Rate, Extended Price. Includes rows for HOURLY RATE - REGULAR and HOURLY RATE - PREMIUM, and a TOTAL LABOR RATES summary row.

7.2. MATERIALS/PARTS – (Price based on discount percentage) The proposed discounts off catalog price will NOT be considered in the evaluation.

Table with 3 columns: Item No., Manufacturer, Discount Percentage. Lists items 1 through 4 with manufacturers like Hy-Security, Alvarado, Brifen USA, and Other Manufacturers.

7.3. PASS THROUGH COSTS –

Table with 3 columns: Item No., Description, Pass-Through (at cost). Lists Special Equipment Rental and Subcontracting.

8. WARRANTY:

Specify the Contractor or dealership/manufacturer where warranty work will be done:

Contractor _____

Address _____

City, State and Zip Code _____



SECTION VI – SUBMITTALS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

9. EMERGENCY 24-HOUR SERVICE CONTACT:

Name _____

Telephone Number _____

Alternate Contact _____

Telephone Number _____

10. CONTRACTOR LICENSING REQUIREMENTS:

Offeror shall comply with all statutes and rules of the State of Arizona and the Registrar of Contractors. In accordance with A.R.S. §. 32-1151, and unless otherwise exempted by A.R.S. § 32-1121, Offeror shall have the correct class of license as required by the Registrar of Contractors for the work specified, at the time of offer submission. Offeror certifies possession of the following license:

Licensed Contractor's Name _____

Class _____

License Number _____

Expiration Date _____



SECTION VI – SUBMITTALS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

11. BUSINESS REFERENCES:

Contractor shall furnish the names, addresses, and telephone numbers of a minimum of three firms or government organizations for which the Contractor is currently furnishing or has furnished, completed service for: install, inspect, repair, maintain, and/or replace vehicle barriers, turnstiles, security gates, cable barriers, gate operating systems, controls, bollards, and their supporting infrastructure.

Company Name _____

Address _____

Reference _____

Telephone Number _____

Email address _____

Company Name _____

Address _____

Reference _____

Telephone Number _____

Email address _____

Company Name _____

Address _____

Reference _____

Telephone Number _____

Email address _____



SECTION VI – SUBMITTALS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

OFFER

TO THE CITY OF PHOENIX - The Undersigned hereby offers and agrees to furnish the material and or service(s) in compliance with all terms, conditions, specifications, and addenda issued as a result of a solicitation.

Arizona Sales Tax No. _____
Use Tax No. for Out-of-State Suppliers _____
City of Phoenix Sales Tax No. _____
Arizona Corporation Commission File No. _____

Taxpayer’s Federal Identification No.: If recommended for contract award, Bidder agrees to provide its federal taxpayer identification number or as applicable its social security number to the City of Phoenix for the purposes of reporting to appropriate taxing authorities, monies paid by the City of Phoenix under the awarded contract. If the Bidder provides its social security number, the City will only share this number with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.

Enter City’s Registration System ID Number Located at City’s eProcurement website (see SECTION I – INSTRUCTIONS - CITY’S REGISTRATION)	
---	--

Offeror has read, understands, and will fully and faithfully comply with this solicitation, its attachments and any referenced documents. Offeror certifies that the prices offered were independently developed without consultation with any other Offeror or potential Offerors.

Authorized Signature

Date

Verify Name and Type of Company
(LLC, Inc., Sole Proprietor)

Printed Name and Title
(Member, Manager, President)

Address _____
City, State and Zip Code _____
Telephone Number _____
Company’s Fax Number _____
Company’s Toll Free # _____
Email Address _____



SECTION VI – SUBMITTALS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the material(s) or service(s) listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc. and the Contractor’s Offer as accepted by the City.

This contract shall henceforth be referred to as Contract No._____. The Contractor has been cautioned not to commence any billable work or provide any material or service under this contract until Contractor receives purchase order, or contract documentation.

CITY OF PHOENIX

A Municipal Corporation
Jeffrey Barton, City Manager

By: _____
Michael D. Hughes
Deputy Aviation Director

Attest:

_____ this ____ day of _____ 2022
City Clerk

Approved as to form this 19th day of January 2017. This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.



SECTION VI – SUBMITTALS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

CONFLICT OF INTEREST & SOLICITATION TRANSPARENCY FORM

This form must be signed and submitted to the City and all questions must be answered (or N/A) or your Offer may be considered non-responsive.

1. Name of person submitting this disclosure form.

First	MI	Last	Suffix
-------	----	------	--------

2. Contract Information

Solicitation # or Name: IFB 23-004 Maintenance and Repair of Vehicle Barriers, Security Gates and Cable Barriers

3. Name of individual(s) or entity(ies) seeking a contract with the City (i.e. parties to the Contract)

4. List any individuals(s) or entity(ies) that are owners, partners, parent, sublessees, joint venture, or subsidiaries of the individual or entity listed in Question 3. Please include all Board members, executive committee members and officers for each entry. If not applicable, indicate N/A.

5. List any individuals or entities that will be subcontractors on this contract or indicate N/A.

- Subcontractors may be retained, but not known as of the time of this submission.
- List of subcontracts, including the name of the owner(s) and business name:



SECTION VI – SUBMITTALS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

6. List any attorney, lobbyist, or consultant retained by any individuals listed in Questions 3, 4, or 5 to assist in the proposal or seeking the resulting contract. If none, indicate N/A.

7. Disclosure of Conflict of Interest:

A. City Code Section 43-34

Are you aware of any fact(s) with regard to this solicitation or resulting contract that would raise a “conflict of interest” issue under City Code Section 43-34?

“An elected City official or a City employee shall not represent any person or business for compensation before the City regarding any part of a procurement, including any resulting contract, if during the time the elected official is or was in office or the employee is or was employed by the City such elected official or employee played a material or significant role in the development of the solicitation, any other part of the procurement, or the contract award.”

- I am not aware of any conflict(s) of interest under City Code Section 43-34.
- I am aware of the following potential or actual conflict(s) of interest:

B. ARS Sections 38-501 et. Seq. & City Charter Chapter 11

State law and the Phoenix City Charter and Code prohibit public officers or employees, their close relatives, and any businesses they, or their relatives, own from (1) representing before the City any person or business for compensation, (2) doing business with the City by any means other than through a formal procurement, and (3) doing business with the City without disclosing that the person has an interest in the contract. This prohibition extends to subcontracts on City contracts and also applies to parent, subsidiary, or partner businesses owned by a public officer or employee. See A.R.S. Sections 38-501 through 38-511, for more information (City Charter, Chapter 11, applies the state conflict-of-interest law to City employees).

Please note that any contract in place at the time a person becomes a public officer or employee may remain in effect. But the contract may not be amended, extended, modified, or changed in any manner during the officer’s or employee’s city service without following city administrative regulations.



SECTION VI – SUBMITTALS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

Are you aware of any fact(s) with regard to this contract that would raise a “conflict of interest” issue under A.R.S. Sections 38-501 through 38-511 (See Arizona Revised Statutes regarding conflict of interest at www.azleg.gov).

- I am not aware of any conflict(s) of interest under Arizona Revised Statutes Sections 38-501 through 38-511.
- I am aware of the following conflict(s) of interest:

8. Acknowledgements

A. Solicitation Transparency Policy – No Contact with City Officials or Staff During Evaluation

- I understand that a person or entity who seeks or applies for a city contract, or any other person acting on behalf of that person or entity, is prohibited from contacting city officials and employees regarding the contract after a solicitation has been posted.
- This “no-contact” provision only concludes when the contract is awarded at a City Council meeting. If contact is required with City official or employees, the contact will take place in accordance with procedures by the City. Violation of this prohibited contacts provision, set out in City Code Sections 2-190.4 and 43-36, by respondents, or their agents, will lead to **disqualification**.

B. Fraud Prevention and Reporting Policy

- I acknowledge that the City has a fraud prevention and reporting policy and takes fraud seriously. I will report fraud, suspicion of fraud, or any other inappropriate action to: telephone no. 602-261-8999 or 602-534-5500 (TDD); or aud.integrity.line@phoenix.gov.

The purpose of the fraud policy is to maintain the City's high ethical standards. The policy includes a way for our business partners to report wrongdoing or bad behavior. Suspected fraud should be reported immediately to the Phoenix Integrity Line. The City has adopted a zero-tolerance policy regarding fraud.



SECTION VI – SUBMITTALS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

OATH

I affirm that the statements contained in this form, including any attachments, to the best of my knowledge and belief are true, correct, and complete.
Should any of the answers to the above questions change during the course of the contract, particularly as it relates to any changes in ownership, applicant agrees to update this form with the new information within 30 days of such changes. Failure to do so may be deemed a breach of contract.

PRINT NAME

TITLE

SIGNATURE

DATE

COMPANY (CORPORATION, LLC, ETC.) NAME and DBA



SECTION VII – EXHIBITS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

EXHIBIT A

SUPPLEMENTAL TERMS AND CONDITIONS TO ALL AIRPORT AGREEMENTS

1. Definitions

1.1 "Airport" means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, and/or Phoenix Goodyear Airport, according to the context of the contract.

1.2 "Contract" means all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions, and other documents, however denominated, that grant or convey a right or privilege on an Airport and to which this Exhibit is attached.

1.3 "Contractor" means all lessees, sublessees, licensees, permittees, consultants, concessionaires and other persons, firms, or corporations exercising a right or privilege on an Airport pursuant to a Contract and includes Contractor's heirs, personal representatives, successors, and assigns.

1.4 "Premises" means the area of an Airport occupied or used by Contractor pursuant to a Contract.

2. Federal Aviation Administration (FAA) Grant Assurances

2.1 Title VI of the Civil Rights Act of 1964 – Compliance with Nondiscrimination Requirements – 49 U.S.C. § 47123 and FAA Order 1400.11

During the performance of this Contract, Contractor agrees as follows:

A. Compliance with Regulations. Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as provided in Section 7 below), as it may be amended from time to time, which is incorporated herein by reference and made a part of this Contract.

B. Nondiscrimination. With regard to the work performed by it under this Contract, Contractor will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate, directly or indirectly, in the discrimination prohibited by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, including employment practices when this Contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.



SECTION VII – EXHIBITS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation, made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this Contract and the Title VI List of Pertinent Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

D. Information and Reports. The Contractor will provide all information and reports required by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Phoenix or the FAA to be pertinent to ascertain compliance with the Title VI List of Pertinent Nondiscrimination Acts and Authorities and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to the City of Phoenix or the FAA, as appropriate, and will set forth what efforts Contractor has made to obtain the information.

E. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City of Phoenix will impose such Contract sanctions as it or the FAA may determine to be appropriate, including:

- (i) Withholding payments to Contractor under this Contract until Contractor complies, and/or
- (ii) Cancelling, terminating, or suspending this Contract, in whole or in part.

F. Covenant Running with the Land. Contractor for itself and its heirs, personal representatives, successors, and assigns, as a part of the consideration for this Contract, hereby covenants and agrees that, in the event facilities are constructed, maintained, or otherwise operated on the property described in this Contract for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Contractor will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities. In the event of a breach of any of the above Nondiscrimination covenants, the City of Phoenix will have the right to terminate this Contract and to enter, re-enter and repossess the property and facilities thereon and hold the same as if this Contract had never been made or issued.



SECTION VII – EXHIBITS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

G. Incorporation of Provisions. Contractor will include the provisions of paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, the Regulations, and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the City of Phoenix or the FAA may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, Contractor may request the City of Phoenix to enter into any litigation to protect the interests of the City of Phoenix. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

2.2 General Civil Rights Provisions – 49 U.S.C. § 47123

A. Sponsor Contracts. Contractor agrees to comply with pertinent statutes, executive orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision binds Contractor and sub-tier contractors from the bid solicitation period through the completion of this Contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. Sponsor Lease Agreements and Transfer Agreements. Contractor agrees to comply with pertinent statutes, executive orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any activity conducted with or benefiting from federal assistance, including Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. If Contractor transfers its obligations to another, then the transferee is obligated in the same manner as Contractor. This provision obligates Contractor or its transferee for the period during which the property is owned, used, or possessed by Contractor and the City of Phoenix remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

2.3 Economic Nondiscrimination – 49 U.S.C. § 47107

In any Contract under which a right or privilege on the Airport is granted to a Contractor to conduct or to engage in any aeronautical activity for furnishing services to the public, Contractor shall:

A. Furnish its services on a reasonable, and not unjustly discriminatory basis to all users of the Airport, and



SECTION VII – EXHIBITS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

B. Charge reasonable, and not unjustly discriminatory prices for each unit or services, provided that Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City of Phoenix shall have the right to terminate this Contract and any estate created herewith without liability therefor or, at the election of the City of Phoenix or the United States shall have the right to judicially enforce said requirement.

2.4 Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 26

A. Contract Assurance (§ 26.13). To the extent that this Contract is covered by 49 C.F.R. Part 26, Contractor agrees that this Contract is subject to the requirements of the U.S. Department of Transportation regulations at 49 C.F.R. Part 26. Contractor or its subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City of Phoenix deems appropriate, which may include (i) withholding monthly progress payments, (ii) assessing sanctions, (iii) liquidated damages, and/or (iv) disqualifying Contractor from future bidding as non-responsible. Contractor agrees to include the foregoing statement in any subsequent contract that it enters into and cause those businesses to similarly include the statement in further agreements.

B. Prompt Payment (§ 26.29). Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract not later than seven (7) days from the receipt of each payment Contractor receives from City of Phoenix. Contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the City of Phoenix. This clause applies to both DBE and non-DBE subcontractors.

2.5 Airport Concessions Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 23

Contract Assurance (§ 23.9). To the extent that this Contract is a concession agreement covered by 49 C.F.R. Part 23, Contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 C.F.R. Part 23. Contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 C.F.R. Part 23 that it enters into and cause those businesses to similarly include the statements in further agreements.



SECTION VII – EXHIBITS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

2.6 Miscellaneous

A. Contractor agrees that it will undertake an affirmative action plan in conformance with 14 C.F.R. Part 152, Subpart E (Nondiscrimination in Airport Aid Program), to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment, contracting, or leasing activities covered in 14 C.F.R. Part 152, Subpart E. Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contractor further agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations as required by 14 C.F.R. Part 152, Subpart E.

B. City of Phoenix reserves the right to further develop, improve, repair, and alter the Airport and all roadways, parking areas, terminal facilities, landing areas, and taxiways, as it may reasonably see fit, free from any and all liability to Contractor for loss of business or damages of any nature whatsoever to Contractor occasioned during the making of such improvements, repairs, alterations, and additions.

C. The City of Phoenix reserves the right, but is not obligated to Contractor, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Contractor in this regard.

D. Contractor acknowledges that this Contract is subordinate to any existing or future agreement between the City of Phoenix and the United States concerning the development, operation, or maintenance of the Airport. If the FAA or its successors require modifications or changes in the Contract as a condition to obtaining funds for improvements at the Airport or as a requirement of any prior grants, Contractor hereby consents to any and all such modifications and changes as may be reasonably required and agrees that it will adopt any such modifications and changes as part of this Contract.

E. This Contract is subordinate to the reserved right of the City of Phoenix and its successors and assigns to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft through the airspace or in landing at, taking off from, or operating at an Airport.



SECTION VII – EXHIBITS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

F. Contractor agrees to comply with the notification and review requirements, as required by 14 C.F.R. Part 77 (Safe, Efficient Use, and Preservation of the Navigable Airspace), if future construction of a structure is planned for the Premises or a planned modification of a structure on the Premises. Contractor shall submit the required FAA Form 7460-1 (Notice of Proposed Construction or Alteration) and provide documentation showing compliance with the federal requirements. After the FAA has completed the aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself and its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree on the Premises above the mean sea level elevation for (1) Phoenix Sky Harbor International Airport, 1,134 feet, (2) Phoenix Goodyear Airport, 968 feet, and (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and remove the offending structure or cut the offending tree at Contractor's expense.

G. Contractor, by accepting this Contract, covenants for itself and its successors and assigns, that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard to air navigation. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and abate the interference at Contractor's expense.

H. Contractor agrees that nothing in this Contract may be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) (No exclusive rights at certain facilities).

I. This Contract is subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation, regulation, and taking-over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

J. If this Contract involves construction, Contractor shall carry out the project in accordance with FAA airport design, construction, and equipment standards and specifications current on the date of project approval.

K. Contractor is encouraged to use fuel and energy conservation practices.

3. Immigration Reform and Control Act of 1986 (IRCA)

Contractor agrees that IRCA (Public Law 99-603) applies to it. Contractor shall comply with the provisions of IRCA as it applies to its activities under this Contract and to permit the City of Phoenix to inspect its personnel records to verify its compliance.



SECTION VII – EXHIBITS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

4. Conflict of Interest

Contractor agrees that the City of Phoenix may cancel this Contract pursuant to Arizona Revised Statutes (A.R.S.) § 38-511 (Cancellation of political subdivision and state contracts).

5. Legal Worker Requirements

The City is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A) (Verification of employment eligibility; e-verify program). Therefore, Contractor agrees that:

5.1 Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214(A).

5.2 A breach of warranty under paragraph A above shall be deemed a material breach of this Contract and is subject to penalties up to and including termination of the Agreement.

5.3 The City of Phoenix retains the legal right to inspect the papers of Contractor or its subcontractor employees who work on this Contract to ensure that Contractor or its subcontractors are complying with the warranty under paragraph A above.

6. City of Phoenix Equal Employment Opportunity Requirement

6.1 If Contractor is by this Contract a supplier to or lessee of the City, then the requirements of the Phoenix City Code, Chapter 18, Article V applies, including the agreement that:

“Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The supplier and/or lessee shall ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.”



SECTION VII – EXHIBITS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

If the supplier/lessee employs more than 35 employees, the following language shall be included as the last paragraph to the clause above:

“The supplier/lessee further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.”

6.2 Documentation. Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

6.3 Monitoring. The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this Section 3 as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

7. Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Contract, Contractor agrees to comply with all federal, state, and local nondiscrimination laws, rules, and regulation, including the following:

7.1 Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) (prohibits discrimination on the basis of race, color, or national origin).

7.2 49 C.F.R. Part 21 (Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964).

7.3 The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §§ 4601, *et seq.*) (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal aid programs and projects).

7.4 Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 701, *et seq.*), as amended (prohibits discrimination on the basis of disability), and 49 C.F.R. Part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance).



SECTION VII – EXHIBITS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

7.5 The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101, *et seq.*) (prohibits discrimination on the basis of age). Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex).

7.6 The Civil Rights Restoration Act of 1987 (Public Law 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973 by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, sub-recipients, and contractors, whether the programs or activities are federally funded or not).

7.7 Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, *et seq.*), which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities as implemented by U.S. Department of Transportation regulations at 49 C.F.R. Part 37 (Transportation Services for Individual with Disabilities) and Part 38 (Americans with Disabilities Act Accessibility Specification for Transportation Vehicles).

7.8 Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.

7.9 Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency) and resulting agency guidance and national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100).

7.10 Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681, *et seq.*), as amended, which prohibits you from discriminating because of sex in education programs or activities.



SECTION VII – EXHIBITS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

EXHIBIT B

COMPLIANCE WITH ENVIRONMENTAL LAWS

Contractor shall, at Contractor's expense, comply with all current and future Environmental Laws to the extent that they apply to Contractor's use or occupancy of the Premises or the Airport. If Contractor has any question about its obligations under this Exhibit, then Contractor may contact the City of Phoenix Aviation Department's Planning and Environmental Division for information, but not legal advice.

1. Definitions

1.1 *Airport* means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, or Phoenix Goodyear Airport according to the context of this Contract.

1.2 *Contract* means the lease, license, permit, or other agreement to which this Exhibit is attached.

1.3 *Contractor* means each person and entity that is a named party to this Contract.

1.4 *Contractor's Agents* means all persons under Contractor's direction or control, including Contractor's officers, managers, employees, heirs, personal representatives, invitees, volunteers, guests, successors, and assigns.

1.5 *Premises* means the area of the Airport or other City-owned property used or occupied by Contractor pursuant to this Contract or where Contractor causes or contributes to a Release of a Regulated Substance.

1.6 *Environmental Laws* means all current and future federal, state, and local laws, rules, regulations, and ordinances as clarified by advisory circulars or guidance documents, promulgated to protect the public health or the environment, including the following, as they may hereafter be amended or supplemented:

A. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9628, as amended by the Superfund Amendment and Reauthorization Act of 1986 (SARA), Pub. Law No. 99-499.

B. Solid Waste Disposal Act (SWDA), 42 U.S.C. §§ 6901-6992k, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), Pub. Law No. 94-580, including the Regulations of Underground Storage Tanks, 42 U.S.C. §§ 6991-6991m.

C. Toxic Substances Control Act of 1976 (TSCA), 15 U.S.C. §§ 2601-2629.

D. Public Health Service Act, 42 U.S.C., Chapter 6A, and Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f-300j-27, and the amendments thereto.



SECTION VII – EXHIBITS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

- E. Federal Water Pollution Control Act of 1948 (FWPCA), as amended by the Clean Water Act, 33 U.S.C. §§ 1251-1388.
- F. Clean Air Act, 42 U.S.C. §§ 7401-7515.
- G. Title 49 of the Arizona Revised Statutes, A.R.S. §§ 49-101 to 49-1408, including the Arizona Environmental Quality Act, A.R.S. §§ 49-101 to 49-192.01.
- H. Arizona Comprehensive Air Quality Act, A.R.S. §§ 49-401 to 49-593.
- I. Arizona Solid Waste Management Act, A.R.S. §§ 49-701 to 49-881.
- J. Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901 to 49-973.
- K. Arizona Underground Storage Tank Regulation Act, A.R.S. §§ 49-1001 to 49-1093.
- L. Occupational Safety and Health Act of 1970, Pub. Law No. 91-596, as amended by 29 U.S.C. §§ 651-678.
- M. Chapter 28 and Chapter 32C of the Phoenix City Code and City of Phoenix Aviation Department Rule and Regulations, including R&R 01-02 (Storm Water Enforcement).
- N. National Environmental Policy Act (NEPA), Pub. Law. No. 91-190, and all FAA-approved NEPA documents.
- O. Endangered Species Act, 16 U.S.C. §§ 1531-1544.
- P. Arizona Antiquities Act, A.R.S. §§ 41-841 to 41-847.
- Q. Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712.
- R. AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001) (AZPDES Construction General Permit); AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit); and AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit).
- S. Interstate Conveyance Sanitation, 21 C.F.R. Part 1250.
- T. Maricopa County Air Quality Department Rule 310 (Fugitive Dust from Dust-Generating Operations) and Rule 310.01 (Fugitive Dust from Non-Traditional Sources of Fugitive Dust).



SECTION VII – EXHIBITS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

U. All current and future federal, state, and local laws, rules, regulations, and ordinances promulgated under the foregoing Environmental Laws that provide for the protection of the public health or the environment, including the ambient air, groundwater, surface water, land use, and substrata soils.

1.7 *Regulated Substances* means:

A. The substances identified or listed as a hazardous substance, pollutant, hazardous material, and petroleum in CERCLA; Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101-5128; RCRA; Arizona Regulation of Underground Storage Tanks; Clean Air Act; and all rules and regulations promulgated to implement these Environmental Laws.

B. The substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or hazardous, special, or solid waste in the Arizona Environmental Quality Act, including the Water Quality Assurance Revolving Fund Act (WQARF), A.R.S. §§ 49-281 to 49-298; Arizona Comprehensive Air Quality Act; Arizona Solid Waste Management Act; Arizona Underground Storage Tank Regulation Act; Arizona Management of Special Waste Act; Arizona Hazardous Waste Management Act; and all rules and regulations promulgated to implement these Environmental Laws.

C. All substances, materials, and wastes that are or hereafter become regulated or that are classified as hazardous or toxic under any Environmental Law, including building materials that may contain any hazardous substance and its disturbance is subject to any Environmental Law. If a building material, including pavements and paint, will be disturbed by Contractor and the building material is not unpainted wood, metal, or glass, then Contractor shall employ an Asbestos Hazard Emergency Response Act (AHERA)-certified inspector, who shall comply with advance survey and testing requirements and the following rules, as applicable:

(i) 40 C.F.R. Part 61 (National Emission Standards for Hazardous Air Pollutants (NESHAP), Subpart M (National Emission Standards for Asbestos)).

(ii) Maricopa County Air Pollution Control Regulations: National Emission Standard for Asbestos Regulation III Maricopa County Air Quality Department (MCAQD) Rule 370, § 301.9 - subpart M

(iii) To the extent required by Environmental Law, NESHAP Notification Form and Delivery Requirement. A NESHAP Notification Form shall be completed and postmarked or delivered to the MCAQD Asbestos NESHAP Coordinator at least ten (10) days before disturbing any building material even if no asbestos is present.

(iv) 29 C.F.R. Part 1926 (OSHA Safety and Health Regulations for Construction).



SECTION VII – EXHIBITS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

(v) RCRA waste determination and proper handling, transport, and disposal.

1.8 *Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing of a Regulated Substance.

2. Compliance

2.1 Contractor shall not cause or allow any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, Released on or under, or transported to or from the Premises by Contractor or Contractor's Agents in a manner that constitutes or would foreseeably result in a violation of any Environmental Law or that would give rise to liability under any Environmental Law.

2.2 Contractor may remediate any Release of a Regulated Substance under Chapter 28 of the Phoenix City Code (the City's pretreatment ordinances), under such other ordinances as may be promulgated by the City, and applicable Environmental Laws, including the Clean Water Act to the extent it applies.

2.3 Contractor (Indemnitor) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials, (elected and appointed), agents, and employees (Indemnitee) from and against any and all demands, claims, complaints, losses, damages, actions or causes of action, assessments, liabilities, costs or expenses, including interest, penalties, and reasonable attorney fees, expert witness fees, and reasonable expenses of investigation and remedial work, (including investigations and remediation by engineers, environmental consultants, and similar technical personnel) asserted against or imposed upon or incurred by Indemnitee arising in connection with, or resulting from, any violation of Environmental Law, including any use, generation, storage, spill, Release, discharge, or disposal of any Hazardous Substance that is now or comes to be located on, at, about, or under the Premises or because of, or in connection with, the violation of any Environmental Law (hereinafter collectively referred to as "Losses") to the extent that such Losses are caused by the fault of Indemnitor or its officers, officials, members, managers, agents, employees, contractors, volunteers, tenants, subtenants, invitees, or licensees (collectively, "Indemnitor's Parties"). Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever occurs first. Indemnitor's duty to defend exists whenever it is alleged that either the Indemnitor and/or one or more of the Indemnitor's Parties, or both, is/are liable, regardless of whether they are ultimately found liable. As used in the section, (a) Hazardous Substance are the Regulated Substances and other substances defined as toxic or hazardous substances, pollutants, or wastes by any Environmental Law and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" has the meaning prescribed above; (c) "Fault" means those nonculpable acts and omissions giving rise to strict liability under any Environmental Law pertaining to Hazardous Substances, as well as culpable conduct (negligence or willful misconduct).



SECTION VII – EXHIBITS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

In consideration of the award of this Contract, Indemnitor agrees to waive all rights of subrogation against the City and its officers, officials, (elected and appointed), agents, and employees for losses arising out of or related to this Contract. The obligations of Indemnitor under this provision shall survive the expiration or earlier termination of this Contract.

2.4 To the extent Contractor or Contractor's Agents Release any Regulated Substance in violation of Environmental Law on or under the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises, then Contractor shall, at its expense, promptly take all actions that are necessary or appropriate to remediate the Release and mitigate any threat to the public health or the environment consistent with Environmental Law. Subject to the City's prior written consent, Contractor shall undertake all remedial actions that are necessary to return the contaminated area to the condition that existed immediately prior to the Release or, if such prior condition is unknown, to such condition as is acceptable to the governmental agency with jurisdiction. Contractor shall undertake its remedial actions under this Section 2.4 without regard to the potential liability of Contractor or any other person. However, remedial actions undertaken by Contractor shall not impair Contractor's rights, if any, to seek contribution or indemnity from any other responsible party.

2.5 Contractor shall, at its expense, prepare all tests, reports, and studies and provide all information to any appropriate governmental agency that is required pursuant to any Environmental Law as a result of Contractor's use or occupancy of the Premises. Contractor's obligation includes any requirement under Environmental Law for a site characterization, site assessment, and/or remediation plan that may be necessary due to any actual or potential Releases of a Regulated Substances by Contractor or Contractor's Agents on, under, or from the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises during the Term of this Contract and during the time Contractor has possession of the Premises. Contractor shall, at its expense, promptly (A) provide all information requested by the City related to the applicability of the Environmental Laws to the Premises, (B) respond to any governmental investigation pursuant to Environmental Laws regarding the Premises, and (3) respond to any claim of liability by third parties that relate to any Release of a Regulated Substance by the Contractor or Contractor's Agents on the Premises or the Airport.

2.6 After giving Contractor at least thirty (30) days prior notice, the City may inspect and copy all of Contractor's records, test results, studies, and other documents, not protected by attorney-client privilege, regarding environmental conditions related to the use, storage, or treatment of any Regulated Substance on, under, or from the Premises.

2.7 Contractor shall promptly notify the City in writing upon the occurrence of any of the following:

A. Contractor receives any correspondence or communication from any governmental agency regarding the application or enforcement of any Environmental Law to the Premises or to Contractor's use or occupancy of the Premises.



SECTION VII – EXHIBITS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

B. There is any change in Contractor's activities on the Premises that changes or may change Contractor's or the City's obligations or liabilities under any Environmental Law.

C. Any person or entity asserts any claim, or any other event occurs for which Contractor may incur an obligation under this Exhibit.

2.8 Contractor shall, at its expense, obtain and comply with all permits and approvals that are, or may become, required as result of Contractor's use or occupancy of the Premises.

2.9 Contractor shall include the provisions of this Exhibit in all agreements and contracts by which it grants a right or privilege to any person or entity under this Contract.

2.10 Contractor shall obtain and maintain compliance with all applicable financial responsibility requirements of all Environmental Laws regarding the ownership or operation of any underground storage tank or other device used to treat or store a Regulated Substance and upon request present evidence thereof to the City.

2.11 Contractor shall take reasonable precautions to prevent persons not acting under Contractor's or Airport's authority, direction, or control from conducting any activity on the Premises that may result in the Release of a Regulated Substance on, under, or from the Premises or to the air, groundwater, or surface waters on or adjacent to the Premises. Contractor shall exercise due care with respect to any Regulated Substance that is located on the Premises as a result of any action of any person who is not under Contractor's authority, direction, or control.

2.12 Contractor shall use its best efforts to minimize its production of a waste stream that includes Regulated Substances, and Contractor shall minimize the storage of Regulated Substances on, in, and around the Premises.

3. Breach and Termination

Subject to the terms and conditions of this Section, Contractor's failure to comply with any requirement or obligation of this Exhibit or any applicable Environmental Law is a default under this Contract. Contractor's failure to cure its default after being provided with notice thereof and a reasonable opportunity to cure, as provided in this Contract, shall constitute a material breach of this Contract. Upon a breach that is not timely cured as provided in this Contract, the City may pursue any and all remedies available under this Contract and all applicable federal, state, and local laws, including the following:

3.1 Without termination of this Contract, the City may enforce all its rights and remedies under this Contract, including, without limitation, any or all the following:

A. The right to file an action or proceeding seeking to recover rent, fees, and other amounts due and that become due under this Contract.



SECTION VII – EXHIBITS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

- B. The right to recover interest at the rate of 18% per annum on all accrued, but unpaid, rents, fees, and other amounts due calculated from the date the amount was due pursuant to § 4-7 of the Phoenix City Code.
- C. The right to file an action or proceeding seeking to recover possession of the Premises.
- D. The right to make payments and to perform obligations required of Contractor under this Contract and to be reimbursed by Contractor for the costs thereof, including all attorney fees, expert fees, and other cost incurred by the City.
- E. The City may terminate this Contract.
- F. The City may exercise the right of “self-help” or similar remedy in order to minimize any damage, expense, penalty, and related fees or costs arising out of or related to the violation of any Environmental Law related to the Premises.
- G. By exercising its rights under this Section, the City does not, and may not be construed as, releasing Contractor from any obligation it would otherwise have under this Exhibit or any applicable Environmental Law.
- H. The covenants of this Exhibit shall survive the termination of this Contract.

If this Contract does not require Contractor to perform any activity on the Airport or other City-owned property, then the following stormwater provisions do not apply to Contractor or this Contract.

4. AZPDES Stormwater General Permit and Phoenix City Code Chapter 32C Compliance

4.1 Contractor shall comply with the City's AZPDES Stormwater General Permit and Aviation Department R&R 01-02 (Storm Water Enforcement). Except for discharges on Indian land, stormwater discharges in Arizona are regulated by the Arizona Department of Environmental Quality (ADEQ) through the Arizona Pollutant Discharge Elimination System (AZPDES) program. An AZPDES permit is required for any point source discharge of pollutants to waters of the United States. Because stormwater runoff can transport pollutants to either a municipal separate storm sewer system (MS4) or to waters of the United States, AZPDES permits are required for stormwater discharges.



SECTION VII – EXHIBITS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

4.2 The City and Contractor are required to obtain AZPDES permit coverage as required by AZPDES regulations and to the extent that covered stormwater is discharged from the Premises. Coverage under the AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001) (AZPDES Construction General Permit) is required for stormwater discharges generated by construction activities. Coverage under the AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit) is required for certain applications of pesticides. Coverage under the AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit) is required for stormwater discharges generated by facilities and operations engaged in certain industrial activities. Among these industries are those engaged in certain activities within the air transportation and associated activities.

4.3 The City has obtained coverage under the AZPDES Multi-Sector General Permit for its air transportation facilities at the Airports. The City has adopted Stormwater Quality Protection ordinances (Phoenix City Code §§ 32C-1 to 32C-111) and has in place an Aviation Department Stormwater Enforcement Procedures and Civil Penalty Policy (Aviation Stormwater Policy), both of which were developed to comply with Environmental Laws governing stormwater pollution.

4.4 The City adopted the Aviation Stormwater Policy to achieve compliance with the AZPDES program requirements by the Aviation Department and its contractors and permittees. Contractor is subject to the Aviation Stormwater Policy as a condition to its use or occupancy of the Premises or any part of the Airports. The City has the right to monitor Contractor's activities on the Premises and the Airport and enforce Contractor's compliance with the Aviation Stormwater Policy. The City will provide reasonable advance notice to the Contractor ahead of monitoring and audit activities.

4.5 Contractor shall comply with the Aviation Stormwater Policy and shall implement, at its expense, all requirements of the Airports' Stormwater Pollution Prevention Plans (SWPPP) and City ordinances that pertain to Contractor's operations and activities on the Premises and the Airports to the extent the operations and activities have a potential to release pollutants to stormwater. Contractor shall use its best efforts to meet all deadlines that are established by applicable Environmental Laws and the Aviation Stormwater Policy. Contractor agrees that time is of the essence in the implementation of all City permit requirements.

4.6 Contractor's compliance with the AZPDES Permit Program set forth in 18 A.A.C. Chapter 9, Article 9 (R18-9-A901 to R18-9-A909); Chapter 32C of the Phoenix City Code; and the Aviation Stormwater Policy is a material requirement and condition of this Contract. If Contractor fails to comply with the foregoing and the City is exposed to any civil or criminal fine, penalty, sanction, or remediation cost, then the City may, in addition to all other remedies available under this Contract and applicable law, terminate this Contract.



SECTION VII – EXHIBITS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

4.7 AZPDES Construction General Permit. If Contractor decides to perform construction activities at the Premises or the Airports, Contractor shall, prior to commencing any such construction activity, obtain stormwater discharge authorization from ADEQ under an AZPDES Construction General Permit. Contractor must obtain that authorization by preparing a SWPPP and filing for AZPDES Construction General Permit coverage in coordination with the City’s manager assigned to the project. The City may consult with and assist Contractor with filing for AZPDES Construction General Permit coverage. Contractor shall work with the City’s project manager to develop pollution controls (e.g., best management practices, control measures, and schedules and procedures) for the SWPPP. Contractor is solely responsible for implementing the pollution controls and paying for all costs related to its compliance with its AZPDES Construction General Permit obligations.

4.8 AZPDES Multi-Sector General Permit.

A. If Contractor activities performed at the Premises are under AZDPES Multi-Sector General Permit, the Contractor shall, prior to using, occupying, or commencing any operation or activity on the Premises or the Airports, obtain stormwater discharge authorization from ADEQ under an AZPDES Multi-Sector General Permit. Contractor shall obtain that authorization as a “co-permittee” with the City. As a co-permittee, Contractor shall do all the following:

(i) Provide the City with a copy of Contractor’s written Authorization to Discharge that Contractor receives from ADEQ.

(ii) Implement the Airports’ SWPPP, including all best management practices, control measures, schedules, and procedures that apply to the Contractor’s use or occupancy of the Premises or the Airports.

B. In connection with its coverage under the AZPDES Multi-Sector General Permit, the City has developed a SWPPP for the Airports to minimize the contact of stormwater and other precipitation event water with Significant Materials (as that term is defined in the Section 32C-101 of the Phoenix City Code) generated, stored, handled, used, or otherwise located on the Premises or the Airports. The City shall provide a copy of the SWPPP, including best management practices, control measures, schedules, and procedures, to Contractor, who shall implement that portion of the SWPPP applicable to its use or occupancy of the Premises or the Airports.



SECTION VII – EXHIBITS

CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034

C. To the extent allowed by applicable Environmental Laws, Contractor may ask to be removed as a co-permittee from coverage under the AZPDES Multi-Sector General Permit when this Contract expires or is terminated, Contractor vacates the Premises, Contractor fails to comply with the all AZPDES Multi-Sector General Permit requirements, or Contractor decides it does not want to be covered as a co-permittee. Contractor shall not be relieved of its obligation to comply with the requirements of the AZPDES Permit Program with regard to its use or occupancy of the Premises or the Airports, and Contractor shall not be excused from any obligation or indemnification incurred and owed to City prior to Contractor being removed as a co-permittee because Contractor failed to fulfill an obligation of a co-permittee.

4.9 Pollution Controls.

A. City reserves the right to impose upon Contractor any best management practices, control measures, schedules, procedures, and any other action reasonably necessary to ensure the City's ability to comply with its AZPDES Permit Program requirements or applicable City ordinances. However, except in Extreme Emergency Conditions (as that term is defined below), Contractor shall have thirty (30) days from the City's notice imposing such pollution control measures and any other requirement to notify the City in writing if Contractor objects to any action Contractor is being directed by the City to undertake. If Contractor does not provide a timely objection, then Contractor will be deemed to have consented to the implementation of the pollution control measures or other requirements. If Contractor provides the City with timely notice of its objections, then the City and Contractor shall negotiate a prompt resolution of their differences. If a resolution is not reached within thirty (30) days, then the City's decision resolving the matter shall control. Contractor warrants that it will not serve a written notice of objections for purposes of delay or to avoid compliance with AZPDES Permit Program requirements or applicable City ordinances.

B. *Extreme Emergency Conditions* means all the following:

(i) Conditions that immediately impact the waters of the United States (e.g., Salt River) that result from an emergency, such as a fire, Release of a Regulated Substance, or explosion, that requires the responsible party or parties to immediately begin appropriate response activities independent of City's direction or oversight.

(ii) A catastrophic event that requires Contractor to close its business in the Premises. Contractor must implement pollution control measures before it reopens.

(iii) A collapse of the stormwater system or any other event that prevents the City from performing its obligations under the City's permit due to lack of capacity.



SECTION VII – EXHIBITS

**CITY OF PHOENIX
Aviation Department
Contracts & Services Div.
2485 E. Buckeye Rd
Phoenix, AZ 85034**

4.10 Covenant of Good Faith. City and Contractor shall act in good faith to implement any requirement imposed on them pursuant to the AZPDES Permit Program. The City and Contractor agree that close cooperation is necessary to ensure compliance with all AZPDES Multi-Sector General Permit requirements and to promote safety and minimize costs. The City and Contractor agree to a candid exchange of information necessary to coordinate a stormwater management and monitoring plan.

Revised May 2022
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