

PHX DVT GYR

CITY OF PHOENIX AVIATION DEPARTMENT

Revenue Contract Solicitation (“RCS”) Request for Responses

TERMINAL 4 SOUTH 1 CONCOURSE RETAIL CONCESSIONS PHASE II AT PHOENIX SKY HARBOR INTERNATIONAL AIRPORT AVN RCS 23-006

SCHEDULE OF EVENTS

All dates are subject to change without prior notice.

The City of Phoenix is not responsible for cost or losses incurred by any Respondent in the preparation of a Response or due to date changes.

ACTIVITY	DATE & TIME (All times are local Phoenix, AZ time)
Publish RCS	Wednesday, September 21, 2022
Pre-Response Meeting	Tuesday, October 11, 2022 at 11:00 a.m. Join by Phone: +1-415-655-0001 Access Code: 2464 241 2028 Meeting Link: https://cityofphoenix.webex.com/cityofphoenix/onstage/g.php?MTID=e631f1eb7b3a0ebbb0e9743d24333d09d
Question Deadline: Submittal of Written Questions	Wednesday, October 19, 2022 at 2:00 p.m.
Answer Deadline: Answers to Written Questions	Tuesday, November 8, 2022
Solicitation Deadline	Friday, December 9, 2022 at 2:00 p.m. Response Opening to begin at 2:15 p.m. Join by Phone: +1-415-655-0001 Access Code: 2464 906 1291 Meeting Link: https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=m789b44a316a9699d344d628ad430579d
Tentative Interviews / Discussion (If Necessary)	March 6 – 10, 2023
Award Recommendation to Phoenix City Council	October 2023
Commencement of Contract	November 2023

Submit Responses and request for alternate formats to:

Annie Sleeper
Procurement Officer
City of Phoenix Aviation Department
2485 East Buckeye Road, Phoenix, AZ 85034-4301
602-273-4389 (TEL) / 800-781-1010 (TTY)
avn.solicitations@phoenix.gov

<https://solicitations.phoenix.gov/Solicitations/Details/1290>

This RCS is issued pursuant to Phoenix City Code Chapter 43 and Administrative Regulation 3.10. This RCS does not commit the City to award any contract(s).



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SECTION I - INTRODUCTION

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I. INTRODUCTION

The City of Phoenix (City) Aviation Department (Aviation) is seeking responses from qualified Respondents to operate and manage Phase II Retail concession spaces at Terminal 4 South 1 (T4S1) Concourse at Phoenix Sky Harbor International Airport (Airport or PHX). The Successful Respondent will enter a Concession Lease Agreement (Lease) with the City. A copy of the draft Lease is attached as **Exhibit 1**. The Premises, identified in **Exhibit 2**, will be developed, operated, and managed by the Successful Respondent.

There is **one (1)** Retail concession contracting opportunity in this RCS, with two spaces. The Successful Respondent will be awarded both Retail spaces for Phase II.

The two (2) available Retail concession spaces in Phase II are:

- **R3** 1,080 square feet: Specialty Retail (Open Concept)
- **R4** 1,139 square feet: News and Convenience

The Retail Concession Program for T4S1 is being solicited and awarded in two phases through two separate Revenue Contract Solicitation (RCS) processes. AVN RCS 21-023 T4S1 Retail Concessions Phase I was awarded by the Phoenix City Council in March 2022. The Successful Respondent and Partners, as defined in Section I(R), resulting from AVN RCS 21-023 cannot be awarded the Lease for the Retail spaces for Phase II.

The City encourages competition in all of its solicitations. The City's desired outcomes from this solicitation process are to:

- Provide passengers with a mix of national, regional, and local brands and concepts that reflect the region, address Airport consumer needs and preferences, and reflect current trends over the term of the Lease.
- Optimize sales and rental revenues over the term of the Lease.
- Have a build-out by the Successful Respondent to create an open and welcoming space.
- Incorporate technology and innovative service concepts to expand offerings throughout the terminal building.
- Increase opportunity for small business participation.
- Expand the quality and uniqueness of souvenir and gifts merchandise / offerings.
- Select Respondents, including their subtenant and/or joint venture partner(s) (if any), who have experience in the successful operation of retail concepts.
- Select Respondents based on the entire Response, not solely based on the highest projected gross sales and/or rental revenues.
- Select Respondents based on a number of factors including Respondents' ability to provide the highest quality customer service, goods, and convenience to the traveling public while also providing a quality workplace for employees and demonstrating a commitment to sustainability, in addition to the expectation of reasonable rental revenues.



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Selection will be based on the entire Response and the Evaluation Criteria and will not be solely based upon the highest financial return to the City. All Respondents must demonstrate not only airport Retail concessions experience and financial capability, but also creativity in proposing retail concepts and quality merchandise that will enhance the customer buying experience. To support a healthy and productive concession workforce, it is also important to the City that the concessionaires offer access to affordable quality health insurance, livable wages, and safe working conditions.

A. BACKGROUND

Phoenix, Arizona is the vibrant center of one of the fastest growing job markets and economies in the United States. The fifth largest city in the country, Phoenix is emerging in the new economy with strength in high-tech manufacturing, bioscience research and advanced business services. In addition to its well-established aerospace sector, Phoenix is home to a large number of high-tech, IT, renewable energy, and personalized medicine industries.

PHX is among the busiest airports in the United States, serving over 46 million passengers in 2019, only approximately 22 million passengers in 2020 due to the impact of the COVID-19 pandemic on the aviation industry, and is on pace to reach approximately 45 million passengers in 2022 as PHX experienced one of the fastest airport recoveries in the country. With increased passenger projections as the Airport continues to recover from the pandemic comes the need to grow the Airport's footprint. In 2016, PHX received approval to construct a new eight-gate concourse to Terminal 4 (T4), which opened to the public in June 2022. The new S1 concourse at T4 is a contemporary and sustainable World Class Facility that embraces modern concepts and technology. The T4 concessions experience is expected to remind travelers of the vibrant and varied Arizona landscapes and regions, through modern designs that incorporate the natural and organic elements of the Southwest yet are not limited to a "desert" theme. The Airport encourages Respondents to also consider including modern urban elements into its concepts along with innovative technology.

The eight (8) gates at the new S1 concourse host Southwest Airlines. In addition to the new concourse, Southwest Airlines is currently operating out of three other concourses on the south side of T4. The new S1 concourse has added 130,000 square feet to T4 and includes a common-use lounge, multiple retail and food and beverage offerings, a new connector bridge to the north T4 concourses, and general improvements to the T4 processor and Security Checkpoint D.

T4 Gross Sales, T4 enplaned passengers by airline and calendar year, and Projected Enplanements for the T4S1 concourse are shown in the tables below.



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TERMINAL 4 GROSS SALES						
Category	CY 2017	CY 2018	CY 2019	CY 2020	CY 2021	CY 2022 (thru May)
Food & Beverage	\$137,769,673	\$144,540,897	\$153,082,411	\$65,055,216	\$106,440,996	\$53,941,991
Retail	\$ 47,939,430	\$ 61,287,946	\$ 65,057,375	\$29,393,933	\$ 55,452,549	\$29,303,476
Total	\$185,709,103	\$205,828,843	\$218,139,786	\$94,449,149	\$161,893,545	\$83,245,467

TERMINAL 4 ENPLANED PASSENGERS BY AIRLINE						
Airline	CY 2017	CY 2018	CY 2019	CY 2020	CY 2021	CY 2022 (thru May)
Air Canada	135,852	150,512	160,588	13,286	-	-
American Airlines	10,207,086	10,409,354	10,696,105	4,947,935	8,375,346	3,749,973
British Airways	107,586	120,960	92,785	11,960	14,452	29,561
Condor	-	9,101	18,206	-	-	440
Southwest Airlines	7,462,745	7,719,923	7,704,179	3,654,287	6,755,728	3,171,797
Volaris	34,435	29,018	37,004	17,325	29,165	10,704
WestJet	230,468	233,716	225,037	77,043	41,984	52,025
TOTAL	18,178,172	18,672,584	18,933,904	8,721,836	15,216,675	7,014,500

T4S1 PROJECTED ENPLANEMENTS	
Year	Projected Enplanements
2024	1,829,400
2025	1,876,964
2026	1,925,765
2027	1,975,835
2028	2,027,207
2029	2,079,914
2030	2,133,992
2031	2,189,476
2032	2,246,402
2033	2,304,808

Further information regarding the Airport's passenger traffic is available at <https://www.skyharbor.com/about/Information>.

More PHX statistics are available at <https://www.skyharbor.com/About/Information/AirportStatistics>.



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The City makes no representation or warranties, expressed or implied, as to the accuracy or relevancy of the statistical data. The Respondent assumes all risk associated with using the data, including its accuracy, relevance, and/or materiality to the formulation of its Response.

B. DEFINITIONS

The following definitions apply to this Revenue Contract Solicitation (RCS). There are additional definitions in the attachments, exhibits and appendices. If there is a conflict between these definitions and the definitions in the attachments, exhibits and appendices then the definitions in the attachments, exhibits, and appendices govern those documents.

AGGRIEVED PARTY means a person or a business that intends a Response that alleges a mistake, impropriety or defect in the solicitation will harm the person or business.

AIRPORT means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport and/or Phoenix Goodyear Airport, in accordance with the context of the contract.

CONTRACT includes any and all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions or other documents, however denominated that grant or convey a right or privilege on an Airport.

DAYS means calendar days, except as otherwise expressly provided in this RCS.

DISCUSSIONS means an exchange between the Procurement Officer and one or more Respondents submitting Responses determined to be Reasonably Susceptible Responses.

GOOD CAUSE means substantial grounds or evidence based upon facts not in dispute as determined by the Procurement Officer that the failure by an aggrieved party or a Respondent to submit a timely Response, protest or appeal was beyond its control due to misinformation relayed in writing by a city employee.

JOINT VENTURE (JV) means an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity.

LEASE is a written agreement with the City to conduct business on City property.

REASONABLY SUSCEPTIBLE RESPONSE means a Response that, based on the evaluation criteria, has a substantial chance of resulting in a Lease award.



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RESPONDENT means an individual, partnership, JV, corporation or firm that submits a Response to the City to perform services requested by a RCS.

RESPONSE means a written response to this Revenue Contract Solicitation.

RESPONSIBLE means to be fully capable of meeting all of the requirements of the solicitation, including possessing the capacity, operational and financial capability, and integrity to perform as contractually required.

RESPONSIVE means an offer or Response that on its face satisfies all material requirements of the solicitation.

REVENUE CONTRACT SOLICITATION (RCS) A solicitation for revenue contracts, including all amendments or supplements thereto.

SUBCONTRACTOR means an individual, partnership, JV, corporation or firm that holds a contract at any tier below the Lease, including a vendor under a purchase order.

SUBTENANT a person or entity that leases property from Respondent.

SUCCESSFUL RESPONDENT means an individual, corporation, firm or JV that has been selected by the City to perform services requested by a RCS.

C. MINIMUM QUALIFICATIONS

Each Respondent must submit documentation in its Response to demonstrate it meets the minimum qualifications as required and include all information requested in this section or the Response will be rejected as non-responsive.

The City of Phoenix Aviation Department reserves the sole right to determine if Respondents meet the minimum qualifications.

1. Respondent must have three (3) or more continuous years in the last five (5) years of ownership or executive management of a Retail business operation in an airport with active involvement in the day-to-day management of the retail business operation (qualifying business). Executive management is defined as the president, vice president, officer (including chief operating officer, chief executive officer, and chief financial officer), majority owner or stockholder, joint venture partner, managing partner, controlling partner, controlling owner or any individuals with authority to make decisions on behalf of an organization that will impact the overall direction of the organization. If Respondent is a newly formed entity, Respondent must demonstrate that owners, which may include JV partners, of Respondent who, in the aggregate, own 51% or more of the entity each satisfies this experience requirement.



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2. Respondent's qualifying business must have achieved minimum gross sales of \$2.5 million dollars for one (1) of the last five (5) years.

Respondents who do not meet the minimum qualifications are encouraged to joint venture partner or sublease with more established firm(s).

D. GOOD STANDING

Any Respondent that currently contracts with the City must be in good standing for its Response to be considered responsive. For purposes of this RCS, good standing refers to compliance with all contractual provisions, including payment of financial obligations.

E. OUTREACH REQUIREMENTS

To be considered for an award, each Respondent must conduct and document Small Business Outreach Efforts in compliance with the Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Race and Gender-Neutral Lease Clause (**Exhibit 3**) and USDOT in 49 C.F.R. Parts 23 and 26. Although there is no ACDBE, Disadvantaged Business Enterprise (DBE), or Small Business participation goal for this RCS, the City strongly encourages each Respondent to voluntarily utilize Small Businesses in its Response.

The Small Business Outreach Efforts Form – EO2 (**Exhibit 4**) and Small Business Participation Commitment Form – EO3 (**Exhibit 5**) are due with the Response at the time of submittal. A Small Business Participation Plan is due on an annual basis by the anniversary date of contract (Lease) award.

A Small Business Participation Plan received from the Successful Respondent that does not meet the outreach requirements will be deemed non-compliant. The Successful Respondent will be held to the Small Business Participation percentages proposed in Form EO3 (**Exhibit 5**).

The Airport has a national market for small business participation. Successful Respondents shall fulfill all required small business outreach requirements and submit all required outreach efforts documentation at the time of submittal and on an annual basis.

Every year on the anniversary of the Effective Date of the Lease, the Successful Respondent must provide the City with any material changes to its Airport-approved Plan.



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In instances where Small Business participation occurs as the result of a Joint Venture (JV) arrangement with a Respondent, the Successful Respondent is required to complete JV documentation, and cooperate and participate in a review of the participation of the JV partners at least once a year. The review will determine the percentage of participation that will be counted for Small Businesses and the participation of ACDBE firms to be reported to the Federal Aviation Administration each year of the Lease.

Successful Respondents are required to comply with Airport ACDBE Program Plan and 49 C.F.R. Parts 23 and 26. Successful Respondents shall track and report all ACDBE, DBE, and/or small business participation that occurs at the Airport as a result of the Lease, procurements, purchase orders, subleases, JV, goods/services or other arrangements involving sub-tier participation. Such documentation must be entered monthly into the internet-based reporting program Business2Government (B2G) System at www.phoenix.diversitycompliance.com.

F. EQUAL PAY REQUIREMENTS

In 2015, Phoenix City Council amended Phoenix City Code Section IV, Article V, 18-21 Equal Opportunity Requirements, known as the Equal Pay Act, to define expectations of all lessees with the City of Phoenix. **Exhibit 6** details the Act, as well as Federal and State provisions. As part of the Response for this RCS, Respondents are required to provide information on how they support, communicate, ensure and comply with these requirements. **Respondents are expected to be as detailed as possible when completing Section III(C), Tab 4.**

G. LEASE TERM AND CONTRACTUAL RELATIONSHIP

The information in this RCS is not intended to completely define the proposed contractual relationship to be entered into by the City and the Successful Respondent. The Lease terms may be amended at the sole discretion of the City at any time during the RCS process and/or prior to execution of the Lease.

The Lease will be effective upon execution by the City ("Effective Date"). The Initial Term of the Lease will begin on the Effective Date and last for twelve (12) months or until the date the Successful Respondent begins all operations under the Lease, whichever occurs first. The Primary Term of the Lease will commence twelve (12) months from the Effective Date or on the date the Successful Respondent begins all operations under the Lease, whichever occurs first. The Primary Term of the Lease will be **ten (10) years**, with no option to extend.

Respondents are advised to read the draft Lease included as **Exhibit 1**, to which the Successful Respondent shall be bound. See Exhibit 14, Affidavit, Paragraph 12 of Assurances.



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This RCS is for non-exclusive Lease(s) with the City. The City will not enter into an exclusive Lease with a Successful Respondent. At any time, the City has the right to award Leases to other operators for retail concessions in operation at the Airport and/or future retail concession that may be located within the existing locations or in later additions to locations throughout the Airport.

H. EXECUTION OF THE LEASE

The City will send the final Lease to the recommended Respondent after Phoenix City Council approves the Award Recommendation. Within **30 calendar days** from the date the Lease was sent, the recommended Respondent must sign and submit the final Lease to the City. The City may request City Council approval to award the Lease to the next highest qualified Respondent in the event the City does not receive the signed Lease and all other required documentation from the recommended Respondent within 30 calendar days. The Lease terms may be amended at the sole discretion of the City at any time during the RCS process and/or prior to execution.

If the recommended Respondent is subject to regulation by the Arizona Corporation Commission (ACC), it must be authorized to transact business in Arizona and be in good standing with the ACC at the time it signs the Lease.

I. GUARANTEE INSTRUMENTS

1. Response Guarantee: Responses must be accompanied by a ten-thousand dollar (\$10,000.00) Response Guarantee in the form of a cashier's check payable, without condition or restrictive endorsement, to the "City of Phoenix". **Each Respondent's Response Guarantee must be submitted in a separate sealed envelope clearly marked "Response Guarantee" along with the Response.**

Response Guarantees submitted by unsuccessful Respondents, including Respondents whose submittals were deemed non-responsive, will be returned, without interest, immediately after formal award of the Lease has been made by the Phoenix City Council or after all responses have been rejected by the City.

The Response Guarantee of the Successful Respondent will be returned, without interest, immediately after Successful Respondent has furnished the City with the Performance Guarantee instruments and insurance policies required by the Lease. Should the Successful Respondent fail to execute the Lease or furnish the Performance Guarantee instruments or insurance within 30 days from the date the Lease was sent, then the Successful Respondent's Response Guarantee will be forfeited as liquidated damages.



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2. Performance Guarantee: Prior to execution of the Lease, the Successful Respondent will be required to post and maintain with the City a Performance Guarantee in the form of a Letter of Credit (LOC) in the amount of six (6) months' Minimum Annual Guarantee (MAG) rent or a Cash Deposit in the amount of six (6) months' MAG rent. The LOC shall be in the form provided in **Exhibit 7**. The Cash Deposit shall be submitted in the form provided in **Exhibit 8**.

Adjustments to Performance Guarantee:

City may increase the amount of the Performance Guarantee from time to time so that it is equal to or greater than six (6) months of MAG paid to the City then in effect. City may increase the amount of the Performance Guarantee by giving the Successful Respondent at least thirty (30) days prior notice of the amount of the increase. The amount of the Performance Guarantee may be increased for any reason the City deems appropriate, including (1) an increase of the Successful Respondent's financial obligations under the Lease, (2) Successful Respondents failure to pay any MAG, Additional Payment, or any other amount when due, or (3) Successful Respondent's financial condition changes to the extent that City is concerned about Successful Respondent's ability to perform under the Lease. Successful Respondent shall pay to City the additional amount necessary to increase the Performance Guarantee upon notice from City.

Letter of Credit or Cash: If the Performance Guarantee is in the form of an irrevocable standby Letter of Credit (LOC), then the Successful Respondent shall use the City's **LOC form**, attached hereto and marked **Exhibit 7**. The LOC shall be issued by either: (1) a financial institution with counters in the Phoenix metropolitan area at which the City may make draws on the LOC; or (2) a financial institution with headquarters in the United States on which City may make telefacsimile draws. Unless City receives a written extension of the LOC in a form acceptable to City at least sixty (60) days before the end of the term of the LOC, City, without notice to Successful Respondent, may draw upon the full amount of the LOC and retain all proceeds as a cash performance guarantee. Any changes to the LOC required provisions must be approved in advance by the Aviation Director. If the Performance Guarantee is in the form of cash, Successful Respondent shall deliver to City a completed **Cash Deposit for Performance Guarantee Form** attached hereto and marked **Exhibit 8**.

Duty to Restore: The Performance Guarantee insures the full and timely performance by Successful Respondent of all its obligations under the Lease and is security payment by Successful Respondent of all claims by City. City may draw on or make a claim against the Performance Guarantee if Successful Respondent breaches or fails to perform under the Lease. If City draws on or makes a claim against the Performance Guarantee, then Successful Respondent, upon demand from City, shall replenish the Performance Guarantee to its previous amount within thirty (30) days of City's draw or claim.



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Return: After the expiration or earlier termination of the Lease, City will return the Performance Guarantee to the Successful Respondent less any Fees, Additional Payment, or any other amount due to City.

3. Employee Fidelity Bond: Upon execution of the Lease, the Successful Respondent will be required to post and maintain with the City a bond covering employees required to handle money in the amount of ten-thousand-dollars (\$10,000.00 USD).

J. PRE-RESPONSE MEETING

Respondents are strongly encouraged to attend the Pre-Response meeting that will be held via WebEx on the date, time, and meeting link listed on page 1.

To request a reasonable accommodation or alternative format for any public meeting, please contact the Procurement Officer (Annie Sleeper), no later than **14 calendar days** prior to the date and time listed on page 1 at 602-273-4389/Voice or 7-1-1/TTY, or email annie.sleeper@phoenix.gov.

K. QUESTIONS AND ANSWERS (Q&A) PROCESS

Respondents are strongly encouraged to read this RCS in its entirety, including all attachments, exhibits and appendices. Failure to read and/or understand any portion of this RCS shall not be cause for waiver of any portion of the RCS or subsequent Lease.

If Respondents discover any mistakes, improprieties or defects, they should submit a report of any mistakes, improprieties or defects in writing to the Procurement Officer at avn.solicitations@phoenix.gov no later than the question deadline listed on page 1.

Respondents and their Partners, as defined in Section I(R), are encouraged to submit questions as a team rather than individually to avoid submitting repetitive questions, which will allow Aviation to answer all questions more efficiently.

All questions about this RCS, including the draft Lease, must be submitted in writing no later than the question deadline listed on page 1 to avn.solicitations@phoenix.gov. All written questions will be responded to in writing and available at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>.

L. ADDENDUM TO RCS

Aviation may amend this RCS before or after the solicitation deadline listed on page 1. Changes to this RCS will be in writing as an addendum and posted at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>. Respondents are responsible to check the website and review all updates and postings.



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Respondents may not rely on any statement by any City employee, consultant or official regarding this RCS unless the statement made is published as an addendum or confirmed in writing as part of the Q&A process.

M. RESPONDENT EXCEPTIONS

The City will award the Lease on a fair and competitive basis and will not accept any changes to the material provisions or requirements of this RCS or Lease. Respondents that take exception to, add to, or subtract from any material provision or requirement of this RCS or Lease may be considered as attempting to change the provisions or requirements of this RCS to gain an unfair advantage over other Respondents. Responses including such exceptions or changes, or that are conditional, are subject to rejection as non-responsive Responses. Non-material exceptions or changes will only be considered if approved by the City during the Q&A process.

NO NEW EXCEPTIONS OR MATERIAL CHANGES TO THE RCS OR THE LEASE WILL BE CONSIDERED AFTER THE Q&A PROCESS.

N. AIRPORT SECURITY

Individuals assigned to work at PHX as a result of this RCS must pass a fingerprint-based Criminal History Records Check, pass a Federally-mandated Security Threat Assessment, and obtain an Aviation-issued security credential or badge. Successful Respondents must comply with all airport security requirements. Visit: <https://skyharbor.com/docs/default-source/default-document-library/newcompanyinformationmanual.pdf> for current information and <https://skyharbor.com/Business/RulesAndRegulations> for current Airport Rules and Regulations.

O. EXCLUSIVE BEVERAGE RIGHTS

The City may enter into an exclusive beverage pouring rights partnership and subsequent contract. City reserves the exclusive right to solicit and enter into product advertising and sponsorship agreements for the display and sale of non-alcoholic beverages including but not limited to carbonated drinks, sports drinks, juices, and bottled water for the display and sale at the Airport. The Respondent agrees to cooperate and assist, as necessary, City in the implementation of such exclusive agreements.

P. CONSOLIDATED RECEIVING AND DISTRIBUTION CENTER (CRDC)

The City reserves the right to develop, construct and operate a Consolidated Receiving and Distribution Center (CRDC) during the term of the Lease. If the CRDC is developed, all Successful Respondents and Partners and all the Successful Respondents' authorized vendors will be required to utilize this facility. If developed, Successful Respondents will be notified of any costs associated with the CRDC that will be charged to them.



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Q. COMMERCIAL DELIVERY ON THE AIRFIELD

Due to various height restrictions (12'-15') based on delivery locations, the City reserves the right to regulate and approve all commercial delivery vehicles to be used on the airfield. This includes the Successful Respondent and / or joint venture partner(s) and all of their authorized vendors. Only badged drivers with the required airport insurance limits have to be escorted by concessionaire personnel when accessing the airfield or sterile areas. All products / equipment must be readily accessible for visual inspection by security team members at the gate for entry to the airfield.

R. RESPONSE LIMITATION TO THIS RCS

Respondents may submit only one (1) Response for this RCS. Multiple Responses are prohibited.

The following shall be deemed Multiple Responses:

- The City receives more than one (1) Response from a Respondent.
- The City receives one (1) Response from a Respondent and one (1) or more Responses from any entity or person affiliated with the Respondent.

If Multiple Responses for this RCS are received from a Respondent, all Responses from that Respondent shall be deemed non-responsive and rejected.

Respondent and an entity or person affiliated with the Respondent (Partner) include:

- A parent and its subsidiary.
- A holding company and its constituent company.
- Constituent companies of a single common holding company.
- Subsidiaries of a common parent.
- A limited liability company and a member or manager of the limited liability company.
- Limited liability companies with common members or managers.
- A partnership and one of its partners, or multiple partners in a single partnership.
- A person or entity proposing as a joint venture partner or joint venture on separate Responses.
- A person or entity proposing as a prime or sole Respondent also proposing as a joint venture partner on a separate Response.
- Two or more Respondents where the president, vice president, officer (including chief operating officer, chief executive officer, and chief financial officer), agent, majority owner or stockholder, management employee, managing or controlling partner, or controlling owner of one Respondent is also the president, vice president, officer (including chief operating officer, chief executive officer, and chief financial officer), agent, majority owner or stockholder, management employee, managing partner, or controlling owner of any other Respondent.



SECTION I - INTRODUCTION

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It is the intent of the City that this prohibition applies regardless of whether the affiliated person or entity submits a response independently or as a partner of a joint venture or other partnership.

The prohibition on Multiple Responses does not preclude a person or entity from participating on more than one Response as a subtenant only or submitting a Response as a Respondent and participating as a subtenant, licensee or vendor on a different Respondent's team.

CONTINGENT RESPONSES WILL BE REJECTED.



SECTION II – SCOPE OVERVIEW

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II. SCOPE OVERVIEW

A. INTRODUCTION

The Successful Respondent will be responsible for the development, operation, and management of Retail concessions at T4S1 Concourse at PHX. The Successful Respondent will enter into a Lease with the City. A draft of the Lease can be found in **Exhibit 1** and the Premises of T4S1 can be found in **Exhibit 2**.

The Successful Respondent will conduct operations in a professional, business-like manner so as to not disturb or be offensive to other tenants or patrons and will not provide or sell any additional services unless approved in writing by the Aviation Director. The Successful Respondent will comply with the Food and Beverage/Retail Operating and Service Standards Manual (**Exhibit 9**). The Successful Respondent will not use or permit use of leased space(s) for any activity not expressly permitted in the Lease.

B. CONCESSION SPACES AND PHASED APPROACH

T4S1 opened in June 2022 and Southwest Airlines is operating out of that concourse.

Phase II spaces include:

- **R3** 1,080 square feet: Specialty Retail (Open Concept)
- **R4** 1,139 square feet: News and Convenience

C. RETAIL CATEGORIES, CONCEPTS, AND EXPECTATIONS

The retail category descriptions contain requirements for the concepts to be proposed for each concession space. Each category contains a description of the types of concepts and merchandise desired by the City. Respondents may not propose changes to the retail category descriptions, total square footage listed for each concession space, or the total square footage per location, except where indicated.

Each retail category includes a Sample Merchandise List, which contains a list of approved merchandise that could be sold in the concession spaces. The list is not intended to be all inclusive. Merchandise that is prohibited by federal or state law will not be allowed to be sold from any of the concession spaces, and under no circumstances can marijuana be sold at the Airport from any of the concession spaces.

Respondents should select concepts that are unique and distinctive from other concepts and/or merchandise offered at PHX or other airports. Respondents should also choose concepts that fit the retail category described and are not duplicative of other concepts in the vicinity of the concept being proposed, if applicable. It is the City's objective to offer customers a broad range of Retail options.



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It is the Respondent's Responsibility to be aware of the current offerings in the surrounding areas in the terminal and propose concepts that will complement the existing Retail program. For more information on the current Retail offerings please see the following link: <https://www.skyharbor.com/ShopsFoodServices/Shops>

To see the locations of all Retail offerings, please see the following link: <https://maps.skyharbor.aero/>.

Respondents should note that the City would prefer that certain retail categories be branded concepts that are nationally or locally/regionally recognized with an off-airport location. A store that sells nationally branded merchandise and has a non-brand store name is not what the City would consider a “national” brand name store. An example of a store that does not meet the City’s preference would be a cosmetics store selling nationally branded cosmetics called “Ethel’s Cosmetics”. It is important that the brand name(s) merchandise sold inside the store be communicated on the exterior of the store on the sign band.

For each national name brand or local/regional concept proposed, the quality of the merchandise should be the same as the merchandise at the concept’s street location. The City expects the national name brand or local/regional concept’s merchandise, in terms of the number and variety of items, to be as close as reasonably possible to the concept’s street location(s).

The same promotions, discounts and loyalty programs, and the same sales and acceptance of gift cards and frequent buyer cards offered in the Successful Respondent’s concept street location(s) must be offered and accepted at its concept airport location.

The City desires each concession space be utilized for maximizing customer service and revenues. The amount of space allocated to each retail concept will be the amount leased to the Successful Respondent. If the Respondent believes it needs less space to maximize gross sales and rent revenues, then the Successful Respondent will be allowed to designate a portion of the space for storage, office, or other purposes not directly related to the display and sale of goods to customers. However, the space allocated to storage, office, and other purposes will not be more than ten percent (10.0%). The space allocated to storage, office, or other purposes will be required to be improved by the Successful Respondent. The cost of improvements will be at the discretion of the Respondent and must comply with all applicable codes, ordinances, rules, regulations, and life safety requirements. The remaining space will be improved at a minimum cost of \$350.00 USD per square foot.



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When designing the spaces, Respondents should be aware of any social distancing requirements with respect to width of aisles and customer queues in order to make customers feel comfortable shopping in the stores. Successful Respondent must also meet the obligations with regard to regulatory requirements to the Americans with Disabilities Act (ADA) accessibility standards.

The Successful Respondent will provide routine cleaning and sanitation of concession spaces and high touch points areas based on current Centers for Disease Control and Prevention (CDC) recommendations due to COVID-19 and/or future health pandemics/risks.

In addition to retail merchandise offered in the spaces for Phase II, the City is expecting the Successful Respondent to be at the forefront of implementing new technology to enhance the customer experience at PHX. One way is to expedite the customer's ordering and checkout experience. As technology continues to advance, it is transforming the ordering process.

The Successful Respondent may contract with third-party delivery companies (approved by the City) that will allow passengers to order, via an app, retail merchandise from concession operators at the Airport no matter their location.

At the discretion of the City, the Successful Respondent may be required to participate in a terminal or airport-wide third-party delivery program, whereby passengers can order merchandise remotely and have their orders delivered to them at a specified area in the terminal, or passengers can pick-up their orders at the concept location. The third-party delivery program is currently under development.

The City also expects the Successful Respondent to expedite the in-store checkout process by using the latest technologies (especially touchless), accommodating various payment methods, and offer different checkout options. Contactless card readers, wireless terminals, self-checkout, and email receipts are such options. In addition, consumers today can pay with more than just cash or card. With virtual wallets and mobile payment options such as Google Pay, Apple Pay and Samsung Pay, it will be important for the Successful Respondent to accommodate as many of these payment methods as possible so customers can check out quickly and efficiently.

Any concept selling bottled alcoholic beverages for consumption off-airport must offer shipping services at a reasonable cost. The sale and shipment of all liquor must comply with the appropriate liquor laws and ordinances of the City of Phoenix and State of Arizona, and the liquor laws of the state that the shipments are made to.



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None of the retail spaces in this solicitation can be developed for food and beverage services except for pre-packaged sandwiches, salads, snacks, and bottled/canned beverages which are allowed to be sold in the R4 space in Phase II. None of the retail spaces are permitted to sell or serve freshly brewed coffee.

Phase II Retail Categories and Descriptions:

1. R3 Specialty Retail
 - a. Open Concept
2. R4 Retail
 - a. News and Convenience

R3: Specialty Retail (Open Concept)

The R3 space, occupying 1,080 square feet, is an Open Concept and is intended to give Respondents the opportunity to propose concepts that would complement, and not duplicate, PHX's retail program, including the retail concepts chosen for the R1 and R2 spaces. The City of Phoenix encourages Respondents to be creative and make the shopping experience more convenient and enjoyable. Respondents are encouraged to propose concepts which are nationally or locally branded or feature local products and artisans. The City encourages creativity by Respondents in terms of the types of merchandise featured in the space and the design and layout of the space. Respondents will not be allowed to sell news/convenience, books, food and beverage, coffee, duty free, or high-tech merchandise in the space.

Respondents should familiarize themselves with the merchandise that will be offered in the R1 space, which is in close proximity to the R3 space, and recently awarded to The Marshall Retail Group, LLC (MRG). Sample list of brands provided in MRG's response include: Changing Hands Bookstore, Melrose Pharmacy, L'Occitane, L'Oreal, Herschel, Maui Jim, Ray-Ban, Oakley, MC Candle Company, etc.

The Successful Respondent is expected to keep up with retail trends and change their product or service offerings to reflect customer needs and preferences. All changes to offerings and prices must have the prior written approval of the Aviation Director.

R4: News and Convenience

The R4 space, occupying 1,139 square feet, is a News and Convenience store. The store is expected to offer essential merchandise a passenger in a hurry can purchase quickly and efficiently. The City of Phoenix encourages Respondents to propose a store that offers touchless and contactless check-out capabilities. Generally, these types of passengers would like to have expedited service allowing for a quick in-and-out experience. The goal is to elevate the customer service experience and increase through-put, especially during peak travel times of the day.



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The store is expected to carry the following merchandise categories: reading materials, sundries, pre-packaged snacks, bottled/canned beverages, souvenirs, gifts, and other miscellaneous merchandise.

Other than pre-packaged snacks and bottled/canned beverages, the store will be prohibited from selling food and beverage items such as pre-packaged sandwiches and salads, soups, fountain drinks, and freshly brewed coffee. The store will be required to limit the amount of high tech merchandise to no more than three percent (3%) of the floor space, since the InMotion store (Phase I R2 space), in proximity to the R4 store, will specialize in high tech merchandise.

- **Reading Materials**

The reading materials section should consist of newspapers, magazines and books including a selection of local and national newspapers such as The Phoenix Business Journal, The Arizona Republic, Wall Street Journal, New York Times and USA Today; the top 20 paperback and hardcover books from the New York Times Best Seller list; and an assortment of magazine titles.

The periodical section is expected to include magazines in the following categories: business, entertainment, fashion, cooking, gourmet foods and wine, health and fitness, sports, electronics/high tech, science, and politics. In addition, printed materials such as travel guides, points of local interest and current events, and maps may be offered. The book section is expected to carry hard cover and paperback books appealing to both business and leisure travelers. Examples of reading categories include the following: fiction, non-fiction, reference, children's books, self-help, advice and how-to, cooking, art, travel, and books related to the Phoenix/Arizona area.

- **Sundries Section**

The sundries section is expected to carry items that passengers may need on their trip or normally carry with them but left at home. Items include aspirin, comb/brush, toothbrush and toothpaste, deodorant, cold tablets, lotion, shaving needs, personal hygiene items, etc. The Successful Respondent should be aware that passengers going through security screening are limited to carrying liquids that are no more than three ounces in size per bottle/container.

Sample merchandise includes but is not limited to:

- Aspirin, cough and cold medication, and other pain remedies;
- Combs and hairbrushes;
- Toothpaste, toothbrushes, and mouthwash;
- Razors and shaving cream;
- Prepaid disposable cellular phones;



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- Batteries;
 - Sunglasses and reading glasses (under \$25.00);
 - Greeting cards and stationery;
 - Postcards;
 - Personal hygiene items;
 - Note pads, pens, pencils, and other office supplies;
 - Individually packaged disposable diapers for children and adults;
 - Panty hose and garments;
 - Stamps
- Pre-Packaged Snacks and Bottled / Canned Beverages
The News and Convenience store is expected to carry pre-packaged snacks such as gum, candy, mints, chips, and a variety of bottled/canned beverages. The size of pre-packaged snacks should include single-sized servings as well as full-sized packages found in most grocery and convenience stores.
 - High Tech Accessories
The high tech section of the store will be limited to the sale of high tech accessories, which include chargers, ear buds, headphones, cables and connectors, adaptors, etc.
 - Souvenirs, Gifts, and Other Miscellaneous Merchandise
The store is expected to carry Arizona memorabilia, including merchandise made in Arizona unique to the PHX market. Examples of souvenir and gift merchandise include t-shirts and sweatshirts, coffee mugs and shot glasses, cactus gardens, wind chimes, children's toys and games, candles and candleholders, hand painted tiles and coasters, picture frames, and caps and hats.

Sample merchandise includes but is not limited to:

- Souvenir t-shirts and sweatshirts;
- Mugs and shot glasses;
- Candles and candleholders;
- Hand painted tiles and coasters;
- Cactus gardens and wind chimes;
- Caps and hats;
- Children's toys and clothing;
- Picture frames;
- Magnets and key chains;
- Ornaments
- Soaps;
- Playing cards;



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- License plate covers and bumper stickers;
- Soft sided and wheeled luggage;
- Bottled wine (as long as all applicable State laws are followed);
- Small household items;
- Olive oil

D. MINIMUM ANNUAL GUARANTEE (MAG) OR PERCENTAGE RENT

Each Respondent must propose the first year Minimum Annual Guarantee (MAG) of gross sales (**Exhibit 10**). The proposed First Year MAG (in aggregate) must be **\$196,375.00 (USD)** or greater (**R3 Space: \$54,000.00** and **R4 Space: \$142,375.00**). Throughout the term of the Lease, the Successful Respondent must pay MAG or Percentage Rent derived from gross sales, whichever is greater. The minimum Percentage Rental Rates set forth below are non-negotiable. Minimum MAG per square foot and Percentage Rental Rates are set based on Airport historical and market data and are provided in the following schedules.

In subsequent years of the Lease, MAG for each concession space shall be established at 85% of the annual rent revenues paid during the preceding year or 100% of MAG for each concession space for the prior Lease year, whichever is greater. Percentage Rent shall be calculated at the percentage of gross sales set forth in the schedules below.

R3: SPECIALTY RETAIL (OPEN CONCEPT)	Percentage of Gross Sales	MAG per SF	Total MAG per Unit
1. Children's Apparel and / Or Toys	12%	\$50.00	\$54,000.00
2. Chocolates / Candy (Nat'l / Local / Regional Brand Preference)	16%		
3. Contemporary Art and Local / Regional Crafts	14%		
4. Cosmetics / Perfumes (Nat'l Brand Name Preference)	12%		
5. Fashion Jewelry (Nat'l Brand Name Preference)	12%		
6. Men's Clothing and Accessories	12%		
7. Women's Clothing and Accessories	12%		
8. Native American	16%		
9. Souvenirs	16%		
10. Sunglasses / Watches (Nat'l / Local / Regional Brand Preference)	12%		
11. Travel Access and Leather (Nat'l Brand Name Preference)	12%		



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R4: NEWS AND CONVENIENCE	Percentage of Gross Sales	MAG per SF	Total MAG per Unit
1. News & Convenience			
a. Reading Materials	12%	\$125.00	\$142,375.00
b. Sundries	12%		
c. Pre-Packaged Snacks & Bottled / Canned Beverages	14%		
d. High Tech Accessories	15%		
e. Souvenirs, Gifts & All Other Merchandise	16%		
Phase II First-Year MAG			\$196,375.00

E. RENT UPON OPENING

During the Initial Term which shall commence on the Effective Date, Successful Respondent will pay percentage rent only until all operations under their Lease begins or twelve (12) months from the Effective Date, whichever is earlier. All dates are subject to change at the discretion of the City.

F. “AS IS” CONDITION AND CAPITAL INVESTMENTS

The concession space will be available to the Successful Respondent in an “as is” condition. All capital investments must be provided by the Successful Respondent in compliance with Proposed Capital Investment by Concession Space and in the Aggregate (**Exhibit 11**). Respondents are responsible for proposing designs and operations in compliance with all requirements in the draft Lease (**Exhibit 1**), the Tenant Design Criteria (**Exhibit 12**), and the Tenant Improvement Handbook (**Exhibit 13**). Respondents are encouraged to be creative and innovative in their design, incorporating the T4S1 design intent and philosophy defined in the Tenant Design Criteria (**Exhibit 12**), and with consideration given to the City’s desired outcomes identified in Section I.

The Successful Respondent shall, in the design and construction of the improvements to the space, comply with all applicable provisions of the Americans with Disabilities Act, 42 U.S.C. § 12101 et al., the ADA Accessibility Guidelines (ADAAG), and implement regulations as imposed upon the owner and operator of public facilities.

Architectural and engineering fees are excluded from the calculation of initial and midterm capital investments for each concession space. All concession spaces must be maintained in “opening day” condition throughout the term of the Lease. Concession spaces that are not maintained in “opening day” condition will not be considered for a lease option renewal (if applicable) by the Aviation Director.



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Initial Capital Investment

All capital investments will be evaluated according to the value and appropriateness of improvements considering the concepts described in this RCS. The Successful Respondent will be required to spend a minimum amount of **\$350.00 USD per square foot** for leasehold improvements and trade fixtures. In the event the Successful Respondent does not spend the total capital investment proposed for the retail concepts, the unspent balance must be remitted to the City no later than four (4) months after commencement of the primary term of the Lease.

Midterm Capital Investment

The Successful Respondent will be required to spend a minimum average of **\$100.00 USD per square foot** as a midterm capital investment (midterm refurbishment must be complete within five (5) years of Primary Term of the Lease) to upgrade leasehold improvements. The midterm capital investment is not intended for general maintenance and should be used to refurbish areas of the Premises visible to customers.

In the event the Successful Respondent does not spend the total midterm capital investment proposed for each concession space, the unspent balance must be remitted to the City within three (3) months after completion of the midterm capital investment. See **Exhibit 1 – Draft Lease**.

G. REPORTS

The Successful Respondent will submit monthly reports to Aviation. Monthly reports will be due within twenty (20) days after the close of each month and must include a detailed statement of gross sales and any deductions from gross sales for the preceding month. The monthly report must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and certified by a responsible financial officer of the Successful Respondent and must be submitted in a format approved by Aviation. Gross sales will be reported by percentage rent category. Weekly reports will be due every Wednesday for the prior week's sales.

Concessions Data Reporting Requirements:

The City will require the Successful Respondent to report concessions sales data via an automated process utilizing the City-provided Application Program Interface (API) standard. The Successful Respondent shall provide near real-time weekly and monthly reporting of concession sales data using this published API specification. Reporting of concessions sales data via this method is required regardless of other means that the Successful Respondent might choose to report similar data to the City on a monthly basis for reporting MAG or percent sales revenue information to meet its other reporting requirements. Any and all equipment and transmission changes necessary to accomplish this reporting process will be the responsibility of the Successful Respondent.



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The draft API specification can be accessed at the below URL. The API specification may change depending on the City’s operational needs.

Draft API Specification:

https://skyharbor.com/docs/default-source/technology/avn-phx-concession-data-openapi-json_v1.json?sfvrsn=31846389_2&download=true

Click on the link, save the file to your computer, the file can be opened using any standard text editor program like “Notepad”, “WordPad”, etc.

H. HOURS OF OPERATION

The retail concepts will be required to maintain hours of operation as approved by the Aviation Director. Business hours will be seven days a week, 365 days per year, opening at least ninety minutes prior to the first scheduled daily flight departure from T4 and remaining open at least thirty minutes after the final departure from T4. Business hours are subject to change at the sole discretion of the Aviation Department.

I. ADDITIONAL SPACE

Limited airport storage and office space (support space) may be made available to the Successful Respondent. Additional support space, if available, would be charged at the rate for the terminal in effect at the time of leasing. The current terminal rate is **\$123.00 USD** per square foot and may be adjusted every year in July. Due to the limited amount of support space available in Terminal 4, the Successful Respondent may need to secure off-airport storage, office, and distribution space to support their airport operations.

J. CUSTOMER DATA AND SECURITY

The Successful Respondent should consider the security of customer data, including credit card numbers, phone numbers, and any other identifying information, and have methods in place to ensure that customer data is adequately protected. The Successful Respondent should submit proof of Payment Card Industry Data Security Standard (PCI DSS) Certification with the response. The PCI DSS Certification will ensure that the Successful Respondent has all required measures in place to secure customer credit card payments.

K. ENVIRONMENTAL AND ENERGY CONSERVATION

The Airport is committed to incorporating sustainable principles and practices into its operation, management and administrative processes and strengthening sustainability throughout the Airport. In keeping with this commitment, the Airport values the vision, commitment and practices demonstrated by its concessionaires in the areas of environmental sustainability and environmental conservation.



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Information on the Airport's sustainability vision, commitment and practices can be found at: <https://www.skyharbor.com/about/Sustainability>

Respondent should avoid the use of polystyrene foam (also branded as Styrofoam) cups and containers for eat in or take-out food and beverage service. The use of bio-based products (cardboard, etc.) or reusable dishes and utensils are suggested alternatives.

The Airport's energy and water conservation requirements for leased spaces are outlined in its Tenant Improvement Handbook and Design Manual. Those include the use of EnergyStar and WaterSense appliances (with certain efficiency ratings) and LED lighting. During the Tenant Improvement process, submittal of energy needs and illumination calculations for the leased space will be submitted for Aviation approval.

The Airport is developing a voluntary Green Tenant Program to incentivize conservation actions that can be taken by the tenants. These initiatives can control costs by reducing waste disposal and energy and water consumption. PHX encourages the Successful Respondent to participate in the program.

Successful Respondent should set up an area for the sorting and accumulation of materials to be recycled, with instructive signage. Successful Respondent may appoint a staff person to serve as the environmental liaison and point of contact with the Airport Recycling Coordinator or designee. This person would oversee training of new staff on recycling procedures and check recycling efforts in the lease space.



SECTION III – EVALUATION CRITERIA AND RESPONSE INSTRUCTIONS

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III. EVALUATION CRITERIA AND RESPONSE INSTRUCTIONS

A. EVALUATION CRITERIA

All responsive and responsible Responses will be evaluated based on the following criteria. The criteria will be evaluated for the Respondent and all Partners of the Respondent, if any. The sub-criteria listed will be considered by the evaluation panel(s), but are neither individually weighted, nor listed in order of importance. This is a best-value-to-the-City-procurement.

1. Proposed Concepts and Merchandise Plans for Each Concession Space (0 – 250 Points)

Responses will be evaluated on proposed concepts, merchandise plans, price points, and methods to monitor and implement retail trends for each concession space with a balance of national, regional, and local concepts for the Retail concessions. The merchandise plans should demonstrate quality, variety, and unique product mixes. Responses shall convey how the concepts and merchandise best fit into the surrounding concepts in the area and the overall PHX retail concession program.

2. Design and Quality of Tenant Improvements for Each Concession Space (0 – 225 Points)

Responses will be evaluated on the amount of Capital Investment intended for tenant improvements. The proposed concept designs will be evaluated for: creativity and innovation for interior and exterior designs; efficiency of layout of the interior layout plan (i.e., point of sale stations, customer circulations, queuing, use of technology, back of house storage, etc.); and overall quality of construction materials for flooring, wall coverings, fixtures, display units, signage, etc. Tenant improvements shall also demonstrate compliance with tenant design criteria, include a clear and feasible construction schedule, and include design and construction proposals promoting environmental sustainability and environmental conservation.

3. Management, Marketing, Operations, and Technology Plans (0 – 175 Points)

Responses will be evaluated on a management plan that contains the following: a staffing plan for each concession space including the qualifications and experience of on-site staff; training programs for customer service, policies and/or procedures for managing customer complaints and emergency situations; incentive programs for staff retention and recruitment; workplace quality to include employee wages, health insurance benefits and affordability, working conditions and workplace safety, personal protective equipment (PPE) availability, and additional benefits or compensation; communication methods to notify employees of employment related regulations, including the **Equal Pay Act**, and monitoring practices to ensure compliance.



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Responses will also be evaluated on the quality of the marketing plan that identifies how the Respondent will use social media, advertise, and implement promotional opportunities and discounts to customers to encourage purchases and increase sales. The evaluation will also, consider how the use of technology improves the customer's buying experience.

In addition, Responses will be evaluated regarding the approach to the operations plan and shall include how technology innovations will be utilized, the Respondent's approach to inventory and cash controls, and the approach to sustainability, including the Respondent's vision, commitment, and practices related to sustainability.. The plan shall also demonstrate the ability to deliver products and merchandise to each concession space during normal business hours and emergency situations. A facility maintenance plan will also be evaluated in the operations plan to review normal repairs and maintenance, trash removal, cleaning and replacement of equipment and fixtures. The facility maintenance plan should also describe the frequency of cleaning the spaces and high touch point areas (during a pandemic such as COVID-19 and during normal circumstances). In addition, if the Respondent is proposing a concept that is licensed, the involvement of the licensor shall be included in the operations plan.

4. Experience and Qualification of Respondent and Partners (if any) (0 – 150 Points)

Responses will be evaluated on the Respondent's experience and qualifications for its organization, partners, and subtenants by providing the number of years and types of experience in relevant concession categories. This includes experience in airports, non-airport venues, similar concepts and operating multiple concession spaces simultaneously and experience with the proposed concepts. Responses shall also discuss the number of years of experience operating and managing a variety of concepts and subtenants and the sales performance of concession spaces operated by the Respondent and all Partners.

5. Proposed Business Plan (0 – 100 Points)

Responses will be evaluated as to the business plan that provides projected annual and aggregate gross sales and rent revenues for concession spaces during the lease term. The plan shall also discuss the projected cash flow from operations, by concession space, to cover the proposed Capital Investment during the lease term. The plan shall also be evaluated on the assumptions in support of the gross sales and Pro Forma financial projections, in addition to demonstrating financial capability to fund the proposed Capital Investment.



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6. **Financial Return to the City (0 – 100 Points)**

Responses will be evaluated on the Proposed First Year Minimum Annual Guarantee (MAG) submitted by the Respondent. The Proposed First Year MAG (in aggregate) must be \$196,375.00 USD or greater (**R3 Space: \$54,000** and **R4 Space: \$142,375**).

Total Points Available

1000 Points

B. **SUBMISSION OF OFFER – ELECTRONIC OR HARD COPY RESPONSE**

The City of Phoenix Aviation Department is accepting electronic Responses for this solicitation, in addition to other methods of submitting sealed Response packages (hard copies). Respondents are responsible for submitting the Response (electronic or hard copies) before the due date and time of the submittal deadline.

FOR HARD COPY SUBMITTAL: For “In-Person” and “via Carrier (i.e. USPS, FedEx, UPS, etc.)” Delivery: Responses will be received at the Aviation Headquarters located at 2485 East Buckeye Road, Phoenix, AZ 85034 in the lobby during normal business hours (8:00 am – 5:00 pm local Phoenix time). Responses should be clearly marked on the outside of the package as designated in the solicitation. The Respondent is responsible for managing potential delays and the City does not make exceptions for delays caused by the Carrier.

If the Respondent submits the Response in a hard copy format, then the Response must be submitted in a sealed package marked with the following information:

- Respondent’s Name
- Respondent’s Address (as shown on the Certification Page)
- AVN RCS 23-006
- RCS Response To: T4S1 Retail Concession Phase II at PHX

FOR ELECTRONIC SUBMITTAL: Please submit your Response via email to avn.solicitations@phoenix.gov. The date and time on the email will provide proof of submission and verification if the Response was received on or prior to the Due Date and Time specified. Please identify the solicitation number i.e. AVN RCS 23-006 on the subject line of the email when submitting your Response.

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



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Respondents will be allowed to submit an electronic test submission. Please send electronic test submissions to avn.solicitations@phoenix.gov and specify in the title of the email that the submission is only a test. The City will acknowledge receipt of the test submission but will not be responsible for providing any additional information related to the Respondent's test submission. A test submission will not be counted as a final submittal. The actual Response must be submitted before the solicitation deadline. Successful electronic test submission is not a guarantee that electronic final submission of the Response will also be successful, and the City will not be responsible for any technical issues that may occur with the electronic final submission. **The Respondent is responsible for ensuring its Response is received prior to the solicitation deadline date and time.**

C. DELIVERY OF RESPONSES

Respondent's sealed package(s) must include the following:

- One (1) original Response with an authorized original signature on the Affidavit (**Exhibit 14**).
- Two (2) hard copies of the Response.
- One (1) electronic copy of the Response on a USB drive using unlocked pdf format and in the same page order as the hard copy.
- In a separate sealed envelope marked "Response Guarantee", a ten-thousand dollars (\$10,000.00) Response Guarantee check.
- Completed and signed Conflict of Interest and Solicitation Transparency Disclosure Form (**Exhibit 15**).
- Letter of Declaration (**Exhibit 6**).
- In a separate sealed envelope marked "Small Business Outreach Requirements," the small business outreach requirements including the following:
 - Two (2) hard copies of the Small Business Outreach Efforts Form (**Exhibit 4 – Form EO2**) filled out.
 - All supporting documentation required in **Exhibit 4 – Form EO2**.
 - Two (2) hard copies of the Small Business Utilization Commitment Form (**Exhibit 5 – Form EO3**) filled out.
 - One (1) electronic copy (USB drive) of the Small Business Outreach Requirements documentation as specified in Section III(J).
- Respondent shall submit in a separate sealed envelope marked "Statement Regarding any Agreement with Labor Organizations", the Statement Regarding Any Agreement with Labor Organizations as specified in Section III(I).



SECTION III – EVALUATION CRITERIA AND RESPONSE INSTRUCTIONS

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If submitting electronically, Respondent is responsible for including all required documentation in the electronic submission. **The actual Response Guarantee and notarized affidavit, regardless of the Response submission method, must be received at the Aviation Headquarters located at 2485 East Buckeye Road, Phoenix, AZ 85034 by the Solicitation Deadline as indicated in the Schedule of Events on page 1.**

Respondents may submit electronic signatures on documents that do not require a Notary Public. The City does not accept electronic signatures for notarized documents; these documents must be submitted in paper form (hard copy) with original or “wet signatures” at the time of the Solicitation Deadline. Please ensure that electronically signed documents are submitted in separate pdf files.

Sealed responses **must** be received by Aviation’s administrative receptionist before the solicitation deadline at the address listed on Page 1 during the normal business hours of 8:00 a.m. to 5:00 p.m. Phoenix time or electronic responses must be received at avn.solicitations@phoenix.gov before the solicitation deadline. The prevailing clock will be Aviation’s clock. Respondents may correct or withdraw their Response any time before the solicitation deadline listed on Page 1.

D. ORGANIZATION OF THE RESPONSE:

All responses should include all the following and must be organized using the Tab numbers listed below:

TAB 1 – GENERAL INFORMATION

- Cover Letter (1-page limitation) including the following information on the first page of the letter:
 - Name of Respondent. If Respondent is a joint venture, then indicate all partners and each partner’s percentage of ownership interest in joint venture.
 - Names of all sublessees, if any.
 - List of all concepts and names of the firms that will be operating the proposed concepts.
- Table of Contents for entire Response with page numbers included.
- Notarized Affidavit (**Exhibit 14**).
- Conflict of Interest and Solicitation Transparency Disclosure Form (**Exhibit 15**).
- Letter of Declaration (**Exhibit 6**).
- Respondent References (**Exhibit 16**).
- Bank’s Letter of Commitment - Respondent must provide a letter from its bank communicating the bank’s commitment to provide the Respondent, if successful, with a Letter of Credit or Cash Deposit, as defined in Section I(l)(2) in an amount equal to six (6) months’ MAG.



SECTION III – EVALUATION CRITERIA AND RESPONSE INSTRUCTIONS

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- Evidence of ability to obtain required insurance coverages, such as a commitment letter from an underwriter or a current certificate of insurance showing comparable insurance limits, confirming that the Respondent is insurable for the required coverages at the required limits as defined in **Exhibit 17**. The City reserves the sole right to determine if the Respondent will meet the required insurance limits as defined in this solicitation.
- Statement regarding any Agreement with Labor Organization.

TAB 2 – PROPOSED CONCEPTS AND MERCHANDISE PLANS FOR EACH SPACE

Respondents should provide a narrative regarding the proposed concepts and merchandise plan for each concession space with a balance of national, regional, and local concepts that demonstrate quality, variety, and uniqueness. Responses shall convey the best fit for the surrounding area. Include the following in Tab 2 of the Response:

- Retail Concept Descriptions (**Exhibit 18**).
- Variety of Products and Range of Price Points (**Exhibit 19**).
- National name brands, local and regional concepts, and local operator participation (if any).
- Copy of license / franchise sublease(s) and/or letter(s) of intent from concept owner(s) to issue license to Respondents or subtenant.
- If concepts are licensed, provide the specific involvement of the licensor in the operation of the concept at PHX.
- Sample merchandise list and the range of prices.
- Description of why the concepts were chosen for PHX's T4S1.
- Description of any unique attributes of each concept.
- Methods used to monitor and implement current trends.

TAB 3 – DESIGN AND QUALITY OF TENANT IMPROVEMENTS FOR EACH CONCESSION SPACE

Respondents should provide a narrative regarding the creativity and innovation for interior and exterior designs, efficiency of the interior layout plan, and overall quality of construction materials. The narrative should also include how tenant improvements will demonstrate compliance with the Tenant Design Criteria (**Exhibit 12**), a clear and feasible construction schedule, and include how the design will promote environmental sustainability and environmental conservation. Respondent to also include the following in Tab 3 of the Response:

- Proposed Capital Investment by Concession Space and in the Aggregate (**Exhibit 11**).



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- Architectural Renderings (11" x 17") must be compatible with Tenant Design Criteria (**Exhibit 12**). Each design should be appropriate to the concept. The following three renderings for each Concession Space will be required with the Response:
 - Exterior – overall design to include color scheme, signage and graphics, lighting, etc.
 - Interior – overall design to include color scheme, materials, lighting, displays, etc.
 - Layout of interior – merchandise displays, POS customer queuing, customer circulation, changing room(s), use of technology, storage areas, grab and go counters, fixtures, etc.
- Material boards – In lieu of submitting physical material boards and samples for each concession space by the solicitation deadline, the Respondent must provide an 11" x 17" foldout with pictures of proposed materials, including the floor and wall coverings, ceiling treatments, service counters and display and lighting fixtures, and all proposed interior and exterior signage. Respondent must also provide the manufacturer information and specifications of proposed materials and an electronic copy of the proposed material board. The City reserves the right to require a physical material board be submitted upon written request if it is determined necessary for evaluation.
- Construction Phasing Plan with a detailed approach to phasing the construction of the concession space(s) and meeting the opening date.
- Design and construction components promoting environmental sustainability and conservation.

TAB 4 – MANAGEMENT, MARKETING, OPERATIONS, AND TECHNOLOGY PLANS

Respondents should provide a narrative regarding the approach to the management, marketing, technology, and operations plan; how to manage the day-to-day operations for each concession concept, and the methodology to recruit and retain quality employees. The narrative should also address the compensation and benefits package for various positions. Respondent to include the following in Tab 4 of the Response:

- Staffing plan for an average day for each Concession Space.
- Qualifications and experience of the on-site team.
 - Respondent's on-site manager(s) that will be responsible for the operations of the Concession Spaces and handling emergency situations and customer service issues (**Exhibit 20**)
 - Subtenant's, if any, on-site managers.
- Management Plan.
 - Recruiting and training programs for employees, leadership and career advancement opportunities, employee incentive, recognition, and motivation programs.



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- Quality Workplace description: employee wages (include narrative on how fair wages derived), health insurance benefits/affordability (include narrative describing coverage, total insurance cost, percentage of cost paid by employee, and percentage of cost paid by employer), working conditions/workplace safety (including employee breaks and access to safety supplies and PPE), and other benefits or compensation (including planned wage increases and paid leave).
- Proposed communication to employees about the **Equal Pay Act** and method to monitor compliance with the Act.
- Customer service program and methods to continuously monitor customer service, i.e., mystery shoppers, comment cards, social media.
- Description of ADA and customers with special needs program.
- Policy for handling customer complaints and emergency situations.
- Description of customer dispute resolution program.
- Marketing Plan
 - Use of social media to promote concepts.
 - Promotions and discounts attributed to customer loyalty programs, employees, military, etc. (include sample materials) to encourage purchases and increase sales. Advertising and implementation plan for promotions and discounts.
- Operations Plan
 - Proposed merchandise product delivery plan to T4 and to each Concession Space during normal operations and during emergency situations.
 - Approach to sustainability, conservation and operating “green” by composting, recycling, etc. Respondent should provide a Sustainability Summary detailing its vision, commitment, and practices in promoting environmental sustainability and environmental conservation.
 - Facility maintenance plan which includes normal repairs and maintenance of Concession Spaces, frequency of cleaning, trash removal, and equipment maintenance plan for fixtures due to normal wear and tear
 - Physical security, inventory, and cash controls.
 - Discuss cleaning of the spaces and high touch points; how to comply with applicable CDC guidelines and Executive Order 13998, Promoting COVID-19 Safety in Domestic and International Travel to prevent the spread of the coronavirus disease.
- Technology Plan
 - How technology will be utilized to improve customer service.
 - How the Respondent will efficiently and effectively expedite the in-store checkout process by using the latest technology (including touchless) and accommodating various payment methods and options.
- Proof of Payment Card Industry Data Security Standard (PCI DSS) Certification.



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TAB 5 – EXPERIENCE AND QUALIFICATION OF RESPONDENT AND PARTNERS (IF ANY)

Respondents should provide a narrative regarding the Respondent's experience and qualifications for its organizations, partners (if any), and subtenants by describing the experience in relevant concession categories. This includes experience in airports, non-airport venues, similar concepts and operating multiple concessions simultaneously and experience with proposed concept. Responses shall also discuss the number of years and experience operating and managing a variety of concepts and subtenants and the sales performance of concession spaces operated by Respondent and all Partners. Include the following in Tab 5 of the Response:

- Respondent's Qualifications and Experience (**Exhibit 21**)
- Contact information for locations provided in Exhibit 21 (**Exhibit 21.1**)
- Respondent's Experience Managing and Operating a Variety of Concepts (**Exhibit 22**)
- Experience of Respondent and Respondent's Partners (if any) with concepts (including Subtenant and JV Partners) (**Exhibit 23**)

TAB 6 – PROPOSED BUSINESS PLAN

Respondents should provide a narrative regarding the business plan that provides projected annual and aggregate gross sales and rent revenues for each concession space during the Lease term. The narrative should also discuss the projected cash flow from operations, by Concession Space, to cover the proposed Capital Investment (CI). Include the following in Tab 6 of the Response:

- Projected Ten-Year Gross Sales by Concession Space and in the Aggregate for each lease year (**Exhibit 24**)
- Projected Ten-Year Rent Revenues by Concession Space and in the Aggregate for each lease year (**Exhibit 25**)
- Pro Forma Financial Statements for each Concession Space and in the Aggregate for each lease year (**Exhibit 26**)
- Assumptions that support annual Gross Sales and Proforma Financial Projections (**Exhibit 27**)
- Projected cash flow from operations to cover the proposed Capital Investment during the Lease term
- Documentation of Respondent's, and Respondent's subtenant and/or joint venture partners', if any, financial capability to fund internally and/or finance proposed Capital Investment such as audited financial statements and/or letters of intent from financial institutions

TAB 7 – PROPOSED FIRST YEAR MINIMUM ANNUAL GUARANTEE (MAG)

Respondent must provide the Proposed First Year MAG (**Exhibit 10**).



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E. FORM OF RESPONSE

Responses shall conform to the format specified below. Responses that are incomplete, conditional, obscure, or that contain additions not requested, changes or exceptions to material provisions or requirements of this RCS, or irregularities of any kind, are subject to rejection as non-responsive.

The provided attachments must be submitted in the size in which they are provided in this RCS with the same font styles and size used on the attachment.

- Narrative portions of the Response shall be submitted on 8.5” x 11” paper with Arial font of at least 12 point.
- The Response and each hard copy shall each be submitted in a 3-ring 8.5” x 11” binder.
- The pages of the Response must be numbered. Pages must be numbered by section (example: Tab 2’s page numbers are 2-1, 2-2, 2-3, etc.).

Forms are provided as part of the RCS to organize the information to be submitted in each Response. Each Respondent is responsible for ensuring the forms are complete. Where financial or numerical data is provided, the Respondent is responsible for the accuracy of its numbers and calculations. All dollar amounts must be in U.S. dollars.

Responses for this RCS are limited to fifty pages (50) double-sided (or one-hundred pages (100) single-sided), letter-size pages typed in 12-point Arial font. The pages of each Response must be numbered. Forms, exhibits, financial information, including the Pro Forma, the Sustainability Summary as defined in Section III(D) – Tab 4, table of contents, tab cover sheets, design renderings, and material boards will not be counted towards the fifty pages (50) double-sided (or one hundred (100) single-sided) page limit. Any additional pages that exceed the page limitation will be removed from the Response and not be considered during the evaluation process. **Respondents are responsible for reading and complying with all requirements of this RCS.**

F. WITHDRAWAL / CORRECT RESPONSE

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

G. LATE RESPONSES

Responses received after the deadline date and time will be rejected as non-responsive, unless Good Cause is shown. If a late Response is submitted, the Aviation Department will document the date and time of the submittal of the late Response, keep the Response and notify the Respondent that its Response was disqualified for being late.



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H. RESPONSE RESULTS

Responses will be opened remotely and accessible to the public through remote video and telephone conference at the link and dial-in phone number provided by the Aviation Department on the offer due date, time, and location indicated in the Schedule of Events, at which time the name of each Respondent will be read. Responses and other information received in response to this solicitation will be shown only to authorized City personnel having a legitimate interest in them or persons assisting the City in the evaluation. Responses are not available for public inspection until after the City has posted the award recommendation on the City's website.

The City will post Respondent names on the City's website, <https://solicitations.phoenix.gov/Awards>, within five (5) calendar days of the response opening. Once the City has evaluated the Responses, the City will post an award recommendation on the website. The City will not provide any further notification to unsuccessful Respondents.

I. LABOR ORGANIZATION DOCUMENTATION

In a separate sealed package marked "Statement Regarding Any Agreements with Labor Organizations" within the same sealed package as the items listed above, Respondents shall submit a response to the following:

Do you currently have an agreement in place that would prohibit a labor organization from engaging in a strike, picketing or conducting other economic actions at the proposed concession operation? If yes, please list the labor organization(s) and the date the agreement was executed.

The information provided in response to this RCS question will not be considered as part of the panel deliberations or scoring criteria.

J. SMALL BUSINESS OUTREACH REQUIREMENTS DOCUMENTATION

The City has implemented outreach requirements for this RCS and Lease. Specifically, each Respondent shall: (1) identify small-business-participation opportunities, including Commercially Useful Functions; (2) actively solicit proposals from small businesses; (3) evaluate small-business proposals; and (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal. If a Respondent fails to conduct these Outreach Efforts or fails to submit the required documentation of Respondent's Outreach Efforts as indicated below, the City may determine that the Respondent's response is *nonresponsive*. A determination of non-responsiveness *disqualifies* Respondent from further consideration for the Lease award.



SECTION III – EVALUATION CRITERIA AND RESPONSE INSTRUCTIONS

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In a separate sealed package marked “Small Business Outreach Requirements” within the same sealed package as the items listed above, Respondents will submit two (2) hard copies of documentation of its compliance with the Small Business Outreach Requirements described in **Exhibit 3**. In addition, Respondents must submit two electronic copies of the documentation on one (1) USB drive.

Respondents must document their efforts to: 1) identify business opportunities that Small Businesses can perform as partners or as suppliers of goods and services, 2) conduct outreach and broadly solicit responses for business opportunities from Small Businesses, 3) evaluate and negotiate with Small Businesses, and 4) communicate outcomes to all Small Businesses that responded to the Respondent’s outreach efforts and notify them whether or not the Small Business was selected.

The separate sealed package marked “Small Business Outreach Requirements” must include the following:

1. Small Business Outreach Efforts (**Exhibit 4 – Form EO2**).
2. All supporting documentation required in Exhibit 4 – Form EO2.
3. Small Business Utilization Commitment (**Exhibit 5 – Form EO3**).

Small Business Outreach Documentation Submittal Requirements

Forms EO2 and EO3, along with supporting documentation for Form EO2 are due with the Response.

1. **Form EO2.** Each Respondent shall complete and submit Form EO2 documenting its diligent, good-faith Outreach Efforts.
 - a. Each Respondent shall list in Form EO2 all Small Businesses contacted by Respondent in preparing its Response. Each Respondent shall also provide the following minimum information to document its Outreach Efforts. The Compliance Specialist will consider this information to determine whether Respondent has demonstrated the required Small Business Outreach Efforts:
 - Each business’s full legal name and contact information;
 - Business status (ACDBE, DBE, Small Business, SBE, or unknown);
 - Scope of work solicited (brief description, percentage of contract value);
 - Solicitation method (personal contact, telephone, fax, e-mail, other);
 - Selection process; and
 - Communication of selection outcome to each participant*.

Respondent shall provide supporting documentation that shows Respondent has communicated its final selection decisions and outcomes to **all Small Businesses **not** chosen to participate in this Lease.*



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b. Each Respondent shall complete Form EO2 in accordance with the following instructions.

- Each Respondent shall actively contact Small Businesses for each scope of work or business opportunity selected for Small Business Outreach Efforts (Columns A and C).
- Respondent's contacts with Small Businesses should occur well before the Response deadline to afford the firms contacted a reasonable opportunity to prepare a proposal and participate in the Lease.
- Respondent shall ask each firm to indicate the number of its employees (Column A).
- For each ACDBE's, DBE's or Small Business's annual gross receipts, Respondent shall ask the firm to indicate the gross-receipts bracket into which it fits (e.g., less than \$500,000; \$500,000 – \$1 million; \$1 – 2 million; \$2 – 5 million; etc.) rather than requesting an exact figure from the firm (Column A).
- If Respondent does not select a particular Small Business to participate in the Lease, Respondent shall explain the reason why (Column E).
- Respondent shall notify each Small Business contacted whether or not Respondent selected the firm. Respondent shall notify all firms not selected, and Respondent shall state when (date) and how (method) the selection outcome was communicated to each firm (Column F).

2. **Form EO2 Supporting Documentation.** Each Respondent shall complete and submit supporting documentation of its Outreach Efforts related to Form EO2.

- a. Respondent shall submit with Form EO2 all supporting documentation of Respondent's contacts with Small Businesses for each scope of work or business opportunity selected for Small Business Outreach Efforts.
- b. This documentation must include: (1) descriptions of scopes of work and business opportunities identified for Small Business participation, and (2) a copy of the actual solicitation sent to Small Businesses. The solicitation may be in the form of a letter, attachment to an e-mail, advertisements in newspapers and trade papers, or written communications with chambers of commerce and/or other organizations.
- c. Respondent shall submit documentation that establishes how Respondent communicated its selection decisions and outcomes to each Small Business *not* selected for this Lease. This documentation may be in the form of a letter, e-mail, fax, or a telephone log and must show the name of the person contacted and date.



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- d. For all of the above documentation, if Respondent uses a blast e-mail or fax format, the documentation submitted must include a copy of the e-mail or fax, and Respondent must disclose all e-mail addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of the transmission. For telephone contacts, Respondent shall document the date and time of the call and the names of the respective persons representing Respondent and the Small Business.
3. **Form EO3.** Respondent shall sign and submit Form EO3, which commits Respondent to the City as follows:
- a. The firms indicated as “selected” in Form EO2 will participate in the Lease;
 - b. The Respondent will comply with the Race- and Gender-Neutral post-award requirements as stated in Sections V and VI below;
 - c. Any and all changes or substitutions will be authorized by the Compliance Specialist before implementation; and
 - d. The proposed total Small Business participation percentage is true and correct.

Respondent shall ensure that the percentages proposed for Small Business participation on Form EO2 equal the total percentage proposed in Form EO3.

Failure to Meet Small Business Outreach Requirements

The Equal Opportunity Department (EOD) Compliance Specialist will determine, in writing, whether Respondent has satisfied all outreach requirements. If the Compliance Specialist determines that Respondent has failed to satisfy the outreach requirements, then the Compliance Specialist may determine that the Response is non-responsive. A non-responsive determination *disqualifies* Respondent from further consideration for the Lease award. The City shall send written notice to Respondent stating the basis for the Compliance Specialist’s decision.

ACDBE Administrative Reconsideration

If the Compliance Specialist determines that Respondent failed to submit required documentation to meet the stated outreach requirements, the City will permit Respondent to request EOD to reconsider this determination in accordance with the Protest provisions in this RCS. In its request for reconsideration, Respondent may clarify its Response. But Respondent may not submit or refer to new or revised documents or information. City will only reconsider the original Response as clarified in the request for reconsideration.

If Respondent requests EOD to reconsider the Compliance Specialist’s determination of non-responsiveness based on insufficient demonstration of Outreach Efforts, Respondent must provide written notice to the City. The ACDBE Administrative Reconsideration period is concurrent with the protest period outlined in this solicitation.



SECTION IV – DETERMINATION OF RESPONSIVENESS AND RESPONSIBILITY AND EVALUATION

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IV. DETERMINATION OF RESPONSIVENESS AND RESPONSIBILITY AND EVALUATION

A. RESPONSIVENESS AND RESPONSIBILITY

Responses will be reviewed for responsiveness and responsibility, documentation of minimum qualifications, completeness, and adherence to RCS requirements.

The qualifications will be reviewed by the Procurement Officer or an evaluation panel in accordance with the criteria set forth in this RCS. If a Respondent's Response is deemed not Responsive or not Responsible or does not meet the minimum qualifications, then no additional opportunity to supplement the qualifications will be afforded to the Respondent.

The City reserves the sole right to determine the sufficiency of qualifications and experience of all Respondents.

B. EVALUATION

Aviation will appoint evaluation panel(s) to evaluate all Responsive and Responsible Responses and recommend the Respondent(s) to be awarded the Lease resulting from this RCS. The Aviation Director may accept the evaluation panel's recommendation and submit it to the Phoenix City Council for approval or may reject the recommendation. If only one Response is Responsive and Responsible to this RCS, then the Aviation Director shall have the discretion to determine whether the evaluation panel or staff will evaluate the Responsive and Responsible Response.

The evaluation panel may interview all Respondents or create a short-list of Respondents to interview. The same evaluation panel will be used for the short-list and the interview process. A short-list of Responses, when used, is a list of Responses identified by the evaluation panel, based on the evaluation criteria in this RCS, as those that have a substantial chance of resulting in a Lease award in comparison to all Responsive and Responsible Responses submitted. The evaluation panel may consider information from the interviews or demonstrations that clarifies the written Responses.

The evaluation panel will score the Responses by consensus based on the evaluation criteria. The City will retain the consensus scoring for each criterion for each Respondent. **The City does not retain individual panelists' scores.**



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C. DISCUSSIONS

The Procurement Officer may hold Discussions, based on the evaluation panel's review, with Respondents submitting a Reasonably Susceptible Response. Discussions may be conducted orally but must be confirmed in writing. In conducting Discussions, the Procurement Officer may not disclose any information derived from Responses submitted by competing Respondents. The Procurement Officer may request Response revisions from all Respondents with whom discussions were held. The Procurement Officer will facilitate the evaluation of any revisions in the revised Responses resulting from the discussions.



SECTION V – GENERAL TERMS AND CONDITIONS OF THE RCS

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V. GENERAL TERMS AND CONDITIONS OF THE RCS

A. SOLICITATION TRANSPARENCY POLICY

1. Commencing on the date and time a solicitation is published, potential or actual 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 or their designee) at a public meeting, posted under Arizona Statutes, until the resulting agreement is awarded or all 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. As long as the solicitation is not discussed, potential or actual Respondents may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff who is not involved in the selection process.
2. Potential or actual Respondents may discuss their Response 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 will identify the participants and the subject matter, as well as invite the public to participate.
3. With respect to the selection of the successful Respondent, 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 or actual Respondents.
4. This policy is intended to create a level playing field for all Respondents, assure that contracts are awarded in public, and protect the integrity of the selection process. **RESPONDENTS THAT VIOLATE THIS POLICY WILL BE DISQUALIFIED.** After official Notice is received by the City for disqualification, the Respondent may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.



SECTION V – GENERAL TERMS AND CONDITIONS OF THE RCS

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5. "To discuss" means any contact by the potential or actual Respondent, regardless of whether the City responds to the contact. Respondents that violate this policy will be disqualified until the resulting agreement is awarded, or all 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 agreement, as long as the City cancels with a statement that the City will rebid the solicitation.
6. With respect to the selection of the Successful Respondent, the City Manager and City Manager's Office will continue the past practice of exerting no undue influence on the process.

B. AWARD RECOMMENDATION

All award recommendations will be posted on the following phoenix.gov website: <https://solicitations.phoenix.gov/Awards>

When the City posts the award recommendation, the procurement file for this RCS will be available upon request for review. The procurement file consists of the RCS, any addenda, advertising documents, Responses, evaluation process documents, Pre-Response meeting documents, Q&A, signed conflict of interest statements used in this process and confirmation of the RCS's posting to the phoenix.gov solicitation website.

C. DISCLOSURE OF CONFIDENTIAL AND PROPRIETARY INFORMATION

1. All materials submitted by Respondents are the property of the City and become a matter of public record available for review pursuant to Arizona law. A Respondent may not request that the entire Response be treated as confidential. A Respondent may request specific information contained within its Response be treated by the Procurement Officer as confidential or proprietary (collectively confidential) provided the Respondent clearly labels the specific information "confidential". To the extent necessary for the evaluation process, information marked as "confidential" will not be treated as confidential.
2. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Respondent 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 a Respondent in writing of any request to view any portion of its offer marked "confidential." The Respondent will have fourteen (14) calendar days thereafter to (i) notify the Procurement Officer if Respondent does not object to such disclosure, or (ii) obtain and furnish a court order enjoining such



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disclosure. The time to obtain a court order may be extended at the Procurement Officer's sole discretion. If the Respondent does not provide the Procurement Officer with a court order enjoining release of the information during the designated time period, the Procurement Officer will make the information requested available for inspection.

D. CITY'S RESERVATION OF RIGHTS

The City may:

1. Accept or reject any or all Responses in whole or in part;
2. Cancel this RCS in whole or in part;
3. Negotiate any Response elements in a manner that does not create an unfair advantage for any Respondent;
4. Reissue this RCS with or without modification;
5. Waive any non-material defects in any Response or the procurement process; and
6. Take any other legal action deemed to be in the City's best interest.

E. CITY'S RIGHT TO DISQUALIFY FOR CONFLICT OF INTEREST

The City may disqualify a Response if the Respondent has a real or apparent conflict of interest disclosed in its Response or discovered from any other source. During the term of the Lease resulting from this RCS, the Successful Respondent's employees may not be involved in any other Aviation-related business, including as an employee, owner, subtenant and/or joint venture partners, or consultant, which presents a real or apparent conflict of interest. All determinations regarding conflicts of interest will be made at the sole discretion of the Aviation Director, whose decision is final and not subject to Section V(J).

F. RESPONDENT INCURRED COSTS

All costs incurred by the Respondent in connection with this RCS must be borne solely by the Respondent. Under no circumstances will the City be responsible for any costs associated with the Respondent's Response or the RCS process.

G. CITY'S SOLE DETERMINATION OF RESPONSIVENESS AND RESPONSIBILITY AND RIGHT TO INVESTIGATE

Responses will be reviewed for documentation of minimum qualifications, completeness, and compliance with the RCS requirements. The City reserves the sole right to determine responsiveness and responsibility, which includes the City's determination of the Respondent's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.



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The City's determination as to whether a Respondent is responsible will be based on the information furnished by the Respondent, interviews (if any), and any other sources the City deems appropriate. Award of the Lease resulting from this RCS will not be made until such investigations, which each Respondent agrees to permit by submitting its Response, are made by the City as it deems necessary.

H. 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 that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids 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.

I. RESPONDENT CERTIFICATION AND AFFIDAVIT

By submission of a Response, each Respondent certifies it has not paid or agreed to pay any fee or commission, or any other item of value contingent on the award of a Lease to any employee, official or current contracting consultant of the City. Any Respondent that is unable to comply with any required certifications may be disqualified.

In compliance with Arizona Revised Statutes §§ 1-501 and 1-502(D), the City will require any Successful Respondent that submits its Response as a sole proprietorship or as an individual to complete the Affidavit of Lawful Presence posted at:

<https://www.phoenix.gov/Documents/lawfulpresence.pdf> prior to the award of any Lease resulting from this RCS process.

J. PROTEST POLICY

1. Conditions for Protest:

- a. An aggrieved party may protest the contents of the RCS up to seven (7) calendar days before the solicitation deadline listed on page 1 when the protest is based on alleged mistakes, improprieties or defects. If an aggrieved party submits a protest based on alleged mistakes, improprieties or defects, they must also submit a Response by the solicitation deadline listed on page 1 if they want to be considered for award of the Agreement. Any potential Respondent should identify any alleged mistakes, improprieties or defects through the Q&A process in Section I(K).



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- b. Respondents may protest an adverse determination issued by the Procurement Officer regarding whether the Respondent is responsible or its Response is responsive within seven (7) calendar days of the date the Respondent was notified of the adverse determination.
- c. Respondents may protest an award recommendation within seven (7) calendar days of its posting at <https://solicitations.phoenix.gov/awards> if the Respondent can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The date the Award Recommendation Notice is posted will initiate the seven (7) day Protest Period. That is, the date the Notice is posted will be day zero (0), with the following day counted as day one (1) and so forth through Close of Business (5:00 PM local Phoenix time) on calendar day seven (7).

2. Submitting a Protest

- a. Protests received after the protest due dates set forth in this RCS will not be considered, except for Good Cause.
- b. In the event the aggrieved party submits a public records request after receiving the applicable notice but prior to the deadline to file a protest, the Procurement Officer will extend the deadline one day for every day between the day the City receives the public records request and the day the public records are produced, the request is otherwise addressed by the City or a court of competent jurisdiction enjoins disclosure of the requested records.
- c. To be considered, all protests must be submitted in writing and must include:
 - RCS number and title;
 - Name, address, telephone number, and email address of the protester;
 - Detailed statement of the legal or factual basis of the protest including any copies of relevant documents;
 - The relief requested;
 - Signature of the protester or its authorized representative;
 - A Respondent protesting an award recommendation will also establish in its protest that it had a substantial chance of being awarded the Agreements and will be harmed by the recommended award.
- d. The Procurement Officer for the solicitation has the authority to review, decide and settle protests.



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- e. Deadlines in the solicitation are not required to be postponed solely on the basis of receiving a solicitation protest. Only upon written notice from the Procurement Officer will a solicitation deadline be postponed, at the City's sole discretion.
- f. The Procurement Officer will issue a protest decision in writing within a reasonable period of time stating the reason for the protest decision and advising the aggrieved party or respondent of its right to appeal in accordance with Phoenix City Code.
- g. The Procurement Officer will not review any supplements or amendments to a Respondent's original protest or any additional protests submitted by the same Respondent. The Procurement Officer will provide the recommended Respondent copies of award recommendation protest(s) and the City's written decision by fax or email and regular mail with return receipts requested for all methods of delivery.

K. LEGAL WORKER REQUIREMENTS

The City is prohibited by A.R.S. § 41-4401 from awarding an agreement to any RESPONDENT who fails, or whose subcontractors fail, to comply with A.R.S. § 23 214(A). Therefore, RESPONDENT agrees that:

1. RESPONDENT 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, subsection A.
2. A breach of warranty under paragraph 1 will be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.
3. The City retains the legal right to inspect the papers of the RESPONDENT or subcontractor employee(s) who work(s) on the resulting Lease to ensure that RESPONDENT or subcontractor is complying with the warranty under paragraph 1.

L. NON-DISCRIMINATION / EQUAL OPPORTUNITY FOR CITY

The City will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Parts 23 and 26 on the basis of race, color, sex, or national origin.



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In administering its ACDBE Program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE Program with respect to individuals of a particular race, color, sex, or national origin.

The City further agrees to meet the non-discrimination requirements provided in 49 CFR Part 26, §26.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by this subpart.

The City will take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements covered under the ACDBE Program.

Compliance with Nondiscrimination Requirements:

During the performance of the resulting Lease or Contract, the Successful Respondent, for itself, its assignees, and successors in interest, agrees as follows:

1. **Compliance with Regulations:** The Successful Respondent (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Successful Respondent, with regard to the work performed by it during the contract, 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. The Successful Respondent will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Successful Respondent 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 the Successful Respondent of the Successful Respondent's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.



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4. **Information and Reports:** The Successful Respondent will provide all information and reports required by the Acts, the Regulations, 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 sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Successful Respondent will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Successful Respondent's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects Issued on June 19, 2018, pages 17-18 (available on the Federal Aviation Administration website)

- a. Withholding payments to the Successful Respondent under the contract until the Successful Respondent complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Successful Respondent will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Successful Respondent will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Successful Respondent becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Successful Respondent may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Successful Respondent may request the United States to enter into the litigation to protect the interests of the United States.

M. AFFIRMATIVE ACTION COMPLIANCE CERTIFICATION

The Successful Respondent certifies its compliance with federal affirmative action requirements by signing the Lease resulting from this RCS.



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N. NON-DISCRIMINATION / EQUAL OPPORTUNITY FOR SUCCESSFUL RESPONDENT

The City extends to all Respondents an equal economic opportunity to compete for City business and strongly encourages the participation of ACDBE firms and Small Business. The Successful Respondent is required to adopt and incorporate the following nondiscrimination policy statement in all contractual arrangements (49 CFR Part 23.25):

The Successful Respondent will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Parts 23 and 26 on the basis of race, color, sex, or national origin.

In administering its ACDBE Program, the Successful Respondent will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE Program with respect to individuals of a particular race, color, sex, or national origin.

The Successful Respondent further agrees to meet the non-discrimination requirements provided in 49 CFR Part 26, §26.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by this subpart.

The Successful Respondent will take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements covered under the ACDBE Program.



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VI. EXHIBITS

EXHIBIT 1 DRAFT LEASE

TERMINAL 4 SOUTH 1 CONCOURSE RETAIL PHASE II CONCESSIONS

Available at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>



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EXHIBIT 2 PREMISES

Overview of Concession Spaces at T4S1

Phase II Spaces: R3 and R4





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EXHIBIT 3

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM RACE- AND GENDER-NEUTRAL LEASE CLAUSE

1. SECTION I DEFINITIONS

The following definitions shall apply to this Exhibit, Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Race- and Gender-Neutral Lease Clause:

Airport Concession Disadvantaged Business Enterprise (ACDBE) means a firm that has been granted ACDBE certification status by the City acting as a member of the Arizona Unified Certification Program pursuant to the criteria contained in 49 Code of Federal Regulations (CFR) Parts 23 and 26.

Arizona Unified Certification Program (AZUCP) is a consortium of government agencies organized to provide reciprocal ACDBE and DBE certification within Arizona pursuant to 49 CFR Part 26. The official ACDBE and DBE database containing eligible ACDBE and DBE firms certified by AZUCP can be accessed at: www.adot.dbesystem.com. The certification system is called the Arizona Unified Transportation Registration and Certification System (AZ UTRACS).

City means the City of Phoenix.

Commercially Useful Function means that an ACDBE or DBE is responsible for executing the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. If an ACDBE or DBE does not perform or exercise responsibility for at least 30% of the total cost of the contract with its own work force, or if the ACDBE or DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the ACDBE or DBE is presumed not to be performing a Commercially Useful Function.

Compliance Specialist means an EOD employee responsible for ACDBE Program compliance with this Lease Clause.

Concession means a business that primarily serves the public on an airport. This includes direct sales or services, management contracts, advertising contracts and goods and services providers.

Contract is a written agreement between any of the following parties: Respondent and JV partner, sublessee, subcontractor, or a Goods and Services Provider.



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DBE stands for disadvantaged business enterprise. In this context, DBE means a Small Business Concern that has successfully completed the DBE certification process and has been granted DBE status by an AZUCP member pursuant to the criteria contained in 49 CFR Part 26.

EOD means the City of Phoenix Equal Opportunity Department.

Goods and Services Providers are firms that provide goods and services that represent a Commercially Useful Function directly to airport concessionaires as an ACDBE, DBE or small business.

Joint Venture (JV) means an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. For purposes of this Lease Clause, one participant in the JV arrangement must be a certified ACDBE or DBE by an AZUCP member. The JV is limited in scope and duration to this Lease. The resources, asset and labor of the participants must be combined in an effort to accrue profit.

Lease is a written agreement for a direct concession opportunity with the City.

Outreach Efforts means the diligent and good-faith efforts demonstrated by a Respondent to solicit participation from Small Businesses. Respondent shall: identify and document potential business opportunities for Small Businesses; describe what efforts were undertaken to solicit Small Business participation; disclose results of negotiations with Small Businesses; and communicate and record Respondent's selection decisions and notifications relating to Small Business participants.

Respondent means an individual, partnership, JV, corporation or firm that submits a Response to the City to perform services requested by a RCS.

Response is a written proposal to the City prepared by a Respondent to perform services.

Revenue Contract Solicitation (RCS) is a solicitation or procurement issued by the City.

Race- and Gender-Neutral (RGN) Measures means effort(s) or program(s) that is, or can be, used to assist all Small Businesses, in the absence of a goal.

Small Business means, with respect to firms seeking to participate as ACDBEs or DBEs in contracts funded by the U.S. Department of Transportation (US DOT), a Small Business Concern as defined in section 3 of the Small Business Act and Small Business Administration regulations implementing the Act (13 CFR part 121), which Small Business Concern does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b) and self-identified small businesses. "Small Business" and "Small Business Concern" are used interchangeably in this Lease Clause.



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Subcontractor means an individual, partnership, JV, corporation or firm that holds a contract at any tier below the Lease, including a vendor under a purchase order.

Sublease is an agreement between the Respondent and another entity or entities [sublessee(s)].

Successful Respondent means an individual, corporation, firm or JV that has been selected by the City to perform services requested by a RCS.

2. SECTION II GENERAL REQUIREMENTS

- A. Applicable Federal Regulations.** This Lease is subject to ACDBE requirements issued by USDOT in 49 CFR Parts 26 and 23. Despite the lack of a race- and gender-conscious ACDBE participation goal for this Lease, the Agency must track and report ACDBE and DBE participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving an ACDBE or DBE. For this reason, the Successful Respondent shall provide all relevant information to enable the required reporting.
- B. ACDBE Participation.** For this solicitation, the City has *not* established a race- or gender-*conscious* ACDBE participation goal. The City extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The City uses race- and gender-*neutral* measures to facilitate participation of Small Businesses. The City *encourages* each Respondent to voluntarily subcontract or joint venture with Small Businesses to perform part of the work—a Commercially Useful Function—that Respondent might otherwise perform with its own forces. The City also encourages each Respondent to voluntarily utilize Small Businesses as suppliers of Goods and Services.
- C. Counting ACDBE and DBE Participation.** The City will count ACDBE and DBE participation as authorized by federal regulations. A summary of these regulations can be found at www.phoenix.gov/eod .
- D. ACDBE and DBE Certification.** *Only* firms (1) certified by the City or another AZUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine ACDBE and DBE participation resulting from RGN measures on this Lease. This ACDBE and DBE determination affects the City’s tracking and reporting obligations to USDOT.
- E. Civil Rights Assurances.** As a recipient of USDOT funding, the City has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Lease signed by the City and the Successful Respondent, and each Subcontract signed by the Successful Respondent and a Subcontractor, must include the following assurance *verbatim*:



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“The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or creed in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Parts 21 and 23 in the award and administration of USDOT- assisted contracts. Failure by the 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.”

Note: For purposes of the required Contract and Subcontract language above, the Successful Respondent is the “contractor.”

3. SECTION III REQUIRED OUTREACH EFFORTS

The City has implemented outreach requirements for this Lease. Specifically, each Respondent shall: (1) identify small-business-participation opportunities, including Commercially Useful Functions; (2) actively solicit proposals from small businesses; (3) evaluate small-business proposals; and (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal. If a Respondent fails to conduct these Outreach Efforts or fails to submit the required documentation of Respondent’s Outreach Efforts as indicated in Section IV, Parts A, B and C below, the City may determine that the Respondent’s proposal is *nonresponsive*. A determination of non-responsiveness *disqualifies* Respondent from further consideration for the Lease award.

4. SECTION IV SUBMITTAL REQUIREMENTS

Documentation due with initial Response.

A. Form EO1 – Statement of Outreach Commitment

Each Respondent shall sign, date and submit a completed **Form EO1 - Statement of Outreach Commitment**, with its initial Response submittal.

B. Failure to Submit Form EO1

Responses that do not have this form completed and signed will be deemed nonresponsive. A nonresponsive response will be disqualified from further evaluation.

5. SECTION V SMALL BUSINESS OUTREACH GENERAL REQUIREMENTS

Respondent shall actively contact Small Businesses for each scope of work or business opportunity identified for its Small Business Outreach Efforts. Respondent’s contact with Small Businesses should occur well before the Response deadline to afford the firms contacted a reasonable opportunity to prepare a proposal and participate in the Lease.



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- A. **At time of submission**, as a matter of responsiveness, **Form EO1, Statement of Small Business Outreach Commitment** must be submitted with the response.
- B. **Following the award of the contract**, as a matter of compliance, documentation of Small Business Outreach efforts (Forms EO2 and EO3) must be submitted and approved within 60 days after contract award:

1) Form EO2 Small Business Outreach Efforts. The Successful Respondent shall complete and submit Form EO2 documenting its diligent, earnest Small Business Outreach Efforts.

1. To document its Outreach Efforts, Respondent shall Identify all Small Businesses contacted by Respondent on Form E02. Form EO2 shall be completed with the following minimum information:
 - i. **COLUMN A.** Each business's full legal name and contact information
 - aa. Respondent shall ask each firm to indicate its number of employees
 - bb. For each ACDBE, DBE or Small Business, Respondent shall indicate the **Range of Annual Gross-receipts** for each ACDBE, DBE, small firm proposed (e.g., less than \$500,000; \$500,000 – \$1 million; \$1 – 2 million; \$2 – 5 million; etc.) *rather than requesting* an exact figure from the firm.
 - ii. **COLUMN B.** Business status (ACDBE, DBE, Small Business, SBE, or unknown);
 - iii. **COLUMN C.** Scope of work solicited (brief description, percentage of contract value);
 - aa. Respondent shall detail each scope of work or business opportunity selected for each Small Business;
 - iv. **COLUMN D.** Solicitation method (personal contact, telephone, fax, e-mail, other);
 - v. **COLUMN E.** Selection decision
 - aa. Respondent must indicate if a firm was selected or not. If Respondent does not select an identified Small Business to participate in the Lease, Respondent must explain the reason why.



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- vi. **COLUMN F.** Communication of selection outcome to each participant.
- aa. Respondent shall notify each Small Business contacted whether or not Respondent selected the firm within 15 days after the initial contact. Respondent shall notify all firms not selected, and Respondent shall state when (date) and how (method) the selection outcome was communicated to each firm.

The Compliance Specialist will evaluate all documented information to determine whether Respondent has demonstrated the required Small Business Outreach Efforts

- C. Form EO2 Supporting Documentation.** Respondent shall complete and submit supporting documentation of its Outreach Efforts related to Form EO2.
1. Respondent shall submit with Form EO2 all supporting documentation of Respondent's contacts with Small Businesses for each scope of work or business opportunity selected for Small Business Outreach Efforts.
 2. This documentation must include: (1) descriptions of scopes of work and business opportunities identified for Small Business participation, and (2) a copy of the actual solicitation sent to Small Businesses. The solicitation may be in the form of a letter, attachment to an e-mail, advertisements in newspapers and trade papers, or written communications with chambers of commerce and/or other organizations.
 3. Respondent shall submit documentation that establishes how Respondent communicated its selection decisions and outcomes to each Small Business *not* selected for this Lease. This documentation may be in the form of a letter, e-mail, fax, or a telephone log and must show the name of the person contacted and date.
 4. For all of the above documentation, if Respondent uses a blast e-mail or fax format, the documentation submitted must include a copy of the e-mail or fax, and Respondent must disclose all e-mail addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of the transmission. For telephone contacts, Respondent shall document the date and time of the call and the names of the respective persons representing Respondent and the Small Business.



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D. Form EO3 Small Business Utilization Commitment. Respondent shall sign and submit Form EO3, which commits Respondent to the City as follows:

1. The firm(s) indicated as “selected” in Form EO2 will participate in the Lease;
2. The Respondent will comply with the Race- and Gender-Neutral post-award requirements as stated in Sections V and VI below;
3. Any and all changes or substitutions will be authorized by the Compliance Specialist before implementation; and
4. The proposed total Small Business participation percentage is true and correct.

Respondent shall ensure that the percentages proposed for Small Business participation on Form EO2 equal the total percentage proposed in Form EO3.

E. Failure to Meet Small Business Outreach Requirements. The Compliance Specialist will determine, in writing, whether Successful Respondent has satisfied all outreach requirements. If the Compliance Specialist determines that the Successful Respondent has failed to satisfy the outreach requirements (specified in Sections III and IV, Parts A, B, and C), then the Compliance Specialist may determine that Successful Respondent is non-compliant.

F. Subcontracting Commitment. Promptly after Lease award, the Successful Respondent shall submit to City copies of all executed contracts, purchase orders, subleases, joint venture (JV) agreements, and other arrangements formalizing agreements between Successful Respondent and any Small Businesses.

The Successful Respondent shall not reduce the amount, alter the scope of work, or terminate the Subcontractor without the Compliance Specialist’s prior written approval. Any request to alter a Small Business Subcontract must be submitted in writing to the Equal Opportunity Department before any change is made. If the Successful Respondent fails to do so, the City may declare the Successful Respondent in breach of the Lease.

G. Post-Award Relief from DBE Requirements. After Lease award, the City will not grant relief from the proposed Small Business Participation Plan except in extraordinary circumstances. The Successful Respondent’s request to modify Small Business participation must be in writing to the Compliance Specialist, who has final discretion and authority to determine if the request should be granted.

The Successful Respondent’s waiver request must contain the amount of relief being sought, evidence demonstrating why the relief is necessary, and any additional relevant information the Compliance Specialist should consider. The Successful Respondent shall include with the request all documentation of its attempts to subcontract with Small Businesses and any other action taken to locate and solicit a replacement Small Business.



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H. **Substitutions.** If a Small Business was approved by the City, but the firm subsequently loses its Small Business status before execution of a contract, the Compliance Specialist will consider whether or not the Successful Respondent has exercised diligent and good-faith efforts to find another Small Business as a replacement. The Successful Respondent shall notify the Equal Opportunity Department in writing of the necessity to substitute a Small Business and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a Small Business may not occur before the Compliance Specialist's written approval has been obtained.

6. SECTION VI. RECORDS & REPORTING REQUIREMENTS

A. **Records.** During performance of the Lease, the Successful Respondent shall keep all records necessary to document ACDBE, DBE and Small Business participation. The Successful Respondent shall provide the records to the City within 72 hours of the City's request and at final completion of the Lease. The City will prescribe the form, manner, and content of reports. The required records include:

1. A complete listing of all Subcontractors and suppliers on the project;
2. Each Subcontractor's and supplier's scope performed;
3. The dollar value of all subcontracting work, services, and procurement;
4. Copies of all executed Subcontracts, purchase orders, and invoices;
5. Total operating expenses and total costs of goods sales; and
6. Copies of all payment documentation.

B. **Reports.** The Successful Respondent shall be required to track and report all Small Business participation that occurs as a result of a contract, procurements, purchase orders, subleases, JV, goods/services or other arrangements involving sub-tier participation. Such documentation must be entered monthly into the internet based reporting program Business2Government (B2G) System at www.phoenix.diversitycompliance.com.

C. **Annual Submittals of Small Business Participation Plan.** As a matter of compliance, the Successful Respondent must submit a **Small Business Participation Plan** and the associated **Supporting Documentation**, on an annual basis by the anniversary date of contract award. The Successful Respondent is required to maintain a **Small Business Participation Plan** and document its ongoing efforts to foster small business participation throughout the life of this Contract. The Successful Respondent is required to conduct a shortfall analysis and develop a corrective action plan in the event the Successful Respondent is unable to achieve its Small Business Participation Commitment.



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1. **Failure to Foster Small Business Participation**

The Compliance Specialist will determine whether Successful Respondent has satisfied all outreach activities in the development of the **Small Business Participation Plan**. If the Compliance Specialist determines that Successful Respondent has failed to satisfy the **Small Business Participation Plan** requirements as specified in this clause, then the Compliance Specialist may determine that the Successful Respondent is not compliant. The City shall send a written notice to the Successful Respondent stating the basis for the Compliance Specialist's decision. The Successful Respondent has seven (7) business days to cure the deficiency. If Successful Respondent fails to submit the required forms and supporting documentation by the due dates, the City may formally deem the Successful Respondent noncompliant, in default of the Lease and not in good standing with the City of Phoenix.

D. Counting of Small Business Participation:

1. In instances where Small Business participation occurs as the result of a JV arrangement with a Respondent, the Successful Respondent is required to complete JV documentation, and cooperate and participate in a review of the participation of the JV partners at least once a year. The review will determine the percentage of participation that will be counted for Small Businesses and the participation of ACDBE firms to be reported to the Federal Aviation Administration each year of the Lease.

If an approved ACDBE or DBE allows its ACDBE or DBE status to expire or its ACDBE or DBE certification is removed during the course of the subcontract, the City will consider all work performed by the ACDBE or DBE under the original contract to count as ACDBE or DBE participation. No increased scopes of work negotiated after expiration or revocation of the ACDBE's or DBE's certification may be counted. Likewise, any work performed under a Lease extension granted by the City may not be counted as ACDBE or DBE participation.

**EXHIBIT 4 –
FORM EO2 SMALL BUSINESS OUTREACH EFFORTS
Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program ACDBE-Race & Gender Neutral**

Name of Company (Respondent):	Solicitation Name:	Contract Name:
Email:	Phone #:	Point of Contact:

Successful Respondent must conduct outreach efforts and submit supporting documentation of those outreach efforts as described in the Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program Race- and Gender-Neutral Contract Clause (Contract Clause). Detailed instructions for this form are included in the Contract Clause. Supporting documentation is required for columns D and F. Successful Respondent should make additional copies of this form as needed.

(A) Small Business Name and Contact Information	(B) Business Status	(C) Scope(s) of Work Solicited	(D) Solicitation Method	(E) Selection Decision	(F) Communication Final Selection Outcome*
Name: Address: City, State, Zip: Number of Employees: Phone Number: Email or Fax: Number of Years in Business: Range of Annual Gross Receipts:	<input type="checkbox"/> ACDBE/DBE <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> SBE - City of Phoenix Certified <input type="checkbox"/> Unknown	List Scope(s) of Work	<input type="checkbox"/> E-mail Blast <input type="checkbox"/> Phone Call <input type="checkbox"/> In-Person <input type="checkbox"/> Newspaper <input type="checkbox"/> Website <input type="checkbox"/> Trade Listing <input type="checkbox"/> Outreach Event <input type="checkbox"/> Other	<input type="checkbox"/> Firm was selected <input type="checkbox"/> Firm was not selected Provide explanation of why firm NOT selected _____ _____ _____	Date Firm was Notified: <hr/> Method used to Communicate Selection: <input type="checkbox"/> Email <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> Letter <input type="checkbox"/> In person
Name: Address: City, State, Zip: Number of Employees: Phone Number: Email or Fax: Number of Years in Business: Range of Annual Gross Receipts:	<input type="checkbox"/> ACDBE/DBE <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> SBE - City of Phoenix Certified <input type="checkbox"/> Unknown	List Scope(s) of Work	<input type="checkbox"/> E-mail Blast <input type="checkbox"/> Phone Call <input type="checkbox"/> In-Person <input type="checkbox"/> Newspaper <input type="checkbox"/> Website <input type="checkbox"/> Trade Listing <input type="checkbox"/> Outreach Event <input type="checkbox"/> Other	<input type="checkbox"/> Firm was selected <input type="checkbox"/> Firm was not selected Provide explanation of why firm NOT selected _____ _____ _____	Date Firm was Notified: <hr/> Method used to Communicate Selection: <input type="checkbox"/> Email <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> Letter <input type="checkbox"/> In person

*Firms must be notified of final selection outcome prior to submittal of this form.



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**EXHIBIT 5
FORM EO3 SMALL BUSINESS UTILIZATION COMMITMENT
ACDBE-Race & Gender Neutral**

Solicitation Name:

On behalf of the Successful Respondent, I certify under the penalty of perjury that the information submitted herein is true and correct:

1. The firms indicated as “Selected” in **Form EO2 Small Business Outreach Efforts**, will participate in this contract;
2. The Successful Respondent will comply with the Race- and Gender-Neutral post-award compliance requirements as stated in the ACDBE contract clause;
3. Successful Respondent understands and agrees that any and all changes or substitutions to subcontracts with Small Businesses must be authorized by the Phoenix ACDBE Compliance Specialist prior to implementation; and
4. The following statement is true and correct:

The proposed total Small Business participation on this contract will be:

_____ %

Company Name: _____

Company Mailing Address: _____

Representative Name: _____

Title: _____

Email Address: _____

Phone Number: _____

Signature: _____ Date: _____



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**EXHIBIT 6
LETTER OF DECLARATION**

The undersigned Respondent agrees to comply with the provisions of the Federal **Equal Pay Act of 1963**, State **A.R.S. § 23-341**, and City **PCC 18-21** regarding equal wage and compensation rates for employees, as it applies to its activities under this Lease.

I declare under penalty of perjury that the foregoing is true and correct.

By: _____
Print Name

Signature

Date: _____

PHOENIX CITY CODE (PCC)

ARTICLE V. SUPPLIER’S AND LESEE’S EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

18-21 Requirements of suppliers and lessees

Any supplier/lessee 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 must 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 must 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. 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 will ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression*

*Last sentence applies to lessees who employ more than 35 employees.



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FEDERAL

Equal Pay/Compensation

The Equal Pay Act requires that men and women in the same workplace be given equal pay for equal work. The jobs need not be identical, but they must be substantially equal. Job content (not job titles) determines whether jobs are substantially equal. All forms of pay are covered by this law, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits. If there is an inequality in wages between men and women, employers may not reduce the wages of either sex to equalize their pay

STATE

23-341. Equal wage rates; variations; penalties; enforcement

A. Notwithstanding the other provisions of this chapter, no employer will pay any person in his employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for the same quantity and quality of the same classification of work, provided, that nothing herein will prohibit a variation of rates of pay for male and female employees engaged in the same classification of work based upon a difference in seniority, length of service, ability, skill, difference in duties or services performed, whether regularly or occasionally, difference in the shift or time of day worked, hours of work, or restrictions or prohibitions on lifting or moving objects in excess of specified weight, or other reasonable differentiation, factor or factors other than sex, when exercised in good faith.

B. Any employer who violates subsection A of this section is liable to the employee affected in the amount of the wages of which such employee is deprived by reason of such violation.

C. Any affected employee may register with the commission a complaint that the wages paid to such employee are less than the wages to which such employee is entitled under this section.

D. The commission will take all proceedings necessary to enforce the payment of any sums found to be due and unpaid to such employees.

E. Any employee receiving less than the wage to which such employee is entitled under this section may recover in a civil action the balance of such wages, together with the costs of suit, notwithstanding any agreement to work for a lesser wage.

F. Any action based upon or arising under this section will be instituted within six months after the date of the alleged violation, but in no event will any employer be liable for any pay due under this section for more than thirty days prior to receipt by the employer of written notice of claim thereof from the employee.

G. The burden of proof will be upon the person bringing the claim to establish that the differentiation in rate of pay is based upon the factor of sex and not upon other differences, factor or factors. 23-341



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**EXHIBIT 7
LETTER OF CREDIT FORM**

[BANK]
IRREVOCABLE STANDBY LETTER OF CREDIT
NO. **[REDACTED]**

To: City of Phoenix – Beneficiary
Aviation Department
Business & Properties Division
2485 East Buckeye Road
Phoenix, Arizona 85034-4301
Attn: Deputy Aviation Director

Applicant: **[Company Name]**
Amount: **\$ xxx.xx**
Expiration Date: **mm/dd/yyyy**

We hereby establish our irrevocable Standby Letter of Credit No. **[REDACTED]** in your favor available against sight drafts drawn on **(name of bank)** at the office of the undersigned located at **(insert address of bank)**, accompanied by the following documents:

1. A certificate purportedly signed by Aviation Director, or by any other director of the City of Phoenix Aviation Department, stating one or more of the following:
 - A. The City of Phoenix is drawing against **(name of bank)** Standby Letter of Credit No. **[REDACTED]** as **[Company Name]** has failed to perform its obligations under or failed to comply with its **Agreement No. [REDACTED]**, or any amendments thereto, or any replacement agreement, and the City requires payment under this Standby Letter of Credit of \$ **[REDACTED]**.
 - B. The City of Phoenix is drawing against **(name of bank)** Standby Letter of Credit No. **[REDACTED]** as **[Company Name]** has failed to provide a replacement Standby Letter of Credit prior to sixty (60) days before the expiration date as required by its **Agreement No. [REDACTED]** or any amendments thereto, or any replacement agreement, and the City of Phoenix requires payment under this Standby Letter of Credit of \$ **[REDACTED]**.
 - C. The City of Phoenix is drawing against **(name of bank)** Standby Letter of Credit No. **[REDACTED]** as City of Phoenix has received notice from **(name of bank)** that the Standby Letter of Credit No. **[REDACTED]** will not be extended, and the City of Phoenix requires payment under this Standby Letter of Credit of \$ **[REDACTED]**.



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2. This original Standby letter of credit for endorsement.

All documents may be forwarded to us by mail, overnight courier, hand delivered to our counters, or via telefacsimile ("fax"). Documents to be directed to our counters at: [insert address as to counter location]. Drawing presented to us via fax must be sent to our fax number [insert – bank's fax number] (each such drawing, a "Fax Drawing") provided, however, that Beneficiary confirm our receipt of any Fax Drawing by telephone to our telephone No. [insert – bank's telephone number(s)].

If Beneficiary presents an improper drawing, we shall notify you in writing sent by overnight courier or by fax to (602) 273-4083 that the demand was not effected in accordance with the terms and conditions of this Standby Letter of Credit, stating the reasons therefore and that we are holding any demand at your disposal. Upon being notified that the purported demand was not effected in conformity with this Standby Letter of Credit, you may attempt to correct any such nonconforming demand for payment.

Partial drawing and multiple presentations are permitted under this Standby Letter of Credit.

This Standby Letter of Credit will automatically be renewed for a one (1) year period from the Expiration Date set forth above and upon each anniversary of such Expiration Date, unless at least sixty (60) days prior to such expiration, or prior to any anniversary of such expiration, we notify both Beneficiary and Applicant in writing by registered mail or overnight courier that we elect not to renew this Standby Letter of Credit.

We hereby agree that this Standby Letter of Credit shall be duly honored upon presentation and delivery of the certification specified above.

This Standby Letter of Credit is subject to the "International Standby Practices (ISP98)," International Chamber of Commerce Publication No. 590, and, as to matters not governed by ISP98, shall be governed by and construed in accordance with the laws of Arizona, without regard to principles of conflicts of law.

[Bank]

By: _____
Authorized Signature



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**EXHIBIT 8
CASH DEPOSIT FOR PERFORMANCE GUARANTEE**

**To: City of Phoenix – Beneficiary
Aviation Department
Business & Properties Division
2485 East Buckeye Road
Phoenix, Arizona 85034-4405
Attn: Deputy Aviation Director**

Tenant: Tenant Full Legal Name _____
Address 1 _____
Address 2 _____
City, State, Zip _____

Date: [Insert Date]

Amount: [Insert Amount]

As required by [Lease Agreement No. TBD – dated] or [Permit No. _____], [Insert Tenant Full Legal Name (_____)] is providing a cash deposit to the City of Phoenix (City) as security for the faithful performance by [Insert Tenant Name] to secure payment of all amounts owed by [Insert Tenant Name] to City and its performance of other obligations under the [Lease No. TBD – dated] or [Permit No. _____]. [Insert Tenant Name]'s cash deposit is for the initial amount of (Insert Printed Dollar Amount) (Insert Numerical Dollar Amount), representing six months of payments under its [Lease No. TBD – dated] or [Permit No. _____].

The amount of this performance guarantee established as of the date of the [Lease No. TBD – dated] or [Permit No. _____] may become inadequate during the [Lease No. TBD – dated] or [Permit No. _____] term and [Insert Tenant Name]'s agrees that it will increase the amount as the City may reasonably prescribe from time to time on at least thirty (30) days prior written notice to [Insert Tenant Name]. The City may commingle the performance guarantee with the City's other funds and City shall have no obligation to pay or account to [Insert Tenant Name] for any interest that may be earned on the performance guarantee.

If [Insert Tenant Name] defaults with respect to any provision of the [Lease No. TBD – dated] or [Permit No. _____], including but not limited to the provisions relating to payment of all amounts owed by [Insert Tenant Name] to City, the City may use, apply or retain all or any part of the performance guarantee for the payment of any amounts owed to the City or any other sum in default, or for the payment of any other amount which the City may spend or become obligated to spend by reason of the [Insert Tenant Name]'s



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default or to compensate the City for any other loss which the City may suffer by reason of the [Insert Tenant Name]'s default. If any portion of the performance guarantee is so used or applied, [Insert Tenant Name] shall, within ten (10) business days after written demand from the City, deposit with the City cash in an amount sufficient to restore the performance guarantee to its original amount, and [Insert Tenant Name]'s failure to do so shall be a material breach of the [Lease No. TBD – dated] or [Permit No. _____].

If [Insert Tenant Name] fully and faithfully performs every provision of the [Lease No. TBD – dated] or [Permit No. _____] to be performed by it, the performance guarantee or any balance thereof shall be returned to [Insert Tenant Name]'s within a reasonable time after the expiration of the [Lease No. TBD – dated] or [Permit No. _____], provided, however, that the City may retain the performance guarantee until such time as any amount due from [Insert Tenant Name] under the [Lease No. TBD – dated] or [Permit No. _____] has been determined and paid in full.

AGREED AND ACCEPTED:

By: _____
[Insert Tenant Full Legal Name]

Title: _____
Print

Name: _____
Print

Date: _____



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EXHIBIT 9 FOOD AND BEVERAGE / RETAIL OPERATING AND SERVICE STANDARDS MANUAL

Section 1 – Cleanliness Standards

Section 2 – Premises Standards

Section 3 – Storage Space / Delivery Standards

Section 4 – Information, Directions and Signs Standards

Section 5 – Employee Standards

Section 6 – Operational Standards

Section 1 - Cleanliness Standards

- 1.1 All Premises shall be kept clean and well-maintained at all times.
- 1.2 All garbage shall be removed from counters and tables within five (5) minutes, following the previous customer's exit.
- 1.3 Carpeting and flooring shall be vacuumed or cleaned daily or immediately when soiled.
- 1.4 Entrance doors (if applicable), glass windows and display cases shall be clean and free of smears, smudges, and dirt.
- 1.5 Sales and cashier areas shall be clean and organized.
- 1.6 Tray slides (if present) shall be clean.
- 1.7 Food trays shall be washed regularly (not just wiped down).
- 1.8 Light fixtures and their attachments shall be kept clean and free of dust.
- 1.9 Delivery palettes shall be neatly stacked/organized (while on loading dock or outside the Premises) between deliveries.
- 1.10 All cardboard boxes shall be broken down and placed within the designated cardboard receptacles.
- 1.11 Hallways, elevators and areas around the Premises shall be free of Lessee-generated garbage.
- 1.12 Garbage receptacles shall be emptied regularly to avoid overflow of garbage.
- 1.13 Garbage shall be disposed of by placing accumulated garbage in Lessor-provided garbage compactor(s) and compacted.



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- 1.14 Air conditioning, heating registers, and vents shall be clean regularly.
- 1.15 Premises and high touch point areas shall be cleaned in accordance to CDC guidelines to prevent the spread of COVID-19.

Section 2 - Premises Standards

- 2.1 Floors within the Premises shall be free of garbage, stains, holes, potential trip hazards and shall be clean and well-maintained.
- 2.2 All tables, chairs, booths display cases and fixtures shall be in good condition with no broken pieces, deep scratches or graffiti.
- 2.3 All walls, ceilings, glass surfaces and fixtures shall be free of dust, stains, and well maintained.
- 2.4 All lights shall be in working order and all burned out bulbs shall be replaced within 24 hours.
- 2.5 Shipping materials, packaging, and delivery carts shall be stored out of the public view when not in use.
- 2.6 Cleaning supplies and equipment shall be stored out of public view.
- 2.7 Closet doors shall be kept closed.
- 2.8 Garbage receptacles shall be odor free, kept clean and in good condition, without dents, marks, or peeling paint.
- 2.9 The personal belongings of employees shall not be in public view.
- 2.10 All entrances to F&B/R concession units shall be free from obstruction(s), including concession merchandise any loading and unloading equipment, sales/advertising stanchions, and Lessee-generated garbage.
- 2.11 Lessee-provided air conditioning and heating units shall be maintained in good working order.
- 2.12 Music shall not be played from the RCC F&B/R concession unit.

Section 3 - Storage Space / Delivery Standards

- 3.1 Products and merchandise stocked in Lessee's support space (if applicable) shall not block doors, electrical panels or hinder the fire suppression system.



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- 3.2 Lessee shall not erect walls within the storage space (if applicable) to create office space, private storage or additionally secured areas.

Section 4 - Information, Directions and Signs Standards

- 4.1 Store policies pertaining to credit cards, returns/refunds, shall be clearly displayed.
- 4.2 Clearly display a toll-free number for customer complaints or customer compliments.
- 4.3 Hours of operation shall be fully displayed.
- 4.4 Handwritten and unprofessional signs shall not be used.
- 4.5 Illuminated signs shall be in proper working condition.
- 4.6 All signage/postings shall receive Aviation approval prior to installation. All necessary licenses, permits, notices and inspection certificates on the Premises will be clearly displayed.
- 4.7 All signage/postings shall comply with plans approved by the Aviation Director.
- 4.8 All necessary licenses, permits, notices and inspection certificates on the Premises shall be clearly displayed.

Section 5 - Employee Standards

Employees shall:

- 5.1 Project a friendly and attentive demeanor and have a positive attitude towards customers and fellow employees at all times.
- 5.2 Provide appropriate attention to customers, purchasing, asking questions, or needing assistance and not gather to chat while on duty.
- 5.3 Make every effort to satisfy a customer's needs, even when those needs are outside the employee's scope of work.
- 5.4 Maintain appropriate eye contact and a pleasant tone of voice while conversing with customers and fellow employees.
- 5.5 Provide each customer with correct change, a receipt, and a "thank you."
- 5.6 Be well informed, capable of providing directions and knowledgeable about where and how to obtain requested information or service for customers.



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Remain calm when encountering an upset customer, try to calm the customer, listen carefully and show empathy with the customer's problem. When encountering a dissatisfied customer, employees should obtain the facts; state any applicable policy clearly and politely; and be able to offer a solution or an adequate alternative to the customer. If unable to satisfy the customer or resolve the issue, employees shall direct the customer to the immediate supervisor.

- 5.7 Be trained on how to obtain assistance to resolve customer questions, address language barriers, and respond to medical and operational emergencies.
- 5.8 Refrain from using foul or inappropriate language at all times.
- 5.9 Have access to personal protective equipment (PPE) to prevent the spread of COVID-19.

Employees shall not:

- 5.10 Eat, drink or chew gum in the view of customers.
- 5.11 Sleep on duty or in a public area.
- 5.12 Use cell phones and personal music devices while on duty.
- 5.13 Wear sunglasses indoors while on duty, unless medically required and accompanied by a doctor's note.

Additionally, to support employee standards, Lessee shall ensure:

- 5.14 Employees have sufficient cash available immediately upon opening to make change for early morning sales.
- 5.15 All complaints be dealt with promptly and documented appropriately.
- 5.16 Employees wear appropriate uniforms or clothing, which shall be clean and presentable to the public.
- 5.17 Employees wear appropriate types and amounts of jewelry, if applicable.



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Section 6 - Operational and Product Standards

- 6.1 All odor-producing operations, products and equipment must be controlled by wrapping, enclosing, containing or other treating to prohibit the entry of objectionable odors into public spaces. Objectionable odors include odors of machinery, electrical devices, perfumes and perfume products, cleansers, and oils.
- 6.2 All prepackaged food items shall be labeled with an “expiration date.” No items shall be offered for sale or remain on shelves after the expiration dates and times.
- 6.3 Food service preparation must comply with all applicable regulations, including those established by the Maricopa County Health Services Department (MCESD).
- 6.4 All food merchandisers and related equipment shall be in good working order maintaining the hot or cool temperature, as necessary, in accordance with MCESD.
- 6.5 Any activities that involve the final preparation of food from raw or partially prepared ingredients, shall be concealed from public view unless otherwise approved by the Landlord and MCESD. Food preparation that is entertaining to watch or commonly accepted as part of a serving operation may be performed in public view with the Landlord’s prior approval.
- 6.6 All odor-producing operations, products and equipment must be controlled by venting, wrapping, enclosing, containing or other treating to prohibit the entry of objectionable odors into public spaces. Objectionable odors shall include odors of machinery, electrical devices, food preparation, perfumes and perfume products, cleansers, oils and garbage disposal systems.
- 6.7 All food used for display purposes shall be rotated daily.
- 6.8 All prepackaged food items shall be labeled with an “expiration date.” No items shall be offered for sale or remain on shelves after the expiration dates.
- 6.9 Lessee shall make every attempt to ensure all menu items are available.
- 6.10 Hot food shall be delivered hot and cold food shall be delivered cold.



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**EXHIBIT 10
PROPOSED FIRST YEAR MINIMUM ANNUAL GUARANTEE (MAG)**

Table 1: Proposed First Year MAG for R3:

PROPOSED FIRST YEAR MAG	PROPOSED FIRST YEAR MAG - Written in Words
\$ _____	_____

Respondents that propose an amount less than the first year MAG of \$54,000.00 USD for space R3 will be deemed non-Responsive and their Response and offer will not be evaluated.

Table 2: Proposed First Year MAG for R4:

PROPOSED FIRST YEAR MAG	PROPOSED FIRST YEAR MAG - Written in Words
\$ _____	_____

Respondents that propose an amount less than the first year MAG of \$142,375.00 USD for space R4 will be deemed non-Responsive and their Response and offer will not be evaluated.

PROPOSED FIRST YEAR MAG IN THE AGGREGATE FOR SPACE R3 AND R4:

\$ _____

Respondents that propose an amount less than the first year MAG of \$196,375.00 USD will be deemed non-Responsive and their Response and offer will not be evaluated.

ATTEST:

(Witness Signature)

(Company Name)

By: _____
(Signature of Chief Financial Officer)

(Print Name of Chief Financial Officer)

Date: _____

Phone No.: _____



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EXHIBIT 11 PROPOSED CAPITAL INVESTMENT BY CONCESSION SPACE AND IN THE AGGREGATE

Available at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>



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EXHIBIT 12 TENANT DESIGN CRITERIA

Available at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>



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EXHIBIT 13 TENANT IMPROVEMENT HANDBOOK

Available at: [https://www.skyharbor.com/docs/default-source/default-document-library/ti-handbook-\(1\).pdf?sfvrsn=9eb58588_4](https://www.skyharbor.com/docs/default-source/default-document-library/ti-handbook-(1).pdf?sfvrsn=9eb58588_4)



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EXHIBIT 14 AFFIDAVIT

Assurances

The undersigned Respondent hereby submits to the City of Phoenix (City) the enclosed Revenue Contract Solicitation Response (Response) based upon all terms and conditions set forth in the City's Revenue Contract Solicitation (RCS) and referenced materials. Respondent further specifically agrees hereby to provide services in the manner set forth in the Response submitted by Respondent.

The undersigned Respondent acknowledges and states, under penalty of perjury, as follows:

1. The City is relying on Respondent's submitted information and the representation that Respondent has the capability to successfully undertake and complete the responsibilities and obligations submitted in its Response and in the resulting Contract.
2. The City has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by Respondent.
3. Respondent has read and fully understands all the provisions and conditions set forth in the RCS documents, upon which its Response is based.
4. The forms and information requested in the RCS are complete and made part of Respondent's Response. The City is not responsible for any Respondent errors or omissions.
5. This Response may be withdrawn by requesting such withdrawal in writing at any time prior to the Response deadline but may not be withdrawn after such date and time.
6. The City reserves the right to reject any and all Responses and to accept the Response that, in its judgment, will provide the best quality of service to the City at reasonable rates.
7. This Response is valid for a minimum of 120 days subsequent to the RCS Response deadline.
8. All costs incurred by Respondent in connection with this Response will be borne solely by Respondent. Under no circumstances will the City be responsible for any costs associated with Respondent's Response or the RCS process.
9. Respondent has not in any manner, directly or indirectly, conspired with any person or party to unfairly compete or compromise the competitive nature of the RCS process.
10. The contents of this Response have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this Response.
11. To the best of the Respondent's knowledge, the information provided in its Response is true and correct and neither the undersigned Respondent nor any Partner, corporate officer or managing employee have ever been convicted of a felony or a crime involving moral turpitude.
12. Respondent has provided its Partners and/or business affiliates, if any, with a copy of its Response and the Draft Lease, and acknowledges and agrees that all are in agreement with the terms set forth with no material changes.



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Name of **Respondent's** Company (Legal Name): _____

Printed Name of Authorized Person: _____

Title: _____

Business Address of Respondent: _____

Telephone: _____ Email: _____

Signature of Authorized Person*: _____

*Must be signed by an individual authorized to contractually bind the Respondent's company.

NOTARIZED

State of _____ County of _____

This Affidavit was subscribed and sworn to before me this _____ day of _____, 20__ by
_____ (full name of the affiant).

Notary Public (signature)

Affix Notary Seal



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**EXHIBIT 15
CONFLICT OF INTEREST AND SOLICITATION
TRANSPARENCY DISCLOSURE FORM**

This form must be signed and submitted to the City and all questions must be answered 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:

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 partners, parent, 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:

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.



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7. Disclosure of conflict of interest:

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 will 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:

8. Notice Regarding Prohibited Interest in Contracts

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.

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:



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9. Acknowledgements

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.**

10. 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.

OATH

PRINT NAME

TITLE

SIGNATURE

DATE

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



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**EXHIBIT 16
RESPONDENT REFERENCES**

Respondent must provide three business references that are familiar with the Respondent's concession operations and experience and the Respondent has provided substantially similar services as described in this RCS. Respondent should list contact information for the airport business references in the spaces provided below.

1) Reference Contact Name: _____
Reference Contact Title: _____
Airport Name: _____
Address: _____
Phone #: _____ Email: _____

2) Reference Contact Name: _____
Reference Contact Title: _____
Airport Name: _____
Address: _____
Phone #: _____ Email: _____

3) Reference Contact Name: _____
Reference Contact Title: _____
Airport Name: _____
Address: _____
Phone #: _____ Email: _____



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EXHIBIT 17 INSURANCE REQUIREMENTS

Respondents (referred to in this Exhibit as “Contractor”) must provide evidence of ability to obtain the required insurance, such as a commitment letter from an underwriter confirming that Contractor is insurable for the required coverages in the required limits.

INDEMNIFICATION CLAUSE:

1. Contractor (“Indemnitor”) must indemnify, defend, save and hold harmless the City and its officers, officials, agents, and employees (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs; attorney fees; and costs of claim processing, investigation and litigation) (“Claims”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, errors, or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors in connection with the Lease and this RCS. This indemnity includes any Claim arising out of or recovered under the Workers’ Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Contractor must indemnify Indemnitee from and against any and all Claims, except those arising solely from Indemnitee’s own negligent or willful acts or omissions. Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of the Lease, Contractor waives all rights of subrogation against Indemnitee for losses arising from the work performed by Contractor for the City. The obligations of Contractor under this provision survive the termination or expiration of the Lease.

2. INSURANCE REQUIREMENTS:

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 the Lease.

These insurance requirements are minimum requirements for the Lease and in no way limit the indemnity covenants contained in this RCS. The City in no way warrants that the minimum limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under the Lease by the Contractor, its agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.



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A. 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 (1) the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met.

1. Commercial General Liability – Occurrence Form

Policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury and liability assumed under an insured contract.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000
- Fire Damage (Damage to Rented Premises) \$ 100,000
- Liquor Liability (if applicable) \$1,000,000

- a. The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured contract arising out of the use and/or occupancy of the property subject to this Lease.
- b. Policy must not contain any restrictions of coverage for operations on or near airport premises.
- c. There shall be no endorsement of modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- d. City of Phoenix is an additional to the full limits of liability purchased by the Contractor.
- e. The Contractor’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of the Lease.

- Combined Single Limit (CSL) – airside driving (including contracted deliveries of goods and services) \$5,000,000



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- a. The policy shall not contain any restrictions of coverage for operations on or near the Airport.
- b. The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by or on behalf of the Contractor, relating to the Lease.
- c. City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- d. The Contractor’s insurance coverage must be primary and non-contributory with respect to any insurance of self-insurance carried by the City.

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy must contain a waiver of subrogation against the City of Phoenix.
- b. This requirement shall 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.

4. Property Insurance

Coverage for Contractor’s leasehold improvements	Replacement Value
Coverage for Contractor’s contents/equipment	Replacement Value

- a. If Contractor is the sole occupant, Contractor must purchase property insurance for the building. Coverage must be written on a Special Causes of Loss property insurance form with replacement cost value, including coverage for flood and earth movement.
- b. The City of Phoenix must be named as a loss payee if Contractor is a sole occupant and/or if Contractor is making tenant improvement(s).
- c. Contractor tenant improvements must be insured. Coverage must be written of a Special Causes of Loss property insurance form with replacement cost value.
- d. Policy must contain a waiver of subrogation against the City of Phoenix.



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5. Fidelity Bond or Crime Insurance – Employee Theft

The bond or crime policy shall provide coverage for loss of monies belonging to the City under the terms of the Lease as a result of theft by Contractor's employees.

Bond or Policy Limit: \$10,000

- a. The bond or policy shall include coverage for all directors, officers, agents and employees of the Contractor.
- b. The bond or policy must include coverage for third party fidelity, i.e. property of the Contractor that is held by the Contractor in any capacity, or property for which the Contractor is legally liable.
- c. The bond or policy shall not contain a condition requiring an arrest and conviction.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix must be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Lease.
2. The Contractor insurance coverage will be primary insurance and non-contributory with respect to all other available sources.

C. NOTICE OF CANCELLATION: For each insurance policy required by the insurance provisions of this Lease, 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 shall be mailed, emailed, hand-delivered or sent by facsimile transmission to:

City of Phoenix
Aviation Department - Business and Properties Division
2485 E. Buckeye Road
Phoenix, AZ 85034
Fax Number: 602-273-4083
Email: aviation.business@phoenix.gov



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- D. 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 above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. VERIFICATION OF COVERAGE:** Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by the Lease. 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 Lease must be in effect at or prior to commencement of this Lease and remain in effect for the duration of the Lease. Failure to maintain the insurance policies as required by this Lease or to provide evidence of renewal is a material breach of contract.

The City Department, Lease number and location or description are to be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Lease at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

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

City of Phoenix
Aviation Department - Business and Properties Division
2485 E. Buckeye Road
Phoenix, AZ 85034
Fax Number: 602-273-4083
Email: aviation.business@phoenix.gov

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
PO Box 4668 – ECM #35050
New York, NY 10163-4668
Email: certificates-cityofphoenix@riskworks.com



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- F. SUBCONTRACTORS:** Contractor's certificate(s) shall include all contractors and subcontractors as additional insureds under its policies or Contractor shall be responsible for ensuring and verifying that all contractors and subcontractors have valid and collectable insurance. At any time throughout the life of the Lease, 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 Lease 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 Lease.
- G. SUBLESSEES AND PARTNERS:** If Contractor is approved by the City to sublease any part of the Leases Premises, sublease must adhere to the insurance specifications stated in the Lease.
- H. APPROVAL:** Any modification or variation from the insurance requirements in the Lease must have prior approval from the City's Law Department, the decision of which shall be final. Such action will not require a formal Lease amendment but may be made by administrative action.



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EXHIBIT 18 RETAIL CONCEPTS

Available at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>



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EXHIBIT 19 VARIETY OF PRODUCTS AND RANGE OF PRICE POINTS

Available at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>



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EXHIBIT 20 QUALIFICATIONS AND EXPERIENCE OF RESPONDENT'S ON-SITE MANAGER

Available at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>



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EXHIBIT 21 RESPONDENT'S QUALIFICATIONS AND EXPERIENCE

Available at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>



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EXHIBIT 21.1 CONTACT INFORMATION FOR LOCATIONS PROVIDED IN EXHIBIT 21

Available at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>



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EXHIBIT 22 RESPONDENT'S EXPERIENCE MANAGING AND OPERATING A VARIETY OF CONCEPTS

Available at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>



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**EXHIBIT 23
EXPERIENCE OF RESPONDENT AND RESPONDENT’S PARTNERS (IF ANY)
WITH CONCEPTS (INCLUDING SUBTENANT AND/OR JV PARTNERS) WITH
PROPOSED CONCEPTS**

Available at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>



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EXHIBIT 24 PROJECTED TEN-YEAR GROSS SALES BY CONCESSION SPACE AND IN THE AGGREGATE

Available at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>



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**EXHIBIT 25
PROJECTED TEN-YEAR RENT REVENUES
BY CONCESSION SPACE AND IN THE AGGREGATE**

Available at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>



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EXHIBIT 26 PRO FORMA FINANCIAL PROJECTIONS AND CASH FLOW BY CONCESSION SPACE AND IN THE AGGREGATE

Available at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>



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EXHIBIT 27 ASSUMPTIONS

Available at: <https://solicitations.phoenix.gov/Solicitations/Details/1290>



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EXHIBIT 28 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.



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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.



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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 subtier 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



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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.



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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.



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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.



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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:

A. 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).

B. 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.

C. 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,



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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.”

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:

A. 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).

B. 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).



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C. 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).

D. 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).

E. 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).

F. 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).

G. 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).

H. 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.

I. 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).



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J. 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.

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Revised 2/1/19



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EXHIBIT 29 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.



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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.

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).



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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).

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



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(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).

(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



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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). 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.



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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.

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.



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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.

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.



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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.

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.



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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.

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.



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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.

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.



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(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.

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.

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