



CITY OF PHOENIX

AVIATION DEPARTMENT

**Nichol Shrum
Procurement Officer
2485 East Buckeye Road
Phoenix, AZ 85034
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**REQUEST FOR PROPOSAL
AVN RFP 23-012 (NS)**

**NOISE AND OPERATIONS MANAGEMENT SYSTEM
REQUIREMENTS CONTRACT**



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

SOLICITATION RESPONSE CHECK LIST

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

- All forms have been completed and signed, including Solicitation Disclosure form.
- All Submittals are included.
- Reviewed and verified prices offered.
- Checked price extensions and totals.
- Included any required drawings or descriptive literature.
- If required, checked and included the amount of the offer surety.
- Reviewed the insurance requirements, if any, to assure compliance.
- Included signed addenda, if any.
- If physical submission is selected:
 - Include the specified number of copies of the offer as indicated in Submittal section.
 - Mailing envelop is addressed to the Procurement Officer on the solicitation front page, at the address listed.
 - Mailing envelop clearly shows your company name and address, the solicitation number, solicitation title and the offer opening date.
- Submitted the response in time – City must receive offers no later than the date and time indicated in the Schedule of Events or addenda.



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SECTION I – INSTRUCTIONS

1. DESCRIPTION – STATEMENT OF NEED:

- 1.1. The City of Phoenix (“City”) invites sealed offers for Noise and Operations Management System (NOMS) for a five-year period commencing on or about August 1, 2023, in accordance with the specifications and provisions contained herein or the “Effective Date” which is upon award by the City Council, conditioned on signature and recording by the City Clerk’s department, as required by the Phoenix City Code, whichever is later.
- 1.2. This solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800-367-8939 for assistance.
- 1.3. Notwithstanding the foregoing, this Contract will terminate upon the earliest of the following occurrence: reaching the end of the term including any extensions exercised, or termination pursuant to the provisions of this Contract.

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

Offeror must be registered in the City’s procurePHX Self-Registration System at <https://www.phoenix.gov/financesite/Pages/EProc-help.aspx> to respond to solicitations and access procurement information. The City may, at its sole discretion, reject any offer from an Offeror who has not registered. The product category code for this solicitation is 926620000 (Noise Testing Services).

3. SCHEDULE OF EVENTS:

ACTIVITY	DATE AND TIME (All times are local Phoenix time)	LOCATION
Solicitation Issue Date	November 22, 2022	City Solicitation Website
Pre-Offer Conference	Wednesday, November 30, 2022 at 2:00 p.m.	Meeting Link: https://cityofphoenix.webex.com/cityofphoenix/onstage/g.php?MTID=e1345037429a97b5d011b5a872fe8188e Join By Phone: +1-415-655-0001 Access Code: 2453 015 3784
Written Inquiries Due Date	Monday, December 5, 2022 at 10:00 a.m.	nichol.shrum@phoenix.gov AND avn.solicitations@phoenix.gov



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Offer Due Date	Thursday, January 5, 2023 at 10:00 a.m.	<p><i>Physical Submission:</i> Aviation Headquarters 2485 East Buckeye Rd. Phoenix, Arizona 85034</p> <p>Refer to Paragraph 13 in this Section.</p> <p>OR</p> <p><i>Electronic Submission</i> Refer to Paragraph 14 in this Section.</p>
Offer Opening	Thursday, January 5, 2023 at 10:15 a.m.	<p>Meeting Link https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=m303961e5119c7645c5665dc2b0d65e48</p> <p>Join by phone +1-415-655-0001 US Toll</p> <p>Access code: 2452 927 9360</p>

The City reserves the right to change dates, times, and locations, as necessary. The City does not always hold a pre-offer conference or site visit.

To request a reasonable accommodation or alternative format for any public meeting, please contact the Procurement Officer (Nichol Shrum) at 602-273-4082 Voice or 711/TTY, or nichol.shrum@phoenix.gov, no later than one (1) week prior to the meeting.

4. MINIMUM QUALIFICATIONS:

The qualified and responsive offeror must meet **all** minimum qualifications listed below. Should an offeror fail to meet one of the minimum qualifications identified, the offer will be disqualified as non-responsive.

- 4.1. Offeror must have been in business providing Noise and Operations Management Services for a minimum of three (3) years.



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5. PREPARATION OF OFFER:

- 5.1. All forms provided in Submittal Section must be completed and submitted with the offer. The signed and completed Solicitation Disclosure form must be included or your offer may be deemed non-responsive.
- 5.2. It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of the offer must be initialed in original ink by the authorized person signing the offer. No offer will be altered, amended or withdrawn after the specified offer due date and time. The City is not responsible for Offeror's errors or omissions.
- 5.3. All time periods stated as a number of days will be calendar days.
- 5.4. It is the responsibility of all Offerors to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:
 - 5.4.1. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
 - 5.4.2. Study and carefully correlate Offeror's knowledge and observations with the solicitation and other related data.
 - 5.4.3. Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in or between the solicitation and other related documents.
 - 5.4.4. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.
 - 5.4.5. Offerors are reminded that the specifications stated in the solicitation are the minimum level required and that offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Offers offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.



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5.4.6. Offer responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products offered. Offers submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.

5.4.7. Prices will be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price will prevail unless obviously in error.

6. OBTAINING A COPY OF THE SOLICITATION AND ADDENDA:

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

7. EXCEPTIONS:

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

8. INQUIRES:

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

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

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



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9. ADDENDA:

The City of Phoenix will not be responsible for any oral instructions made by any employees or officers of the City of Phoenix regarding this solicitation. Any changes will be in the form of an addendum. **The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the offer submittal. Failure to acknowledge receipt and returning signed addenda may result in the rejection of Offer as non-responsive.**

10. BUSINESS IN ARIZONA:

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

11. LICENSES:

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

12. CERTIFICATION:

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

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

13. SUBMISSION OF OFFER – HARD COPY SUBMISSION:

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

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

- Offeror's Name
- Offeror's Address (as shown on the Certification Page)
- Solicitation Number
- Solicitation Title



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- Offer Opening Date

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

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

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

14. SUBMISSION OF OFFER – ELECTRONIC BID SUBMISSION:

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

For “Electronic” Submittal: Offers must be submitted via email to avn.solicitations@phoenix.gov. Due to file size limitations of 100mb for electronic transmission (for sending or receiving), offers sent by email may need to be sent in parts with multiple emails. The date and time on the email(s) as received/stamped by the City’s inbox will provide proof of submission and verification whether the Offer (including all parts if sent in multiple emails) was received on or prior to the Solicitation Deadline. The solicitation number and title “**AVN RFP 23-012 – Noise and Operations Management System**” must be included on the subject line of the email when submitting your Offer.

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

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



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15. WITHDRAWAL OF OFFER:

At any time prior to the solicitation due date and time, an Offeror (or designated representative) may withdraw the offer by submitting a request in writing and signed by a duly authorized representative. If Offeror withdraws the offer electronically, email nichol.shrum@phoenix.gov. The request to withdraw must be in the form of a letter attached to the email that includes either an image of the duly authorized representative's signature or an electronic signature from a verifiable source, such as Adobe Sign, DocuSign or a similar verifiable software program.

16. OFFER RESULTS:

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

Meeting Link

<https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=m303961e5119c7645c5665dc2b0d65e48>

Join by phone

+1-415-655-0001 US Toll

Access code: 2452 927 9360

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

The City will post the Offeror's name on the City's website, <https://solicitations.phoenix.gov/Awards> within five calendar days of the offer opening. Offers are not available for public inspection until after the City has posted the award recommendation on the City's website. Once the City has reviewed the offers, the City will post an award recommendation on the website. The City will not provide any further notification to unsuccessful Offerors.

17. PRE-AWARD QUALIFICATIONS:

Upon notification of an award the Offeror will have thirty (30) days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this solicitation. Insurance requirements are non-negotiable.

18. AWARD OF CONTRACT:

18.1. Unless otherwise indicated, award(s) will be made to the most responsive, responsible Offeror(s) who are regularly established in the service, or



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providing the goods, contained in this solicitation and who have demonstrated the ability to perform in an acceptable manner.

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

- Technical capability of the Offeror to accomplish the scope of work required in the Solicitation. This may include performance history on past and current government or industrial Contracts; and,
- Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation; and,
- Safety record; and,
- Vendor history of complaints and termination for convenience or cause.

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

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

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

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

20. SOLICITATION TRANSPARENCY POLICY:

20.1. Commencing on the date and time a solicitation is published, potential or actual offerors or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under Arizona Statutes, until the resulting Contract(s) are awarded to all offers or responses are rejected and the solicitation is



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cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation.

- 20.2. As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff. Offerors may not discuss the solicitation with any City employees or evaluation panel members.
- 20.3. Offerors may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.
- 20.4. With respect to the selection of the successful Offerors, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.
- 20.5. This policy is intended to create a level playing field for all Offerors, assure that Contracts are awarded in public, and protect the integrity of the selection process. **OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED.** After official Notice is received by the City for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.
- 20.6. "To discuss" means any contact by the Offeror, regardless of whether the City responds to the contact. Offerors that violate this policy will be disqualified until the resulting Contract(s) are awarded, or all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the Contract, as long as the City cancels with a statement that the City will rebid the solicitation.

21. PROTEST PROCESS:

- 21.1. Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an addendum to the



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solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City's best interests to set new deadlines, amend the solicitation, cancel or re-bid.

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

22. PUBLIC RECORD:

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

23. LATE OFFERS:

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

24. RIGHT TO DISQUALIFY:

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



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25. PERFORMANCE GUARANTEE:

Not later than the Effective Date of this Contract, Contractor shall deliver to City a performance guarantee in the amount of five percent (5%) of the total annual Contract amount. Contractor must maintain the performance guarantee for the entire Term of this Contract. The performance guarantee secures payment of all fees and any other amounts owed by Contractor to the City under this Contract and secures the performance of all of the Contractor's obligations under this Contract. City will not pay interest to Contractor on the performance guarantee.

25.1. Adjustment 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 three (3) months of operating fees paid to the City then in effect. City may increase the amount of the performance guarantee by giving Contractor 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 City deems appropriate, including (A) an increase of Contractor's financial obligations under this Contract, (B) Contractor's failure to pay any fees, additional payment, or any other amount when due, or (C) Contractor's financial condition changes to the extent that City is concerned about Contractor's ability to perform under this Contract. Contractor shall pay to City the additional amount necessary to increase the performance guarantee upon notice from City.

25.2 Letter of Credit: If the performance guarantee is in the form of an irrevocable standby letter of credit (LOC), then the Contractor shall use the City's **LOC Form**, attached hereto and marked **Exhibit G**. The LOC shall be issued by either: (1) a financial institution with counters in the Phoenix metropolitan area at which 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 Contractor, may draw upon the full amount of the LOC and retain all proceeds as a cash performance guarantee. Any changes to the Letter of Credit required provisions must be approved in advance by the Aviation Director.

25.3. Duty to Restore: The performance guarantee insures the full and timely performance by Contractor of all its obligations under this Contract and is security for payment by Contractor of all claims by City. City may draw on or make a claim against the performance guarantee if Contractor breaches or fails to perform under this Contract. If City draws on or makes a claim against the performance guarantee, then Contractor, 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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25.4. Return: After the expiration or earlier termination of this Contract, City will return the performance guarantee to Contractor less any fees, additional payment, or any other amount due to City.

26. CONTRACT AWARD:

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

27. DETERMINING RESPONSIVENESS AND RESPONSIBILITY:

27.1. Offers will be reviewed for documentation of minimum qualifications, completeness, and compliance with the Solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

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

27.3. Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and an Offer that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as nonresponsive. Alternatively, the City in its sole discretion may instruct in writing that any Offeror remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so in writing, the City may determine the Offer to be nonresponsive.

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

27.5. The Procurement Officer will review each Offer to determine if the Offeror is responsible. The City's determination as to whether an Offeror is responsible will be based on all information furnished by the Offeror, interviews (if any), and information received from Offeror's references, including information about Offeror's history, terminations for convenience or cause, Contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the Contract resulting from the solicitation will not be made until any necessary investigation, which each Offeror agrees to permit



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by submitting its Offer, is made by the City as it deems necessary. A review of responsibility may occur up to Contract award.

27.6. The Offeror's unreasonable failure to promptly supply information about an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Offeror.

28. DETAILED EVALUATION OF OFFERS AND DETERMINATION OF COMPETITIVE RANGE:

During deliberations, the Evaluation Panel will reach a consensus score for each evaluation criterion except price. The Procurement Officer will score the price, which will be added to the overall consensus score. The overall consensus scores will determine the Offerors' rankings and which Offers are within the Competitive Range, when appropriate.

29. OFFERS NOT WITHIN THE COMPETITIVE RANGE:

The City may notify Offerors of Offers that the City determined are not in the Competitive Range.

30. DISCUSSIONS WITH OFFERORS IN THE COMPETITIVE RANGE:

30.1. The City will notify each Offeror whose Offer is in the Competitive Range or made the 'short list' and provide in writing any questions or requests for clarification to the Offeror. Each Offeror so notified may be interviewed by the City and asked to discuss answers to written or oral questions or provide clarifications to any facet of its Offer. The Offerors in the competitive range may be required to provide a demonstration of their product.

30.2. Demonstrations - Offerors in the competitive range may be invited to construct a hands-on sample or presentation of their solution at the City of Phoenix. In addition, each finalist may prepare and deliver a presentation of their proposed solution based on the script developed by the evaluation panel. The City may also require a hands-on lab demonstration designed specifically for the evaluation panel. The results of the surveys will be tabulated and delivered to the evaluation team for the final review and solution selection session(s).

30.3. If an Offer in the Competitive Range contains conditions, exceptions, reservations or understandings to or about any Contract or Solicitation Scope requirement, the City may discuss or negotiate the conditions, exceptions, reservations or understandings during these meetings. But the City in its sole discretion may reject any and all conditions, exceptions, reservations and understandings, and the City may instruct any Offeror to remove the conditions, exceptions, reservations or understandings. If the Offeror fails to



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do so, the City may determine the Offer is nonresponsive, and the City may revoke its determination that the Offer is in the Competitive Range.

30.4. To the fullest extent permitted by law, the City will not provide any information, financial or otherwise, to any Offeror about other Offers received in response to this solicitation. During discussions with Offerors in the Competitive Range, the City will not give Offerors specific prices or specific financial requirements that Offerors must meet to qualify for further consideration. The City may state that proposed prices are too high with respect to the marketplace or otherwise unacceptable. Offerors will not be told of their relative rankings before Contract award.

31. BEST AND FINAL OFFERS (BAFO):

31.1. A BAFO is an option available for negotiations. Each Offeror in the Competitive Range, which is determined in the City's sole discretion, may be afforded the opportunity to amend its Offer and make one BAFO.

31.2. If an Offeror's BAFO modifies its initial Offer, the modifications must be identified in the BAFO. The City will evaluate BAFOs based on the same requirements and criteria applicable to initial Offers. The City will adjust appropriately the initial scores for criteria that have been affected by Offer modifications made by a BAFO. Based on the criteria defined in the solicitation as weighted, the City will then perform final scoring and prepare final rankings.

31.3. The Evaluation Panel will recommend the Offer that is the best value and most advantageous to the City based on the evaluation criteria.

31.4. The City reserves the right to make an award to an Offeror whose Offer is the highest rated, best value, and most advantageous to the City based on the evaluation criteria, without conducting written or oral discussions with any Offeror, without negotiations, and without soliciting BAFOs.



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1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of Offer as non-responsive.

Should: Indicates something that is recommended but not mandatory. If the Contractor fails to provide recommended information, the City may, at its sole option, ask the Contractor to provide the information or evaluate the offer without the information.

May: Indicates something that is not mandatory but permissible.

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

“A.R.S.” Arizona Revised Statute

“Buyer” or “Procurement Officer” City of Phoenix staff person responsible for the solicitation. The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor's performance under this Contract.

"City" The City of Phoenix

"Contractor" The individual, partnership, or corporation who, as a result of the competitive process, is awarded a Contract by the City of Phoenix.

"Contract" or "Contract" The legal Contract executed between the City of Phoenix, AZ and the Contractor.

“Days” Day or days means calendar days unless otherwise specified.

“Deputy Aviation Director” The Contracting authority for the City of Phoenix, AZ, authorized to sign Contracts and amendments thereto on behalf of the City of Phoenix, AZ.

“Employer” Any individual or type of organization that transacts



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business in this state, that has a license issued by an agency in this state and employs one or more employees in this state. Employer includes this state, any political subdivision of this state and self-employed persons. In the case of an independent Contractor, employer means the independent Contractor and does not mean the person or organization that uses Contract labor. (A.R.S. 23-211).

“Good Cause”	Substantial grounds or evidence based upon facts not in dispute as determined by the Procurement Officer that the failure by an aggrieved party an offeror or a respondent to submit a timely offer response protest or appeal was beyond its control due to misinformation relayed in writing by a City employee.
“Offer”	Means a response from a supplier, Contractor or service provider to a solicitation request that, if awarded, binds the supplier, Contractor or service provider to perform in accordance with the Contract. Same as bid, proposal, quotation or tender.
“Offeror”	Any Vendor, Seller or Supplier submitting a competitive offer in response to a solicitation from the City. Same as Bidder or Proposer.
“Solicitation”	Means an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Quotations (RFQ), Request for Qualifications (RFQu) and request for sealed bids, or any other type of formal procurement which the City makes public through advertising, mailings, or some other method of communication. It is the process by which the City seeks information, proposals, bids or quotes from suppliers.
“Suppliers”	Firms, entities or individuals furnishing goods or services to the City.
“Vendor or Seller”	A seller of goods or services.



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2. CONTRACT INTERPRETATION:

2.1. **APPLICABLE LAW:** This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.

2.2. **CONTRACT ORDER OF PRECEDENCE:** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:

- 2.2.1. Federal terms and conditions, if any
- 2.2.2. Special terms and conditions
- 2.2.3. Standard terms and conditions
- 2.2.4. Amendments
- 2.2.5. Statement or scope of work
- 2.2.6. Specifications
- 2.2.7. Attachments
- 2.2.8. Submittals
- 2.2.9. Exhibits
- 2.2.10. Instructions to Contractors
- 2.2.11. Other documents referenced or included in the Solicitation

2.3. **ORGANIZATION – EMPLOYMENT DISCLAIMER:** The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the agreement are considered to be City's employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.

2.4. **SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

2.5. **NON-WAIVER OF LIABILITY:** The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it.



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Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.

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

3. **CONTRACT ADMINISTRATION AND OPERATION:**

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

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

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



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subcontracts, job-contractor agreements or subleases of this agreement entered into by supplier/lessee.

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

For a Contractor with 35 employees or fewer: Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, Contractor agreements or subleases of this agreement entered into by supplier/lessee.

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



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incorporated in all subcontracts, job-Contractor agreements or subleases of this Agreement entered into by supplier/lessee. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

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

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

3.4. **LEGAL WORKER REQUIREMENTS:** The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:

3.4.1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.

3.4.2. A breach of a warranty under paragraph 1 will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.

3.4.3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.

3.5. **HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS:** The Contractor's products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City.

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

3.5.1. Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract



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3.5.2. A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.

The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement. The City further reserves the right to make unannounced inspections of the Contractor's facilities (during normal business hours).

3.6. **COMPLIANCE WITH LAWS:** Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance.

Because the contractor will be acting as an independent contractor, the City assumes no responsibility for the Contractor's acts.

Contractor shall comply with the provisions of the **Supplemental Terms and Conditions to All Airport Agreements** attached, marked **Exhibit A**, and incorporated herein by this reference.

3.7. **LAWFUL PRESENCE REQUIREMENT:** Pursuant to A.R.S. §§ 1-501 and 1-502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. In the event the prevailing responder is unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder. The law does not apply to fictitious entities such as corporations, partnerships and limited liability companies

3.8. **CONTINUATION DURING DISPUTES:** Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.



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- 3.9. **EMERGENCY PURCHASES:** The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

4. COSTS AND PAYMENTS:

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



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Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Offer and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.

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

5. CONTRACT CHANGES:

- 5.1. **CONTRACT AMENDMENTS:** Contracts will be modified only by a written Contract amendment signed by persons duly authorized to enter into Contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the Contract, will affect or modify any of the terms or obligations contained or to be contained in the Contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All Contracts shall be in writing and Contract changes shall be by written amendment signed by both parties.
- 5.2. **ASSIGNMENT - DELEGATION:** No right or interest in this Contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.
- 5.3. **NON-EXCLUSIVE CONTRACT:** Any Contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source when necessary.

6. RISK OF LOSS AND LIABILITY:

- 6.1. **TITLE AND RISK OF LOSS:** The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.
- 6.2. **ACCEPTANCE:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.



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

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

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

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



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

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

7. CITY'S CONTRACTUAL RIGHTS:

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



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deduct from the Contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

7.7. **COST JUSTIFICATION:** In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.

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

8. CONTRACT TERMINATION:

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

8.2. **CONDITIONS AND CAUSES FOR TERMINATION:**

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

8.2.2 The City reserves the right to cancel the whole or any part of this Contract due to failure of Contractor to carry out any term, promise, or condition of the Contract. The City will issue a written notice of



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default to Contractor for acting or failing to act as in any of the following:

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

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

9. STATE AND LOCAL TRANSACTION PRIVILEGE TAXES:

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



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10. TAX INDEMNIFICATION:

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

11. TAX RESPONSIBILITY QUALIFICATION:

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

12. NO ISRAEL BOYCOTT:

If this Contract is valued at \$100,000 or more and requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, or construction, then Contractor must certify and agree that it does not and will not boycott goods or services from Israel, pursuant to Title 35, Chapter 2, Article 9 of the Arizona Revised Statutes. Provided that these statutory requirements are applicable, Contractor by entering this Contract now certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of goods or services from Israel.

13. NO FORCED LABOR OF ETHNIC UYGHURS:

If this Contract requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, goods, or construction, then pursuant to Title 35, Chapter 2, Article 10 of the Arizona Revised Statutes Contractor must certify and agree that it and any contractors, subcontractors, or suppliers it utilizes do not and will not use the forced labor of ethnic Uyghurs in the People's Republic of China or any goods or services produced by such forced labor. Provided these statutory requirements are applicable, Contractor, by entering this Contract, now certifies it is not currently engaged in, and agrees for the duration of the Contract to not engage in, (a) the use of forced labor of ethnic Uyghurs in the People's Republic of China; (b) the use of any



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goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (c) the use of any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

14. **ATTORNEY FEES:** In any contested action related to or arising out of this Contract, the prevailing party shall recover its attorney fees, court costs, and other expenses from the other party. Where there are no competing claims, "prevailing party" means the party that substantially obtained the relief sought. Where there are competing claims, the prevailing party is the net winner or the party who prevailed in a totality of the litigation.
15. **HEADINGS:** Headings for articles, sections, and paragraphs are for reference only and do not limit the content or scope of any provision of this Contract.
16. **NATIONAL EMERGENCY:** This Contract is subject to the right of the United States to control, operate, and regulate the Airport and to use of the Airport during the time of war or national emergency.
17. **NO IMPAIRMENT OF TITLE:** Contractor and its agents, employees, and Contractors shall not cause or allow any person or entity to cause any lien, cloud, charge, or encumbrance to be filed, recorded, or imposed on the Airport or any portion thereof.
18. **NO PERSONAL LIABILITY:** The City's officers, officials, agents, and employees are not personally liable to Contractor for any default or breach of this Contract by the City, are not liable for any amount that may become due to Contractor, and are not obligated to perform under any provision of this Contract.
19. **SUCCESSORS AND ASSIGNS:** This Contract binds the parties and their owners, officers, directors, managers, members, agents, employees, representatives, trustees, executors, personal representatives, and successors.
20. **TERMINATION FOR NON-APPROPRIATION OF FUNDS:** This Contract is contingent on the appropriation of adequate funds by the Phoenix City Council for each fiscal year during the term of this Contract. If adequate funds are not appropriated, then this Contract shall terminate on June 30 of the last fiscal year for which funds were appropriated. The termination shall be without penalty or any liability by the City.
21. **BREACH AND REMEDIES FOR BREACH:** The occurrence of any of the following events shall be deemed a material breach of this Contract by Contractor:
 - Contractor fails to pay any amount when due and the failure continues for ten (10) days after notice from the City.



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

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

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

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

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



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- 23. DELINQUENT ACCOUNT FEE:** Any amount that is not paid by Contractor when due is deemed delinquent. If the delinquent amount remains unpaid for ten (10) days, then a delinquent account fee of eighteen percent (18%) per annum shall be assessed according to Phoenix City Code § 4-7. Delinquent account fees shall be computed and accrued on a daily basis and assessed until the account balance, including delinquent account fees, is paid in full. Delinquent account fees are due from Contractor upon demand by the City.
- 24. ENTIRE CONTRACT:** This Contract constitutes the entire Contract between the parties and supersedes all prior written and oral Contracts, understandings, discussions, proposals, negotiations, communications, representations, and correspondence related to this Contract. The parties are not bound by any obligation not provided for in this Contract. Contractor certifies that it was not induced to enter into this Contract by any misrepresentation, undue influence, or coercion by the City or any of its officers, officials, agents, or employees. The Exhibits attached to this Contract are material parts of this Contract and are incorporated herein by this reference.
- 25. FAIR INTERPRETATION:** Contractor agrees that the rule that ambiguous or vague language in a Contract is construed against the drafter is waived and does not apply to this Contract. Contractor agrees that this Contract shall be interpreted fairly and not against the City simply because the City drafted this Contract.
- 26. NO THIRD-PARTY BENEFICIARIES:** Except as expressly provided in this Contract, nothing contained herein creates or may be construed to create any right or privilege in any person or entity that is not a party to this Contract.
- 27. NOTICE:** All notices, consents, approvals, and other communications (notices) between the City and Contractor that are required to be given under this Contract shall be in writing and given by (A) personal delivery, (B) email with return receipt requested (read receipt), (C) facsimile transmittal with delivery confirmation, (D) prepaid delivery to any commercial air courier or express delivery service, or (E) registered or certified mail, postage prepaid and return receipt requested, through the United States Postal Service.

Notices to the City shall be sent to:

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

City of Phoenix Aviation Department



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Aviation Department
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Aviation Headquarters
ATTN: Sarah Carter, Program Manager
2485 East Buckeye Road
Phoenix, AZ 85034

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

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

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

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



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SECTION III – SPECIAL TERMS AND CONDITIONS

1. TERM OF CONTRACT:

The term of this Contract will commence on or about **August 1, 2023** and will continue for a period of five (5) years thereafter.

2. FREE ON BOARD (FOB) DELIVERED: Prices quoted will be FOB destination and delivered, as required, to the following point(s):

Aviation Office Building: 2485 East Buckeye Road, Phoenix, AZ 85034

3. PRICE:

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

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

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

5. METHOD OF INVOICING: Invoice must be emailed in .pdf format to invoices@phoenix.gov and sarah.carter@phoenix.gov and must include the following:

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



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6. **METHOD OF PAYMENT:** Payment to be made from Contractor's invoice and a copy of the signed delivery/service invoices ticket submitted to cover items received and accepted during the billing period.
7. **PARTIAL PAYMENTS:** Partial payments are authorized on individual purchase orders. Payment will be made for actual goods and services received and accepted by the City.
8. **CONTRACTOR PROFILE CHANGES:** It is the responsibility of the Contractor to promptly update their profile in procurePHX at www.phoenix.gov/procure. If Contractor's legal identity has changed, the Procurement Officer must be notified immediately. Failure to do so may result in non-payment of invoices and Contract termination.
9. **ESTIMATED QUANTITIES OR DOLLAR AMOUNTS (REQUIREMENTS CONTRACTS ONLY):** Quantities and dollar amounts listed are the City's best estimate and do not obligate the City to order or accept more than City's actual requirements during the period of this Contract, as determined by actual needs and availability or appropriated funds. It is expressly understood and agreed that the resulting Contract is to supply the City with its complete actual requirement for the Contract period.
10. **AUTHORIZED CHANGES:** The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within thirty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the Aviation Director prior to the institution of the change.
11. **SUSPENSIONS OF WORK:** The Aviation Department reserves the right to suspend work wholly or in part if deemed necessary for the best interest of the City. This suspension will be without compensation to the Contractor, other than to adjust the Contract completion/delivery requirements.
12. **POST AWARD CONFERENCE:** A post-award conference will be held by the Aviation Department prior to commencement of any work on the project. The purpose of this conference is to discuss critical elements of the work schedule and operational problems and procedures.
13. **PERFORMANCE INTERFERENCE:** Contractor shall notify the Aviation Department Representative (ADR) immediately of any occurrence and/or condition that interferes



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with the full performance of the Contract and confirm it in writing within 24 hours.

Aviation Department Representative: Sarah Carter, Environmental Planning Manager
Phone: 602-683-3951

14. HOURS OF WORK: All work under this Contract shall be coordinated with the ADR. Any changes to the established schedule must have prior written approval by the ADR.

15. CLEANING: The Contractor shall keep the premises clean of all rubbish and debris generated by the work involved and shall leave the premises neat and clean. All surplus material, rubbish, and debris shall be disposed of by the Contractor at their expense. The work area shall be cleaned at the end of each work day.

All materials, tools, equipment, etc., shall be removed or safely stored. The City is not responsible for theft or damage to the Contractor's property. All possible safety hazards to workers or the public shall be corrected immediately and left in a safe condition at the end of each work day. If there is a question in this area, the ADR will be consulted.

16. COOPERATIVE CONTRACT: In addition to the City and with approval of the Contractor, this Contract may be extended for use by other municipalities and government agencies in the State of Arizona.

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

17. ADVERTISING: Contractor will not advertise or publish news releases concerning this Contract without the prior written consent of the Aviation Director and the City will not unreasonably withhold permission.

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

19. STRICT PERFORMANCE: Failure of either party to insist upon the strict performance of any item or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, obligations imposed by this Contract, or by law, will not be



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deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

- 20. LICENSES AND PERMITS:** Contractor will keep current Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.
- 21. DEMONSTRATION:** The City may, in its discretion, require a demonstration of the products or services offered as part of the evaluation process. The demonstration shall be provided by the Contractor at no cost to the City for the period deemed sufficient to properly evaluate the product or service. The exact time, conditions, and terms of the evaluation shall be established at the time a demonstration is requested.
- 22. PROCUREMENT REPORTS:** Contractor shall submit reports in an electronic format acceptable to the City during the term of this Contract. Contractor will provide sample forms for approval by the City.
- 23. WARRANTY:** All equipment supplied under this Contract shall be fully guaranteed by the Contractor for a minimum period of one (1) year from the date of acceptance by the City. Any defects of design, workmanship, or materials that would result in non-compliance with the Contract specifications shall be fully corrected by the Contractor (including parts and labor) without cost to the City.
- 24. INDUSTRY STANDARDS:** It is intended that the manufacturer in the selection of components will use material and design practices that are the best available in the industry for the type of operating conditions to which the item will be subjected. Component parts shall be selected to give maximum performance, service life and safety and not merely meet the minimum requirements of this specification. All parts, equipment and accessories shall conform in strength, quality of material and workmanship to recognized industry standards.

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

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

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

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



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- 25. INSPECTION AND ACCEPTANCE:** Each product delivered shall be subject to complete inspection by the City prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to the specifications, mechanical integrity, quality, workmanship and materials. Ten business days will be allowed for this process. If delivered items are unacceptable and returned to the Contractor prior to acceptance, an additional five business days will be allowed for inspection when subsequent delivery occurs. It shall be the Contractor's responsibility to pick up unacceptable products, correct the deficiencies, and return the product following the corrections.
- 26. MANUALS:** All complete operating manuals and parts manuals are to be furnished upon delivery at no additional cost to the City. Manuals and other materials shall show all Noise and Operations Management System (NOMS) specifications and mechanical troubleshooting in paper and electronic media.
- 27. PRODUCT DISCONTINUANCE:** The City may award Contracts for products and/or models of equipment because of this solicitation. If a product or model is discontinued by the manufacturer, the City, in its sole discretion, may allow the Contractor to provide a substitute for the discontinued item. Contractor shall request permission to substitute a new product or model and will provide the following:
- A formal announcement from the manufacturer that the product or model has been discontinued.
 - Documentation from the manufacturer that names the replacement product or model.
 - Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation
 - Documentation that provides clear and convincing evidence that the replacement will be compatible with all functions or uses of the discontinued product or model.
 - Documentation from the manufacturer confirming that the price for the replacement item will be the same as the discontinued item.
 - The Deputy Aviation Director or Aviation Department Director will be the sole judge in determining the allowable substitute, new product or model change for discontinued item.
- 28. REPAIR AND REPLACEMENT PARTS GUARANTEE:** Following the expiration of any express or implied warranty applicable to those goods, furnished to the City under this Contract, Contractor agrees to supply the City (as well as its agents, representatives, Contractors, and hires) with in-stock repair and replacement parts carrying a full manufacturer's warranty at a cost that shall not exceed the cost it would charge if it were Contracted to service or install those repair and replacement parts.



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29. REPLACEMENT PARTS AVAILABILITY: A response to this solicitation shall constitute a guarantee by the Contractor that a stock of replacement parts for the specified equipment is locally available. The Contractor will assume all delivery fees.

Discounts Off Price List: All discounts offered will be firm and fixed for the entire Contract period. Discounts offered must be expressed as a single percentage (%) figure for each Contract item.

30. TRAINING: Contractor shall include onsite training for a minimum of ten (10) City personnel to assure proper operation and utilization of the equipment. Costs for all training shall be included in the offer price. All manuals and other materials necessary for the required training shall be furnished by the Contractor at no additional cost to the City.

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

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

33. FINAL INSPECTION AND APPROVAL: The Contractor will request the ADR to conduct a site inspection after the project is complete. City's ADR will prepare a "punch-list" during the inspection and will forward a copy to the Contractor.

After the "punch-list" items have been corrected, the Contractor will request a final inspection with the ADR. Final project approval is contingent upon the ADR's final inspection and written approval.

34. DELIVERY TIME: Delivery is an important consideration and will be a factor in determining the award. A delivery time after receipt of order (ARO) must be stated in definite terms. Should there be variations in delivery times by item; the solicitation submittal must be clear concerning these variations.

The City's required delivery date has been selected for a specific reason. Any deviations by the Contractor from that date, after contract award, may result in the implementing of the "Default" provisions of the contract.

35. TRANSITION OF CONTRACT: At least forty-five (45) days prior to the expiration or termination of this Contract, Contractor must provide all services necessary to ensure



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an orderly and efficient transition of the services, in whole or in part, to another provider and the City, including a transition plan, if required by the scope. Contractor will, without limitation, provide important information to the successor Contractor and the City to ensure continuity of service at the required level of proficiency. Contractor agrees to provide to the City all files in ASCII format (or other city-designated format), supplies, data, records, and any other properties or materials of the City, which the City owns or has rights to pursuant to this Contract and which are in the possession of Contractor. The provisions of this section will survive the expiration or termination of this Contract. Within the City's sole discretion, the Contractor agrees to a month-to-month extension at the same price(s) for continued services or goods deemed as essential by the City.

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

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

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

36.1. Legal Worker Background Check

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

36.2. City Rights Regarding Security Inquiries

In addition to a Legal Worker Background Check, the City reserves the right to require Contractor to:



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- 36.2.1. Have a Contract Worker provide fingerprints and execute any document that is necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) or Phoenix City Code § 4-22 or both;
- 36.2.2. Act on newly acquired information, whether or not the information should have been previously discovered;
- 36.2.3. Unilaterally change its standards and criteria related to the acceptability of Contract Workers; and
- 36.2.4. Object, at any time and for any reason, to a Contract Worker performing work under this Contract, including supervision and oversight services.

36.3. **Contractor Certification**

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

36.4. **Contractor's Contracts and Subcontracts**

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

36.5. **Materiality of Background Screening Requirements and Indemnity**

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

36.6. **Continuing Duty and Audit**

Contractor's obligation to ensure that all Contract Workers pass a Background Screening pursuant to Section shall continue throughout the entire term of this Contract. Contractor shall immediately notify the City of any change to a



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Contract Worker's Background Screening. Contractor shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Contractor's compliance with this Section.

37. CONTRACT WORKER ACCESS CONTROLS AND AIRPORT SECURITY BADGE REQUIREMENTS

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

38. SECURITY IDENTIFICATION DISPLAY AREA (SIDA) BADGE PROCESS

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

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



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39. RISK-BASED BACKGROUND CHECK PROCESS

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

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

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

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

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

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

- A. Disqualification should not be based solely on a criminal conviction, unless the conviction related to performance under this Contract.
- B. Arrests that did not result in a conviction being entered or charges being filed may not be considered.
- C. Not all criminal convictions or other negative information obtained in a background check will disqualify a Contract Worker from working under this Contract.
- D. Contractor must evaluate the relevance of the information to the work the Contract Worker will perform under this Contract.
- E. Contractor must consider the following factors in determining whether negative background information disqualifies a Contract Worker:
 - Duties of the position
 - Time, nature, and number of negative events and convictions
 - Attempts and extent of rehabilitation efforts
 - The relation between the duties of the position and the nature of the crime committed



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

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

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

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

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

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

39.8. In a maximum risk background check, Contractor must conduct the same review as in a standard risk background check. However, when submitting its list of qualified Contract Workers, Contractor must also submit the results of the



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background checks to the City for review. After its review, the City will either approve or deny each Contract Worker.

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

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

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

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

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

40. STANDARD RISK BACKGROUND CHECK

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

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

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

40.1. Scope of the Standard Risk Background Check

The standard risk background check conducted by Contractor must be based on the real identity and legal name of the Contract Worker and include felony and misdemeanor records checks from any county in the United States, the state of Arizona, and any other jurisdiction where the Contractor Worker has lived at any time in the last seven (7) years.



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41. AIRPORT SECURITY BADGE HANDLING PROCEDURES

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

- 41.1 **Key Access Procedures.** If a Contract Worker requires keyed access to enter a City facility, then a separate key will be issued and Contractor must complete a return form and submit it to the City for each key issued.
- 41.2 **Stolen or Lost Badges or Keys.** Contractor shall immediately report any lost or stolen airport security badge or key to the City. A new airport security badge application or key issue form must be completed and submitted along with payment of the applicable fee prior to issuance of a new airport security badge or key
- 41.3 **Return of Badges or Keys.** All airport security badges and keys are the property of the City and must be returned to the Badging Office within one (1) business day after the Contract Worker's access to a City facility is no longer required under this Contract. Contractor shall collect a Contract Worker's airport security badge and all keys (1) when the Contract Worker's employment is terminated, (2) when the Contract Worker's services are no longer required at a City facility, or (3) when this Contract terminates, is cancelled, or expires, whichever occurs first.
- 41.4 **Employee Identification and Access.** Contract Workers must have an airport security badge and some form of verifiable company identification in their possession at all times while working under this Contract, unless otherwise provided in the Scope of Work. Contract Workers are strictly prohibited from entering any area of the Airport that is not authorized by the airport security badge or key issued to them by the Badging Office. The Aviation Department will determine who will have access to the Airport. Contract Workers access authority is only valid during their scheduled hours. Contractor shall provide the City with updates and changes in personnel as they occur.
- 41.5 **Badge Fees.** Contractor shall pay the airport security badge fees set forth in § 4-11(D) of the Phoenix City Code.

42. CONTRACTOR'S BREACH

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



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

43. LIQUIDATED DAMAGES AND REMEDIES FOR BREACH OF AVIATION SECURITY PROCEDURES

In addition to any other remedy available to the City at law or in equity, including the right to terminate this Contract, Contractor shall be liable for and shall pay to the City a stipulated damage in the amount of \$1,000.00 for each breach of Aviation Security Procedures and for each time a Contract Worker entered a restricted or secured area of the Airport without proper authority. Contractor agrees that the stipulated damage amount is not a penalty, but is a reasonable estimate of the actual harm to the City caused by a breach and that the harm was very difficult to estimate at the time this Contract was entered into.

44. CONTRACTOR CERTIFICATION

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

45. CONFIDENTIALITY

"Confidential Information" means all non-public, confidential, sensitive, or proprietary information disclosed or made available by City to Contractor or its affiliates, employees, contractors, partners, or agents (collectively "Recipient"), whether disclosed before or after the Effective Date, whether disclosed orally, in writing, or via permitted electronic access, and whether or not marked, designated, or



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otherwise identified as confidential. Confidential Information includes, but is not limited to: user contents, electronic data, meta data, employment data, network configurations, information security practices, business operations, strategic plans, financial accounts, personally identifiable information, protected health information, protected criminal justice information, and any other information that by the nature and circumstance of the disclosure should be deemed confidential. Confidential Information does not include this document or information that: (a) is now or subsequently becomes generally available to the public through no wrongful act or omission of Recipient; (b) Recipient can demonstrate by its written records to lawfully have had in its possession prior to receiving such information from the City; (c) Recipient can demonstrate by its written records to have been independently developed by Recipient without direct or indirect use of any Confidential Information; (d) Recipient lawfully obtains from a third party who has the right to transfer or disclose it; or (e) the City has approved in writing for disclosure.

Recipient shall: (a) protect and safeguard Confidential Information with at least the same degree of care as Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, such as ensuring data is encrypted in transit and at rest and maintaining appropriate technical and organizational measures in performing the Services under the Agreement; (b) not use Confidential Information, or permit it to be accessed or used, for any purpose other than in accordance with the Agreement; (c) not use Confidential Information, or permit it to be accessed or used, in any manner that would constitute a violation of law, including without limitation export control and data privacy laws; and (d) not disclose Confidential Information except to the minimum number of recipients who have a need to know and who have been informed of and agree to abide by confidentiality obligations that are no less restrictive than the terms of this Agreement. If Recipient is required by law or court order to disclose any Confidential Information, Recipient will first give written notice to the City and provide the City with a meaningful opportunity to seek a protective order or limit disclosure.

Upon the City's written request or expiration of this Agreement, whichever is earlier, Recipient shall, at no additional costs to the City, promptly return or destroy all Confidential Information belonging to the City that Recipient has in its possession or control. After return or destruction of the Confidential Information, Recipient shall certify in writing as to its compliance with this paragraph.

If applicable, Contractor agrees to comply with all City information technology policies and security standards, as may be updated from time to time, when accessing City networks and computerized systems whether onsite or remotely.

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's



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breach of this Section (Confidentiality). Contractor's obligations pursuant to this Section (Confidentiality) shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Agreement.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

46. DATA PROTECTION

The parties agree this Section shall apply to the City's Confidential Information and all categories of legally protected personally identifiable information (collectively "PII") that Contractor processes pursuant to the Agreement. "Personally identifiable information" is defined as in the Federal Privacy Council's Glossary available at: <https://www.fpc.gov/resources/glossary>.

As between the parties, the City is the data controller and owner of PII and Contractor is a data processor. In this Section, the term "process," "processing," or its other variants shall mean: an operation or set of operations which is performed on PII, whether or not by automated means, including without limitation: collection, recording, copying, analyzing, caching, organizing, structuring, storage, adaptation, alteration, retrieval, transmission, dissemination, alignment, combination, restriction, erasure, or destruction.

46.1. When Contractor processes PII pursuant to the Agreement, Contractor shall, at no additional cost to the City:

46.1.1. process PII only within the United States and only in accordance with the Agreement and not for Contractor's own purposes, including product research, product development, marketing, or commercial data mining, even if the City's data has been aggregated, anonymized, or pseudonymized;

46.1.2. implement and maintain appropriate technical and organizational measures to protect PII against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure, including at a minimum, and as applicable, those measures specified by the National Institute of Standards and Technology (NIST) SP800-53; A.R.S. § 18-552 (Notification of Security System Breaches); A.R.S. § 44-7601 (Discard and Disposal of Personal Identifying Information Records); Health Information Technology for Economic and Clinical Health (HITECH) Act; Payment Card Industry Data Security Standards; and good industry practice; (When considering what measures are appropriate and in line with good industry practice, Contractor shall keep abreast of current regulatory trends in data security and the state of technological development to ensure a level of security appropriate



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to the nature of the data to be protected and the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, damage, theft, alteration or disclosure. At minimum, Contractor will timely remediate any vulnerabilities found within its network that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS); however, Contractor must remediate vulnerabilities that are rated critical within 14 days and vulnerabilities that are rated high within 30 days. If requested by the City, Contractor shall promptly provide a written description of the technical and organizational methods it employs for processing PII.)

- 46.1.3. not subcontract any processing of PII to any third party (including affiliates, group companies or sub-contractors) without the prior written consent of the City; and Contractor shall remain fully liable to the City for any processing of PII conducted by a sub-processor appointed by Contractor;
- 46.1.4. as applicable, implement and maintain appropriate policies and procedures to manage payment card service providers with whom Contractor shares sensitive financial information or cardholder data; and provide the City with a Qualified Security Assessor Attestation of Compliance for Payment Card Industry Data Security Standards on an annual basis, but no later than within 30 days of attestation report completion;
- 46.1.5. take reasonable steps to ensure the competence and reliability of Contractor's personnel or sub-processor who have access to the PII, including verifications and background checks appropriate to the security level required for such data access;
- 46.1.6. maintain written records of all information reasonably necessary to demonstrate Contractor's compliance with this Agreement and applicable laws;
- 46.1.7. allow the City or its authorized agents to conduct audit inspection during the term of the Agreement, but no more than once per year, which may include providing access to the premises, documents, resources, personnel Contractor or Contractor's sub-contractors use in connection with the Services; provided however, the City may at its sole discretion accept a qualified and industry recognized independent third-party assessment report or certification (such as SSAE 18 SOC 2 or ISO/IEC 27001) provided by Contractor at no cost to the City in lieu of the audit inspection rights of this Section;



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46.2. If Contractor becomes aware of any actual or potential data breach (each an “Incident”) arising from Contractor’s processing obligations pursuant to the Agreement, Contractor shall notify the City at SOC@phoenix.gov without undue delay within 48 hours; and:

46.2.1. provide the City with a detailed description of the Incident, the type of data that was the subject of the Incident, and the identity of each affected person as soon as such information can be collected or otherwise becomes available;

46.2.2. take action immediately, at Contractor’s own expense, to investigate the Incident and to identify, prevent, and mitigate the effects of the Incident and to carry out any recovery or other action necessary to remedy the Incident;

46.2.3. cooperate with the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable laws or as otherwise required by the City; and

46.2.4. not directly contact any individuals who may be impacted by the Incident or release or publish any filing, communication, notice, press release, or report concerning the Incident without the City’s prior written approval (except where required to do so by applicable laws).

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys’ fees, damages or proceedings arising out of Contractor’s breach of this Section (Data Protection). Contractor’s obligations pursuant to this Section (Data Protection) shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Agreement.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City’s discretion result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.



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1. INDEMNIFICATION CLAUSE:

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

INDEMNIFICATION – PATENT, COPYRIGHT AND TRADEMARK:

In addition to any other indemnification required by this Agreement, Contractor agrees to defend, at its own expense, and to indemnify and hold harmless the City and its officers, agents, and employees from and against all judgments, claims, damages, suits, liabilities, settlements, costs and demands, including reasonable attorneys’ fees, suffered or incurred by the City as a result of any claim that the Technology Assets infringe the patents, copyrights, or other intellectual property rights of third parties, provided that Contractor is notified in writing of such claim. The City will reasonably cooperate with Contractor, at Contractor’s expense, to facilitate the settlement or defense of such claim. Without limiting in any way the Contractor obligations set forth herein, if, as a result of any claim of infringement with respect to the Technology Assets, the City is enjoined from using the Technology Assets, or if Contractor reasonably believes that the Technology Assets are likely to become the subject of a claim of infringement, Contractor may, at Contractor’s option and expense, (1) procure the right for the City to continue to use the Technology Assets, or (2) replace or modify the Technology Assets so as to make them non-infringing and of equal or superior functionality and capability for the purpose(s) for which the Technology Assets were provided.



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The Contractor’s obligation to indemnify, defend, and hold harmless the City pursuant to this subsection shall be reduced to the extent the applicable infringement is caused or alleged to be caused by the alteration or modification of the Technology Assets by the City (including its employees and contractors other than the Contractor and its subcontractors) other than in connection with the ordinary or expected use of the Technology Assets.

2. CONTRACTOR’S INSURANCE:

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontractors. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors and Contractor may purchase additional insurance as they determine necessary.

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

2.1.1. Commercial General Liability – Occurrence Form

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

- 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 activities performed by, or on behalf of the Contractor related to this Contract.
- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- City of Phoenix is an additional insured to the full limits of liability



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purchased by the Contractor.

- The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

2.1.2. Automobile Liability

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

Combined Single Limit (CSL)	\$1,000,000
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- 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 this Contract.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

2.1.3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
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Employers' Liability:

Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

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

2.1.4. Technology Errors and Omissions Liability

Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

- The policy must cover errors and omissions or negligent acts in the delivery of products, services, and/or licensed programs for those services as defined in the Scope of Services of this Contract.



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- Contractor warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

2.2. NOTICE OF CANCELLATION: For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be sent to the **Aviation Department Representative’s Name and Address listed below.**

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

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

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

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

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

City of Phoenix
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Contracts and Services Division



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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

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



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1. INTRODUCTION:

The City of Phoenix Aviation Department (Aviation) maintains a Noise and Operations Management System (NOMS) near Phoenix Sky Harbor Airport (PHX), currently comprised of twenty (20) permanent and one (1) portable noise monitoring devices. In addition to maintaining and operating the twenty-one (21) noise monitoring devices, Aviation utilizes integrated flight-tracking and complaint management software to analyze and communicate data from the devices.

Aviation is seeking a responsible, experienced, and qualified Contractor to provide operation and maintenance of twenty-one (21) noise monitoring devices, flight tracking, and complaint management software. Contractor will provide broad experience in the areas of aircraft noise monitoring systems, aviation acoustics, noise abatement, and federal and state noise regulations.

Contractor will provide a NOMS that must meet all minimum requirements in accordance with the 1994 Intergovernmental Agreement (“IGA”) between the City of Phoenix and City of Tempe (**Exhibit B**).

2. FUNCTIONAL REQUIREMENTS:

The NOMS will require all noise monitoring data to be retained for the life of the system, including data for noise levels, flight operations and tracks, complaints and weather. To ensure all NOMS data is protected, nightly backups of stored data to offsite hosted locations approved by Aviation are required. The NOMS user interface will be web based, and include a hosted storage system, available to at least three (3) users, and up to ten (10) users, at a time, with a login and password, meeting the City’s account policy requirements and applicable Administrative Regulations, including the following attached as exhibits and incorporated by this reference:

- **Exhibit C – Information Study – Identity Management**
- **Exhibit D – Information Security – Password Management**
- **Exhibit E - A.R. 1.90 – Information Privacy and Protection**
- **Exhibit F - A.R. 1.91 – Information Privacy and Protection Supplement – Data Shared with Third Parties**

The backend infrastructure supporting the system is required to be resilient and highly available so that reliability of data, database and services provided meet or exceed 99% availability. The system is required to provide strong graphical reporting capability for all data points collected and retained by the system.



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3. FLIGHT TRACKING SOFTWARE AND ANALYSIS TOOL REQUIREMENTS:

Flight Tracking Software and Analysis Tools must:

- 3.1. Utilize Federal Aviation Administration (FAA) radar data or other comparable data.
- 3.2. Track aircraft movements in the terminal airspace (50 NM radius from PHX) in real-time or near real-time.
- 3.3. Minimum data collection ceiling: No less than 23,000 feet above PHX elevation.
- 3.4. Accurately identify airport operations and the runway used by each operation.
- 3.5. Automatically correlate flight events with the date and time provided in noise complaints and whenever possible include noise events measured at the noise monitors.
- 3.6. Select, sort, analyze, and display operations according to all available flight data, including user-defined airspace gates, corridors, points of closest approach (PCA), etc. in two and three dimensions.
- 3.7. Display and plot altitude profiles of selected aircraft flight.
- 3.8. Replay (slow motion, real-time, and fast forward) selected historical periods.
- 3.9. Ability to export data in a variety of formats (.csv and other excel formats, .kml, .shp, and formats compatible with databases, documents, and GIS (Geographic Information Systems)), including an API (Application Programming Interface), so Aviation can export data automatically on demand.
- 3.10. Integrate with third party software utilized by Aviation, currently including Airport Surface Detection Equipment Model X (ASDE-X), Google Earth Pro (GE Pro), and Aviation Environmental Design Tool (AEDT), as well as the ability to integrate with any future third party software.
- 3.11. On-site and web-based training in the use of the software capabilities.
- 3.12. Provide a user interface to create customizable and standard reports, including text and graphic displays based on all data sets, including Ad hoc custom reports and the capability of using drag and drop user interface for all available data sets.
- 3.13. Provide automatic daily downloading of Noise Monitoring Terminal (NMT) data. The system is required to have the ability for an API data download.
- 3.14. The software must include automatic data backup, archiving, and retrieval capabilities.
- 3.15. Display sound levels at the noise monitor(s) in real-time and include historical events.
- 3.16. The software must have the capability of aborting a search query, data pull, or any software system task with a simple command.
- 3.17. Aviation requires the retention of existing database(s) and all data collected. The successful Contractor must be able to work with Aviation's current vendor (L3Harris and PlaneNoise) for data migration and retention and



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incorporate all existing noise monitor readings, flight track operations, and complaint databases into the NOMS. Noise complaint and noise monitor data can currently be exported in .csv and excel formats. Flight track data is available in .csv, excel formats, .shp, .kml, .drawing, .fh, .fhl, .GML formats, MIF files, POL files, and SVG files.

- 3.18. The software must automatically link noise events and operations.
- 3.19. The software must automatically allocate noise events to the most plausible aircraft/ operator.
- 3.20. The software must automatically differentiate between aircraft events and background ambient noise.
- 3.21. The software must calculate noise metrics caused by aircraft.
- 3.22. Easily produce a count and calculated average flight track (profile and aerial view) for a selected group of tracks.
- 3.23. Include a public/community-facing flight tracker.
- 3.24. Display flight tracks over numerous base map layer options, including but not limited to Google Earth streets view, aerial view, Visual Flight Rules (VFR) and Instrument Flight Rules (IFR) maps, weather data, and customizable range rings.
- 3.25. Flight tracking software must support the 1994 IGA between Phoenix and Tempe.

4. NOISE AND COMPLAINT MANAGEMENT SYSTEM REQUIREMENTS:

Contractor must provide a web based Noise and Complaint Management System to include an online complaint form, mobile application, and hotline that will allow the public to submit complaints. The Noise and Complaint Management system must be able to log complaints directly without City staff entering the information manually.

The Noise and Complaint Management System must:

- 4.1. Provide functionality or a chatbot to answer common questions.
- 4.2. Provide a local and toll-free hotline that transcribes and logs complaints directly into the database without staff having to manually enter it.
- 4.3. Determine whether a complainant has previously filed a complaint.
- 4.4. Allow rapid preparation of reports describing the numbers and locations of complaints and households.
- 4.5. Link the complaint database with the flight track database and noise event and operations, including weather data.
- 4.6. Allow for manual entry of a complaint even if the complainant's address is unknown.
- 4.7. Automatically populate data fields.
- 4.8. Correlate and report weather and runway use conditions.
- 4.9. Transcribe hotline complaints and identify if a response is requested.
- 4.10. Provide a dashboard and maps to identify noise-sensitive areas and noise complaint trends.



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- 4.11. Provide detailed GIS Mapping and reports, with the ability to integrate into our current GIS database to pull current GIS layers maintained by Aviation.
- 4.12. Ability to export noise complaint data, with required available API.
- 4.13. Ability to send automated and custom responses to complainant acknowledging receipt of the complaint.
- 4.14. Visually map and correlate flight tracks based on the date and time of a complaint.
- 4.15. Integration/retention of both current databases (L3Harris & PlaneNoise).
- 4.16. Map complaint locations.
- 4.17. Ability to provide comprehensive complaint data reports, with the minimum ability to replicate reports in our current Monthly and Annual Noise Reports - <https://www.skyharbor.com/FlightPaths/PHX-NoiseReports>.
- 4.18. Provide a means of displaying complaint statistics graphically.
- 4.19. The noise complaint management software must support the 1994 IGA between Phoenix and Tempe.

5. VIRTUAL AND CONTOUR NOISE MODELING SOFTWARE:

Aviation currently has Virtual and Contour Noise Modeling software integrated into the system. While Aviation is still interested in this capability, it is not required for the Contractor to provide. If Virtual and Contour Noise Modeling software is included, it must:

- 5.1. Calculate various noise metrics to create contours including Equivalent Sound Level (Leq), Maximum A-Weighted Sound Level (Lmax), Effective Perceived Noise Level (EPNL), Sound Exposure Level (SEL), Day Night Level (DNL), Community Noise Equivalent Level (CNEL), and Time Above Threshold (TALA).
- 5.2. Export in various file formats including shapefile (SHP) and Keyhole Markup (KMZ).
- 5.3. Automatically import known data for given time frames (e.g. weather).
- 5.4. Provide noise readings with various metrics at a specific point, virtually.
- 5.5. Utilize the FAA's most current version of the AEDT.
- 5.6. Provide noise readings virtually for a single event and given time frames.
- 5.7. Provide the ability to validate Area Navigation (RNAV) and noise abatement procedure sound levels.
- 5.8. Virtual noise monitoring software must support the 1994 IGA between Phoenix and Tempe.

6. CONTRACTOR PROCEDURAL REQUIREMENTS:

Contractor must:

- 6.1. Provide project schedules and product deliveries.
- 6.2. Provide Organizational chart with duties, limits of authority, and contact information for all staff.
- 6.3. Provide budget and financial controls for cost reporting.
- 6.4. Provide back up documentation for all invoices being submitted.



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- 6.5. Coordinate projects with various Aviation Staff.
- 6.6. Coordinate with the City of Phoenix Aviation Department, ADR or designee.
- 6.7. Maintain progress reports and project records.
- 6.8. Attend a post award conference, if applicable.
- 6.9. Attend coordination meetings as requested by ADR.
- 6.10. Coordinate with Facilities and Services Division for Vendor Use of Premises.
- 6.11. Obtain written approval from ADR for any product substitutions.

7. ANALYSIS & REPORTING:

Software must:

- 7.1. Conduct and report a variety of analyses on the noise, operations, weather, and flight track data at and around PHX and its neighboring communities.
- 7.2. Provide a noise event report for each event that exceeds the established system thresholds at each NMT.
- 7.3. Provide a graphic illustration of the noise event time history is also required.
- 7.4. Provide a daily noise report that lists the aircraft-caused noise levels of various metrics.
- 7.5. Aircraft caused DNL at each noise monitor over 24 hours.
- 7.6. Provide a daily on a scheduled timeframe and provide calibration for each noise monitor.
- 7.7. Generate a revised daily report after automatic or manual discrimination of aircraft noise.
- 7.8. Prepare a graph showing the noise values for each 24 hours
- 7.9. Provide a monthly noise report that lists the daily aircraft caused DNL values for each NMT for each day of the preceding month for PHX.
- 7.10. Provide daily landing and departure data, and runway utilization.
- 7.11. Prepare a report indicating whether aircraft operations have occurred outside any defined gates/corridors/PCA's during a specified time.
- 7.12. Include a graphic depiction of the flight tracks, as well as tabular data.
- 7.13. Produce and store a daily report of inoperative or data sources that were unavailable.
- 7.14. Provide a weather report.
- 7.15. Have the ability to prepare custom reports easily upon demand.
- 7.16. Analysis and reporting options must support the 1994 IGA between Phoenix and Tempe

8. TESTING:

Contractor will develop a comprehensive Test Plan to ensure the operability and functionality of the NOMS. The Test Plan must cover testing of all equipment, hardware, networking, software, and application functionality. The Test Plan must be prepared during the Contractor's implementation schedule and must address all phases of testing approved during the implementation schedule. There will be an endurance period of 60 days, which will begin once the Test Plan has been successfully completed on all NOMS sites. Contractor must resolve any issues or failures experienced during the endurance period. Contractor must resolve the



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issues or failures within an agreed upon timeframe, and the endurance period is reset. The NOMS must run without issues or failures for 60 consecutive days before providing final sign off on the project.

Ten (10) days following any testing of the NOMS, Contractor will prepare a test report certifying successful completion of that test. The test report will be submitted to the ADR for review and acceptance. The test report will contain, at a minimum:

- 8.1. Commentary on test results
- 8.2. A listing and discussion of all discrepancies between expected and actual results and all failures encountered during the test and their resolution
- 8.3. A complete copy of test procedures and test data sheets with annotations showing dates, times, initials, and any other annotations entered during execution of the test

Any discrepancies or problems discovered during these tests will be corrected by the Contractor at no cost to Aviation. The problems identified in each phase will be corrected and the percentage of the entire system as determined by the ADR will be re-tested before any subsequent testing phase is performed. Acceptance of any test is at the sole discretion of the ADR. If resolution of any test cannot be achieved, Aviation will have the right to terminate the Contract. Acceptance of system to perform sufficiently and provide specified functions will be determined by the ADR. Performance of system will equal or exceed criteria stated in individual specification sections. If system does not perform satisfactorily, the Contractor will make corrections and modifications and schedule a new test with the ADR. Compliance is at the sole discretion of the ADR. The ADR will have the right to determine if compliance cannot be met, or is insufficient, and the Aviation Director may terminate the Contract because of such determination.

9. TRAINING

Contractor will provide training to ensure reliable operation of the NOMS by Aviation staff. Training will commence after the system is operating so staff can train on the new system. Contractor will provide adequate training for up to ten (10) users. A user guide manual will also be prepared for the NOMS. Contractor must provide unlimited telephone support during Aviation Noise Office working hours between 8:00 a.m. and 5:00 p.m. (local AZ time) on operation of the NOMS throughout the Contract term and warranty period.

10. WARRANTY

- 10.1. All equipment and replacement services shall be warranted against failure and malfunction for the minimum period of one (1) year.
- 10.2. Replacement or repair of equipment will be in accordance with the current industry standards.
- 10.3. Aviation may request a repair or replacement of defective equipment, software, parts, and associated labor at the Contractor's expense.



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- 10.4. Assurances that Original Equipment Manufacturer (OEM) provided warranties shall continue to benefit the NOMS for the full term of those warranties.
- 10.5. The Contractor is the owner and licensor of the proprietary (non-third party) software included in the NOMS, and the system will be free and clear of any lien or encumbrance on the final acceptance date.
- 10.6. Aviation will retain all noise monitors, noise complaints, flight track, and any other data accumulated during the life of the Contract.

11. WARRANTY AGAINST INFRINGEMENT

Contractor warrants that the deliverables will be free of the rightful claim of any third party for or by way of infringement or misappropriation of patent, copyright, trade secret, trademark or other rights arising under the laws of the United States.

Contractor further warrants that no act or omission of Contractor will result in a third party holding a claim that interferes with the City's enjoyment or use of the deliverables. Contractor warrants that it owns or possesses all rights, title and licenses necessary to perform its obligations hereunder.

Contractor warrants that, as of the Effective Date and throughout the term of this Contract, Contractor has not conveyed any rights or licenses to any third party regarding the deliverables.

12. MAINTENANCE AND SUPPORT

Contractor must:

- 12.1. Maintain and repair Aviation's current fleet of Larson Davis Model 831C noise monitoring hardware and provide replacement parts for each component of the NMT system. Aviation Technology Division will provide Level I – Hardware Support for all noise monitor communications and power.
- 12.2. Calibrate and test all 21 noise monitors two (2) times per year, providing a system functionality report to ensure system compliance with:
 - 12.2.1. Manufacturer's certification
 - 12.2.2. Any other applicable noise or FAA regulations
- 12.3. Provide resources, staff availability, and equipment as necessary to remedy and return any non-communications and power failures to proper working order.
- 12.4. Provide recovery from system failures, errors, and loss of data.
- 12.5. Provide additional manpower, equipment, and data resources on an as-needed basis.
- 12.6. Provide on-call 24/7 remote tech support service.
- 12.7. Provide software support, with the ability to stay current with OS (support), patching, firmware, and manufacturing software revisions.



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- 12.8. Contractor must actively monitor the system and field devices remotely. All devices and sites will not be down (unscheduled downtime) for three (3) days or longer.

13. HOSTING AND OTHER TECHNICAL REQUIREMENTS

- 13.1. Any public or private hosted/cloud services and all data collected from NOMS must reside within the lower 48 states of the Continental United States of America.
- 13.2. Prior to Contract award, Contractor will be required to complete an Information Security Risk Assessment Requirement Form if determined by Aviation Technology Division.
- 13.3. Contractor will be required to provide a Service Organization Control, SOC2 Type 2 report annually.
- 13.4. Login accounts for any website or portal will be secured using HTTPS (TLS) encryption.
- 13.5. Login accounts will be issued on a per end user basis and must meet Citystandards for complexity, aging, and lockouts.
- 13.6. Contractor must maintain operating system version updates not to exceed (n-1) and provide certification and migration to major software release no less than one (1) year before the end of support date of the current software release.
- 13.7. End devices and servers must be hardened following the latest available guidelines from the Center for Internet Security (CIS). This includes disabling any unnecessary protocols, services, and/or operating system features. The hardening images must be reviewed and updated annually.
- 13.8. End devices and servers must have the latest available security patches and updates from Microsoft applied monthly.
- 13.9. End devices and servers must have an approved end device protection (antivirus) product installed and configured to automatically receive definition and software updates and perform daily full scans. The solution must include centralized management and reporting and be configured to send notifications/alerts of incidents and events.
- 13.10. Remediation for zero-day vulnerabilities must be applied within five (5) days of public notice or PHX notice.
- 13.11. Any cybersecurity incident, event, or breach must be reported to PHX within twenty-four (24) hours by emailing aviation.cyberevents@phoenix.gov and contacting the airport Command Center at (602) 273-3302.

14. PERFORMANCE STANDARDS REMEDIES:

In the event of unscheduled downtime occurrences, the Contractor will undertake commercially reasonable efforts to remedy such unscheduled downtime within a commercially reasonable timeframe. If the Contractor is unable to meet the system availability standards set forth in Table 1, Performance Standards - Unscheduled Downtime, then the City will be entitled to the following City Credits, provided that the maximum number of City Credits to be issued by the Contractor to the City for



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any and all unscheduled downtime shall not exceed one month of service. In addition, upon request from the City, historical data (if applicable) for the downtime period will be provided by the Contractor.

Table 1 – Performance Standards – Unscheduled Downtime

Length of Unscheduled Downtime	City Credit*
4 to 24 hours of continuous unscheduled downtime	1 day of service fees credited to the City (i.e., 1/30 monthly fees)
24 to 48 hours of continuous unscheduled downtime	2 days of service fees credited to the City (i.e., 1/15 monthly fees)
48 to 72 hours of continuous unscheduled downtime	3 days of service fees credited to the City (i.e., 1/10 ** monthly fees)

*City Credit will be applied to the next month's invoice.

**Each block of 72 hours of continuous unscheduled downtime thereafter will be credited 3 days of service fees.

Note: For more than 168 hours of total unscheduled downtime, one (1) full month of fees will be credited.

15. Component List:

Description	Part Number
GX450 AirLink Modem Sierra Wireless PHX provided	GX450
2 Cellular Antennas	COM-ANT
Solar Charger	PSA038
Control Power Block (power hub)	Control Power Block
TRP019 NMT Aluminum Tilt Pole	TRP019-S
Enclosure	EPS045-S
Battery	BAT019-045
LD831C Noise Monitor	831C
Microphone Cable	CBS222-20
Preamplifier with Microphone	PRM2103-FF
Solar Panel PHX provided	N/A most sites, site 4 SLP003
Bird Spike, WindScreen, PreAmp enclosure	EPS2116
Solar Cable from Solar Panel	CBL233-12
USB Extra Storage	DVX013

16. OTHER SERVICES AS NEEDED / REIMBURSABLE EXPENSE:

Contractor will provide additional NOMS services, as needed per the ADR. Prior to incurring any billable expenses, Contractor must present the anticipated total cost to the ADR and obtain ADR's approval. Travel expenses will not be reimbursed.



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17. EVALUATION CRITERIA:

In accordance with Administrative Regulation, 3.10, Competitive Sealed Proposal awards shall be made to the responsive and responsible Offeror(s) whose Offer is determined in writing to be the most advantageous to the City based upon the evaluation criteria listed below. The evaluation factors are listed in the relative order of importance and more details are provided in Section V – Scope of Work.

- A. Method of Approach 0 – 300 Points**
- B. Qualifications and Experience of Firm 0 – 275 Points**
- C. Qualifications and Experience of Key Personnel 0 – 225 Points**
- D. Fee Schedule 0 – 200 Points**

Total Available Points: 1000 Maximum Points

A. METHOD OF APPROACH (300 Points):

Offeror must provide an executive summary detailing its method of approach to satisfy the requirements stated in the Scope of Work and include the following: implementation schedule for hardware and software; project management plan which includes the following work order completion, training plan for staff, comprehensive testing plan, troubleshooting, maintenance plan, parts availability/replacement tracking, merging of noise complaint and flight data to new system; and modern and user friendly interface. Offeror must include details of how they will measure, report, and improve their services over the life of the Contract.

B. QUALIFICATIONS AND EXPERIENCE OF FIRM (275 Points):

Offeror must submit an executive summary, not to exceed five (5)-pages to demonstrate that it possesses the required experience and expertise to successfully complete the type of work required by this solicitation. The Response must include the type of ownership or legal structure of the Contractor (sole proprietor, partnership, type of corporation, etc.); date established and in which state; the length of time the Contractor has been operating as a legal entity and has been providing the requested services; and three (3) business references (Section VI – Submittal Section).

C. QUALIFICATIONS AND EXPERIENCE OF KEY PERSONNEL (225 Points):

Offeror must submit an executive summary detailing the qualifications and experience of its Key Personnel and include the following: organizational chart, description of roles and responsibilities for each team member, resumes for all key personnel that will be assigned to the Contract, and a description of their experience specifically related to the scope of services.

D. FEE SCHEDULE (200 Points):

Submit Bid Price Schedule (Section VI – Submittals)



SECTION VI – SUBMITTALS

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SECTION VI – SUBMITTALS

1. SUBMISSION OF OFFER – Hard Copy Submission:

- 1.1. Refer to “SUBMISSION OF OFFER” paragraph 13 under the “SECTION I – INSTRUCTIONS” of this solicitation document.
- 1.2. Please submit one original, 1 copy, and one (1) electronic copy (portable drive or CD) of the Submittal Section and all other required documentation.
- 1.3. **Please submit only the Submittal Section, do not submit a copy of the entire solicitation document.** This offer will remain in effect for a period of 180 calendar days from the opening date, and is irrevocable unless it is in the City’s best interest to release offer(s).
- 1.4. Please do not lock the electronic copy with password protection so that the City may digitally incorporate the successful offer into the awarded Contract.

2. SUBMISSION OF OFFER – Electronic Submission:

- 2.1. Refer to “SUBMISSION OF OFFER” paragraph 14 under the “SECTION I – INSTRUCTIONS” of this solicitation document.
- 2.2. **Electronic Bid Submission via email:** Offers is to be submitted electronically via email to the following email addresses:
 - nichol.shrum@phoenix.gov
 - avn.solicitations@phoenix.gov
- 2.3. **The email subject line must include solicitation number and title.** For example: **AVN RFP 23-012 (NS) – Noise and Operations Management System (NOMS)**
- 2.4. **Please submit only the Submittal Section, do not submit a copy of the entire solicitation document.** This offer will remain in effect for a period of 180 calendar days from the opening date, and is irrevocable unless it is in the City’s best interest to release offer(s)
- 2.5. Please do not lock the electronic copy with password protection so that the City may digitally incorporate the successful offer into the awarded Contract.



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3. OFFER SUBMITTAL FORMAT:

The written offer should be:

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

Tab 1	Method of Approach
Tab 2	Qualifications and Experience of Firm
Tab 3	Qualifications and Experience of Key Personnel
Tab 4	Fee Schedule - Section VI – Submittals and Related Documents (including Offer, Acceptance, and All Required Forms and Documentation)
Tab 5	Signed Addenda, if applicable

4. COSTS AND PAYMENTS:

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

- Contractor offers a prompt payment discount of either _____% - 30 days or 0% – 45 days - to apply after receipt of invoice or final acceptance of the products (invoice approval), whichever date is later, starts the 30 days. If no prompt payment discount is offered, the default is 0%, net 45 days; effective after receipt of invoice or final acceptance of the products, whichever is later. **Payment terms offering a discount will not be considered in the price evaluation of your offer.**
- Contractor may be paid immediately upon invoice approval, if enrollment is made to the Single Use Account (SUA) Program, administered by the City’s servicing bank (“Bank”). By checking this box, the vendor accepts transaction costs charged by their merchant bank and agrees not to transfer to the City those extra charges. The City will not pay an increase in our services for the SUA charges; if an audit uncovers an upcharge for the SUA charges the vendor will owe the City all costs. The vendor may opt-out of the SUA program once, but then may not rejoin during the same Contract term. **For more information about the SUA program or to enroll, send email to mailbox.sua@phoenix.gov.**

5. OPTION FOR ADDITIONAL SERVICES/REIMBURSABLE EXPENSE:

By signing and submitting this solicitation, Offeror agrees that the City may add additional services at any time. Offeror must obtain ADR’s approval in writing prior to services being completed.



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6. BID PRICE SCHEDULE: ALL OR NONE

Table with 5 columns: Item No., Description, Estimated Quantity, Proposed Price Excluding Tax, Extended Price Excluding Tax. Rows include Data Transfer, NOMS Software Implementation, NOMS Hardware and Equipment Maintenance and Support, NOMS Software Maintenance and Support, and Grand Total.

NOMS Software Name: _____

A. OPTIONAL ANCILLARY SERVICES

Contractor may be requested to provide additional services associated with the NOMS parts and maintenance contract. Prior to incurring any billable expenses, Contractor must present the anticipated total cost to the ADR and obtain their written approval.

Table with 3 columns: Item No., Description, Proposed Rate Excluding Tax. Rows include Additional Maintenance and Support per Hour and Percentage Discount for items listed in Component List for Equipment Replacement.

7. DELIVERY: Contractor states that item(s) ordered will be delivered ____ days after receipt of order. This delivery schedule will include any time for shipping.



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- 8. SUBSTITUTION OF SPECIFIED ITEMS:** Whenever in the specifications any item or process is requested or specified by manufacturer name, proprietary name or patent, such specifications will be used for the purpose of facilitating descriptions of the item or process and will be followed by the words “or equal.” The Contractor may offer any item or process that is equal in every respect. However, if the item or process delivered is not, in the opinion of the City of Phoenix, equal in every respect to the specifications then the Contractor must furnish the item or material with one that in, the opinion of the City of Phoenix, is equal.
- 9. EMERGENCY TWENTY-FOUR HOUR SERVICE:** Emergency 24-hour service is to be provided by Contractor at no additional cost. The Contractor will provide an emergency contact person, with phone number, who is authorized to release material to the City of Phoenix during non-business hours, in the event of an emergency repair requirement. Any changes in contacts must be promptly submitted to the City.

Name _____

Telephone Number _____

Alternate Contact _____

Telephone Number _____

10. YEARS IN BUSINESS AND REFERENCES:

Offeror certifies that they have provided Noise and Operations Management listed in this solicitation for a minimum of three (3) years.

YES **NO**

Offeror must furnish three (3) references from firms, organizations, or government agencies. For each reference, Offeror must provide: the name of the firm or organization, the name and title of contact person and his or her address, telephone number, and email address for which the Offeror is currently furnishing or has furnished, completed service for a Noise and Operations Management System.



SECTION VI – SUBMITTALS

**CITY OF PHOENIX
Aviation Department
2485 E. Buckeye Road,
Phoenix, AZ 85034**

Company Name _____

Address _____

Reference _____

Telephone Number _____

Email address _____

Company Name _____

Address _____

Reference _____

Telephone Number _____

Email address _____

Company Name _____

Address _____

Reference _____

Telephone Number _____

Email address _____

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

Contractor _____

Address _____

City, State and Zip Code _____



SECTION VI – SUBMITTALS

**CITY OF PHOENIX
Aviation Department
2485 E. Buckeye Road,
Phoenix, AZ 85034**

OFFER

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

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

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

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

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

Authorized Signature

Date

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

Printed Name and Title
(Member, Manager, President)

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



SECTION VI – SUBMITTALS

**CITY OF PHOENIX
Aviation Department
2485 E. Buckeye Road,
Phoenix, AZ 85034**

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

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

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

CITY OF PHOENIX
A Municipal Corporation
Jeffrey Barton, City Manager

Michael D. Hughes
Deputy Aviation Director

Attest:

City Clerk

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



SECTION VI – SUBMITTALS

**CITY OF PHOENIX
Aviation Department
2485 E. Buckeye Road,
Phoenix, AZ 85034**

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

1. Name of person submitting this disclosure form.

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

2. Contract Information

Solicitation # or Name:

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

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

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

Subcontractors may be retained, but not known as of the time of this submission.

List of subcontracts, including the name of the owner(s) and business name:

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

7. Disclosure of Conflict of Interest:



SECTION VI – SUBMITTALS

CITY OF PHOENIX
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2485 E. Buckeye Road,
Phoenix, AZ 85034

A. City Code Section 43-34

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

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

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

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

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

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

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

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

8. Acknowledgements

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

- I understand that a person or entity who seeks or applies for a city contract, or any other person acting on behalf of that person or entity, is prohibited from contacting city officials and employees regarding the contract after a solicitation has been posted.



SECTION VI – SUBMITTALS

**CITY OF PHOENIX
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Phoenix, AZ 85034**

- This “no-contact” provision only concludes when the contract is awarded at a City Council meeting. If contact is required with City official or employees, the contact will take place in accordance with procedures by the City. Violation of this prohibited contacts provision, set out in City Code Sections 2-190.4 and 43-36, by respondents, or their agents, will lead to **disqualification.**

B. Fraud Prevention and Reporting Policy

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

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

OATH

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

PRINT NAME

TITLE

SIGNATURE

DATE

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



SECTION VII - EXHIBITS

CITY OF PHOENIX
Aviation Department
2485 E. Buckeye Road,
Phoenix, AZ 85034

SECTION VII – EXHIBITS

EXHIBIT A

SUPPLEMENTAL TERMS AND CONDITIONS TO ALL AIRPORT CONTRACTS

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, Contracts, 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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Phoenix, AZ 85034

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

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

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

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

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



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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 Contracts and Transfer 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, 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

B. Charge reasonable, and not unjustly discriminatory prices for each unit or services, provided that Contractor may be allowed to make reasonable and non-



SECTION VII - EXHIBITS

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Phoenix, AZ 85034

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 Contracts.

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 Contract 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 Contract, management Contract, or subcontract, purchase or lease Contract, or other Contract covered by 49 C.F.R. Part 23. Contractor agrees to include the above statements in any subsequent concession Contract 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 Contracts.



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Aviation Department
2485 E. Buckeye Road,
Phoenix, AZ 85034

2.6 Miscellaneous

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

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

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

D. Contractor acknowledges that this Contract is subordinate to any existing or future Contract 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.

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



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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.

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).



SECTION VII - EXHIBITS

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Phoenix, AZ 85034

5. Legal Worker Requirements

The City is prohibited by A.R.S. § 41-4401 from awarding an Contract 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 Contract.

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 Contract that:

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



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Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant Contracts or subleases of this Contract 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).

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.



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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).

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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**CITY OF PHOENIX
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2485 E. Buckeye Road,
Phoenix, AZ 85034**

EXHIBIT B

INTERGOVERNMENTAL CONTRACT

**NOISE MITIGATION FLIGHT PROCEDURES
BETWEEN CITY OF TEMPE
AND
CITY OF PHOENIX**

Available at: <https://www.phoenix.gov/solicitations/1384>



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**CITY OF PHOENIX
Aviation Department
2485 E. Buckeye Road,
Phoenix, AZ 85034**

EXHIBIT C

**CITY OF PHOENIX
INFORMATION TECHNOLOGY STANDARD**

INFORMATION STUDY – IDENTITY MANAGEMENT (s1.3)

Available at: <https://www.phoenix.gov/solicitations/1384>



SECTION VII - EXHIBITS

**CITY OF PHOENIX
Aviation Department
2485 E. Buckeye Road,
Phoenix, AZ 85034**

EXHIBIT D

**CITY OF PHOENIX
INFORMATION TECHNOLOGY STANDARD**

INFORMATION SECURITY – PASSWORD MANAGEMENT (s1.5)

Available at: <https://www.phoenix.gov/solicitations/1384>



SECTION VII - EXHIBITS

**CITY OF PHOENIX
Aviation Department
2485 E. Buckeye Road,
Phoenix, AZ 85034**

EXHIBIT E

**CITY OF PHOENIX
ADMINISTRATIVE REGULATION 1.90**

INFORMATION PRIVACY AND PROTECTION

Available at: <https://www.phoenix.gov/solicitations/1384>



SECTION VII - EXHIBITS

**CITY OF PHOENIX
Aviation Department
2485 E. Buckeye Road,
Phoenix, AZ 85034**

EXHIBIT F

**CITY OF PHOENIX
ADMINISTRATIVE REGULATION 1.91**

**INFORMATION PRIVACY AND PROTECTION SUPPLEMENT
DATA SHARED WITH THIRD PARTIES**

Available at: <https://www.phoenix.gov/solicitations/1384>



SECTION VII - EXHIBITS

CITY OF PHOENIX
Aviation Department
2485 E. Buckeye Road,
Phoenix, AZ 85034

EXHIBIT G

LETTER OF CREDIT FORM

[BANK]
IRREVOCABLE STANDBY LETTER OF CREDIT
NO. [redacted]

To: City of Phoenix – Beneficiary
Aviation Department
Contracts & Services 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 Contract No. [redacted], or any amendments thereto, or any replacement Contract, 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 Contract No. [redacted] or any amendments thereto, or any replacement Contract, 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].



SECTION VII - EXHIBITS

**CITY OF PHOENIX
Aviation Department
2485 E. Buckeye Road,
Phoenix, AZ 85034**

- 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