



CITY OF PHOENIX
Parks and Recreation Department

Planning and Production of Fireworks Events

REQUEST FOR PROPOSALS

PKS-RFP23-FR1

Submit proposals and requests for alternate formats to:

Isis Sanchez, Procurement Officer
City of Phoenix Parks and Recreation Department
200 West Washington Street, 16 Floor
Phoenix, Arizona 85003-1611
Telephone: (602) 534-6986 (7-1-1 Friendly)
isis.sanchez@phoenix.gov

<https://solicitations.phoenix.gov/Solicitations/Details/1458>

This solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800.367.8939 for assistance.

This RFP does not commit the City to award any agreement.
All dates subject to change.

Issue Date February 21, 2023



SECTION I – INTRODUCTION

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

I. INTRODUCTION

A. DESCRIPTION OVERVIEW OF SCOPE OF WORK

The City of Phoenix Parks and Recreation (Parks) Department is issuing a Request for Proposals (RFP) to solicit competitive proposals from firms, groups, or individuals, with expertise in the Planning and Production of firework and pyrotechnic display events.

Parks has identified three specific events each year for which fireworks displays are planned but reserves the right to add additional events, as needed. However, at the minimum, the selected proposer will need to provide services for at least the Phoenix Fabulous 4th Event on Tuesday, July 4, 2023.

The three (3 events) and locations are identified below.

SCHEDULED FIREWORK EVENTS		
A. After Dark in the Park	Deer Valley Park 2001 W. Wahalla Lane Phoenix, AZ 85027	Saturday, June 24, 2023
B. Light Up the Sky	Maryvale Baseball Stadium 3600 N. 51 st Avenue Phoenix, AZ 85031	Monday, July 3, 2023
C. Phoenix Fabulous Fourth	Steele Indian School Park 300 E. Indian School Road Phoenix, AZ 85012	Tuesday, July 4, 2023

Contract award for the services outlined in the RFP is for a one (1) year period commencing on or about April 1, 2023, in accordance with the specifications and provisions contained herein, with two (2) one-year options to extend the contract at the sole discretion of the City.

The Scope of Work is set forth in detail in Section III of this RFP.

B. SCHEDULE OF EVENTS

ACTIVITY (All times are local Phoenix time)	DATE / ADDITIONAL DETAILS
PRE-PROPOSAL CONFERENCE REGISTRATION DUE DATE:	March 2, 2023, by 5:00 PM Send registration to: isis.sanchez@phoenix.gov
Pre-Proposal Conference <i><u>*Potential Proposers Must Pre-Register by 5:00pm 3/2/2023 if interested in attending</u></i>	March 6, 2023 @ 11:30 AM
Written Inquiries Due Date	March 8, 2023 by 12:00 PM



SECTION I – INTRODUCTION

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

Proposal Due Date (electronic)	March 10, 2023 at 12:00 PM
Proposal Submittal Location	Via email to Isis Sanchez at isis.sanchez@phoenix.gov

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

C. MINIMUM QUALIFICATIONS

Each proposer must provide sufficient documentation to demonstrate the proposer meets the minimum qualifications. The minimum qualifications include:

1. Must have an experienced Licensed Pyrotechnic Operator and/or have staff (and assistants) with at least three (3) years' experience firing Electronic-powered displays.
2. Must have been in operation a minimum of five years. The Proposer's normal business activity during the past five years will have been for providing the goods or services in this solicitation.
3. Must have adequate financial resources, or the ability to obtain resources required.
4. In "Good Standing" with the City if previously or in a current contract. Good Standing refers to compliance with all contractual provisions, including payments or financial obligations and performance reporting.

D. HEALTH AND PUBLIC SAFETY DURING PUBLIC HEALTH EMERGENCIES

The health and safety of the public during the COVID-19 pandemic remains a top priority for federal, state and local government agencies. To reduce the impact of COVID-19 outbreak conditions on businesses, workers, customers, and the public, it is important for all businesses to follow the Occupational Safety and Health Administration (OSHA) planning guidance for workplaces. In addition, while encouraging productive and healthy daily life and supporting agency missions, businesses are strongly encouraged to follow guidelines issued by the Centers for Disease Control and Prevention (CDC).



SECTION II – INFORMATION AND INSTRUCTIONS TO PROPOSERS

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

II. INSTRUCTIONS TO PROPOSERS

1. TERM AND CONTRACTURAL RELATIONSHIP

If selected, the Proposer will enter into a contract with the City of Phoenix Parks and Recreation Department for a one (1) year term with two (2) one-year options to extend the Agreement at the sole discretion of the City and if contractor is in good standing.

2. CITY'S VENDOR SELF-REGISTRATION AND NOTIFICATION

Vendors must be registered in the City's procurePHX Self-Registration System at <https://www.phoenix.gov/financesite/Pages/EProc-help.aspx> to respond to solicitations and access procurement information. The City may, at its sole discretion, reject any proposal from a Proposer who has not registered.

3. PRE-PROPOSAL CONFERENCE

Proposers are strongly encouraged to attend the pre-proposal meeting to obtain clarification and an explanation of the items included in the RFP at the time listed in **Section I, B. SCHEDULE OF EVENTS**. You must register to attend by submitting your request via email to isis.sanchez@phoenix.gov. Include the RFP number and "REGISTRATION" in the subject line. Please identify yourself, your organization and how many staff members will be attending. The conference will start at the time and dates listed in the schedule as a courtesy to everyone staff will not wait for late attendees.

4. PROPOSER QUESTIONS AND NOTIFICATIONS

Proposers are advised to read this RFP in its entirety. Failure to read and/or understand any portion of this RFP shall not cause for waiver of any portion of the RFP or subsequent agreement.

The City of Phoenix takes no responsibility for informing recipients of changes to the original solicitation document. It is the Proposer's responsibility to obtain a copy of any amendment relevant to this solicitation.

To adequately respond in writing to questions submitted, no questions will be accepted after the deadline date and time listed in the Schedule of Events of the RFP. All questions about this RFP must be submitted in writing no later than the deadline listed in the Schedule of Events to isis.sanchez@phoenix.gov. All written questions will be responded to in writing via an Amendment to the proposal.

No informal contact initiated by Proposers on the requested service will be allowed with members of City's staff from date of distribution of this RFP until after the closing date and time for the submission of proposals. All questions concerning or issues related to this RFP shall be presented in writing.

5. ADDENDA

The City shall not be responsible for any oral instructions made or given by any City employees or officials regarding RFP instructions, specifications, or documents. Any changes will be in writing and available at <https://www.phoenix.gov/solicitations>.

6. OBTAINING A COPY OF THE SOLICITATION AND ADDENDA



SECTION II – INFORMATION AND INSTRUCTIONS TO PROPOSERS

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Interested proposer may download the complete solicitation and addenda from <https://www.phoenix.gov/solicitations>. Internet access is available at all public libraries. Any interested proposers without internet access may obtain this solicitation by calling (602) 534-6986.

7. REQUEST TO MODIFY THE CONTRACT PROVISIONS

A response to any RFP is an offer to contract with the City based upon the contract provisions contained in the City's RFP, including, but not limited to, the specifications, scope of work and any terms and conditions. Proposers who wish to propose modifications to the contract provisions must submit a "Request for Consideration of Alternate Terms." The written request for modification must be received by the Department contact listed on the front of this solicitation, at least seven (7) calendar days prior to the proposal due date. The City may issue an addendum to this solicitation of any approved specification changes. The provisions of the RFP cannot be modified without the express written approval of the Director or Director's designee. If a proposal or offer by Proposer is returned with modifications to the contract; the contract provisions contained in the City's RFP shall prevail unless the Proposer's proposed alternative provisions are expressly approved in writing by the Director or designee.

8. COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY

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



SECTION III – SCOPE OF WORK

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

III. SCOPE OF WORK

A. OVERVIEW

The City of Phoenix Parks and Recreation Department (Parks) is seeking a Contractor to supply all necessary materials, equipment, labor, transportation, and expertise necessary to provide professional quality fireworks displays, for various Parks events, for a one (1) year period, beginning about April 1, 2023. Parks has identified three specific events each year for which fireworks displays are planned but reserves the right to add additional events, as needed. However, at the minimum, the selected proposer will need to provide services for at least the Phoenix Fabulous 4th Event on Tuesday, July 4, 2023. Event dates are estimated but are subject to change. Actual dates will be confirmed with Contractor at least 60 days prior to the event.

Notwithstanding the foregoing, the Contract will terminate upon the earliest occurrence: by reaching the end of the term including any extensions exercised, or termination pursuant to the provisions of the Contract. The City and contractor may opt to extend the terms of the contract for two additional one-year terms up to three (3) years total.

B. EVENT INFORMATION

Individual event information is provided below. Note that fireworks display details reflect product types and quantities from previous events that have been conducted and should be used by Contractor as a guideline when submitting bid pricing. Actual quantities may vary.

SCHEDULED FIREWORK EVENTS		
1. After Dark in the Park	Deer Valley Park 2001 W. Wahalla Lane Phoenix, AZ 85027	Saturday, June 24, 2023
2. Light Up the Sky	Maryvale Baseball Stadium 3600 N. 51 st Avenue Phoenix, AZ 85031	Monday, July 3, 2023
3. Phoenix Fabulous Fourth	Steele Indian School Park 300 E. Indian School Road Phoenix, AZ 85012	Tuesday, July 4, 2023

After Dark in the Park- Saturday June 24, 2023
<i>Proposed Display</i> Approximate Duration: 15-minute display • Estimated Total aerial effects: 650 • Estimate Minimum of 300 shells to include: 3 inch (300) • Estimate Minimum of 350 Basin effects (1.3G)
Light Up the Sky- Monday July 3, 2023
<i>Proposed Display</i>



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CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

Approximate Duration: 20-minute display

- Estimated Total aerial effects: 1,200
- Estimate Minimum of 600 shells to include:
 - 4 inch (80)
 - 3 inch (320)
 - 2.5 inch (50)
 - 1.5-inch titanium salutes (150)
- Estimate Minimum of 600 Basin effects (1.3G)

Phoenix Fabulous Fourth Event- Tuesday July 4, 2023

Proposed Display

Fireworks Display:

- Approximate Duration: 25-minute display
- Estimate Total aerial effects: 7,800
- Estimate Minimum of 6,000 shells to include:
 - 4 inch (1,500)
 - 3 inch (3,000)
 - Cakes (1.25 inch – 3inch) 1,500

C. GENERAL REQUIREMENTS

Contractor will meet with the appropriate Parks representative not less than 30 days prior to the scheduled event to walk the venue and plan the display and discuss any special requirements. No more than seven calendar days after this meeting, Contractor will provide the event representative a detailed plan for the fireworks display event for Parks approval. The plan must include a timeline and information related to the coordination of the display such as installation, load-in and load-out. Parks reserves the right to make minor changes to the plan and will work with Contractor to finalize the plan two weeks prior to the event. All the following requirements must be met:

- 1.1. Fireworks display events will be set to music and will include an opening and grand finale.
- 1.2. Contractor will choreograph the fireworks display to correspond with the music provided by the City.
- 1.3. Contractor must provide the proposed firing method.
- 1.4. All expenses must be included in the total event price. No additional charges will be authorized.
- 1.5. Contractor must obtain permit(s) as required to conduct the fireworks display. No person, firm or corporation will set up or operate fireworks display without first obtaining necessary permit(s). Parks will waive all fees associated with City of Phoenix permit(s).
- 1.6. Contractor will provide all labor, equipment, materials, and installation services needed for the display. The City will not be responsible for providing any equipment or services needed for the actual fireworks display.
- 1.7. All set up and display equipment will comply with Phoenix Fire Code Article 78. Phoenix Fire Department staff will conduct periodic inspections during set-up and a final inspection the day of the event to ensure compliance.
- 1.8. Parks, in conjunction with the Contractor, will select a suitable place for the display, including a firing and debris zone reasonably acceptable to the City and the Contractor (hereinafter referred to as the "Display Area"). The Display Area will adhere to or exceed applicable National Fire Protection Association (NFPA) standards. The content of the display may be limited by the selection of the display area due to the requirement to provide sufficient safety zone.
- 1.9. Contractor must be completely set-up and ready to be inspected by the fire marshal no less than two hours prior to the scheduled start time of the event. For the Phoenix Fabulous 4th event



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three days will allowed for set-up. All other events require same day set-up.

D. CANCELLATION

1. In the event fireworks displays are cancelled by the City due to rain or inclement weather any products and/or materials will be secured and removed from the event location as soon as weather conditions allow for safe removal. The Contractor will be entitled to a cancellation fee.
2. In the event fireworks displays are cancelled or not conducted, are only partially conducted, or are conducted in a manner other than that which the City agreed, due to any action or inaction of Contractor, Contractor will NOT be entitled to a cancellation fee and may be subject to liquidated damages.

E. SECURITY

1. The City will furnish 24-hour security personnel, fencing, and barricades to preclude unauthorized individuals from entering the designated area for the discharge of the fireworks display. The City will provide a maximum of 72 hours of security coverage prior to the City Phoenix Fabulous Fourth Event.
2. Contractor must furnish on sight personnel for all other events to secure fireworks to preclude unauthorized individuals from entering the designated area for the discharge of the fireworks display.
3. If, in its sole discretion, the City designates an area for members of the public to view the display (hereinafter referred to as the "Spectator Area") or an area for vehicular parking (hereinafter referred to as the "Parking Area"), the City will:
 - Ensure that the spectator area does not infringe on the display area
 - Have sole responsibility for ensuring that the terrain of the spectator area and any structures thereon, including but not limited to grandstands and bleachers are safe for use by spectators
 - Have sole responsibility for ensuring that the Parking Area is safe for use
 - Have sole responsibility to police, monitor and appropriately control spectator access to the Spectator Area and the Parking Area, and monitor crowd control in these areas. The contractor will not inspect any area other than the display area, except to ensure that any spectator or parking areas are outside the display area.
4. Prior to, during, and immediately following the firework display, the City will monitor the Display Area and will be solely responsible to keep all persons and property not authorized by the contractor out, and behind safety zone lines and limits.

F. CLEAN-UP

The City will be responsible for any clean up that may be required of the Display Area, Spectator Area, and Parking Area following the fireworks display. Contractor will be responsible for the removal of wiring, frames, unexploded fireworks, sets and lumber, refilling of holes, and electrical ignition devices or any items that are affixed or set in place by the contractor.

All items used by the contractor must be removed within 24 hours after the conclusion of the Phoenix Fabulous Fourth Event in order to prevent disruption of the City's normal business operations. For all other events, items used by the contractor must be removed at the conclusion of the event. The Contractor will be held responsible for any damages to City property and/or other amenities.

G. LIQUIDATED DAMAGES

If the Contractor fails to deliver the supplies or perform the services as specified in its contract, the actual damages to the City will be difficult or impossible to determine. Therefore, in lieu of actual



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damages, liquidated damages will be assessed as follow:

- Failure to begin fireworks display on time- **\$250.00 per occurrence**
- Failure to conduct fireworks display according to plan- **25% of event pricing**

Contractor agrees that a violation of any of the above shall result in the City incurring damages that are impractical or impossible to determine. The Contractor agrees that the above monetary assessments are a reasonable approximation of such damages.

Procurement Division may terminate this contract in whole or in part as provided in the "Default" provision. In that event, the Contractor shall be liable for such liquidated damages accruing until such time as the City may reasonably obtain delivery or performance of similar supplies and services. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence. The Deputy Finance Director or Department Director will be the sole judge in determining the liquidated damages.

H. INSURANCE REQUIREMENT

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

I. FAMILIARIZATION OF SCOPE OF WORK

It is the responsibility of all proposers 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 a proposal. Negligence in preparing a proposal confers no right of withdrawal after due date and time. The Proposer shall be responsible for fully understanding the requirements of the subsequent contract and otherwise satisfy itself as to the expense and difficulties accompanying the fulfillment of the contract requirements. The submission of a proposal will constitute a representation of compliance by the proposer. There will be no subsequent financial adjustment, other than that provided by the subsequent contract, for lack of such familiarization.

J. ORGANIZED BASED ON SCOPE OF WORK

Proposer's must provide a complete proposal that includes the **XII. Attachments and Exhibits section** and organize the requirements of the Scope of Work based on the following Evaluation Criteria sections also detailed in **Section IV. Proposal Instructions** and **Section V. Proposal Evaluation**:

- **SECTION 1- Qualifications and Experience**
- **SECTION 2- Method of Approach to Scope of Work**
- **SECTION 3- Price**



SECTION IV – PROPOSAL INSTRUCTIONS

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IV. PROPOSAL INSTRUCTIONS

A. DELIVERY OF PROPOSALS

The City of Phoenix will ONLY accept proposals electronically for this RFP process. No hard copies will be accepted. Hard copy proposals will be rejected as non-responsive. To submit proposals electronically, proposers must:

1. Compile a complete comprehensive proposal including all attachments in one PDF document.
2. Send the complete proposal PDF document as an electronic attachment in an email to the **Procurement Officer, Isis Sanchez, at isis.sanchez@phoenix.gov** by the date listed on the Schedule of Events.
3. In the email submission body include the proposer's business name, contact, and submission information (Title of Solicitation and Solicitation #).
4. Please also identify the solicitation number ("PKS-RFP23-FR1") on the subject line of the email when submitting your proposal.

The Procurement Officer will send a confirmation receipt for proposals received by the due date listed on the **Schedule of Events**. The receipt only confirms the document was received, it does not consider responsive and/or responsible proposals. Non-responsive proposals will receive separate communication. Proposals must be able to be downloaded by the Department on or prior to the exact time and date indicated in the Schedule of Events on the cover page. Late proposers will not be considered. The prevailing clock will be the Department clock and/or email received electronic stamp. The date and time on the email will provide proof of submission and verification if the proposal was received on or prior to the Due Date and Time specified.

B. FORMAT OF PROPOSAL

Proposals not following the specified format below or that are incomplete, conditional, obscure, or contain additions not requested, exceptions to material provisions, or irregularities of any kind, may be deemed non-responsive and disqualified from the process.

The entire proposal cannot exceed five (5) pages excluding resumes, visual marketing material (brochures, etc.), and Attachments and Exhibits are not included in this page limit. Proposals shall be typewritten for ease of evaluation.

Each proposer shall describe the following to satisfy the requirements of the solicitation by providing an executive summary detailing each of the following components of the proposer's proposal.

1. SECTION 1 - QUALIFICATIONS AND EXPERIENCE

- Proposers must provide a one-page Executive Summary identifying your organization, background, interest in the project, knowledge of what is needed and detailed contact information for the solicitation and subsequent contract signing authority.
- Each proposer must provide sufficient documentation, including resumes, to demonstrate the proposer meets the "Minimum Qualifications" listed in Section I- C. Minimum Qualifications.
- Proposers must provide examples of experience of the largest events that the proposer has provided service for in the last two (2) years.

Years Providing Services

The proposer shall provide a history of their business including the date established, the



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type of ownership or legal structure of the business (sole proprietor, partnership, corporation, etc.), the length of time that the firm has been operating as the legal entity and the length of time the firm has been providing the requested services. Discuss the areas of expertise and resources available both nationally and locally to provide the requested services.

References

The proposer shall provide references that refer to the services that will be provided. A minimum of three (3) references but no more than five (5) from firms or government organizations for which the Proposer is currently furnishing services; or in the past five (5) years has completed services. References from large public entities or large corporate entities comparable in size and scope to the City of Phoenix are preferred.

Complete contact information must be supplied in the response. The City will not coordinate reference checks with the Proposer or provide advance notice of the timing of the City's contact. The responses from the references may be scored and factored into the overall evaluation of the Proposers if the City chooses. **Incomplete or inadequate references may result in proposal rejection.**

The City of Phoenix reserves the right to contact current or former end users not provided by the proposer/vendor as part of the evaluation.

Reference information should include the following:

- Complete Name of the Company or Government Entity,
- Contact Name of Reference
- Complete Address
- Telephone Number
- Email Address

Key Personnel

Key Personnel included in the stated project must have at least one (1) year of employment with the Proposer's organization. List the proposed key members of staff to be assigned to the City's contract including their roles, responsibilities, and estimated participation in delivering the services. Identify which staff member will be the Lead assigned. Attach resumes of the Key Personnel that will be assigned to these services. Include education and training. Resumes shall clearly state any experience specifically related to the Scope of Work and list any similar work successfully completed.

Adverse Actions/Potential Impact

State whether the company is currently involved in any litigation, threatened litigation, investigation, reorganization, receivership, filing, strike, audit, corporate acquisition, unpaid judgements or other action that could have an adverse impact on your ability to provide the required RFP needs. If so, please describe the nature of the item and its potential impact.

Other Relevant Information

Submit any other information which documents other skills or experience relating to the requirements of this RFP which you believe may be relevant including brochures and descriptions.



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2. SECTION 2 - METHOD OF APPROACH TO SCOPE OF WORK

The proposer shall describe the firm's Method of Approach to satisfy the Scope of Work requirements detailed in **Section III. Scope of Work** of this solicitation. Proposer may utilize a written narrative or other visual aid technique to demonstrate the ability to satisfy the Scope of Work and should address the following capabilities:

- Use of any or the latest technology to provide quick and efficient customer service.
- Promotions, discounts, return information

3. SECTION 3 – PRICE

Proposals must provide a detailed list price for each event with a total for all events to be all inclusive (including staff, supplies, licenses, travel, etc.). While the City has an approved budget for the three events the City will determine the best evaluated offer and take into consideration the most advantageous if applicable.

C. EXCEPTIONS

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

D. LATE PROPOSALS

Late proposals shall be rejected regardless of the reason, including electronic mail delivery problems beyond Proposer's control. Proposers submitting their responses should allow sufficient time to ensure delivery by the date and time specified in the Schedule of Events in this RFP.

E. NON-RESPONSIVE PROPOSALS

Proposals deemed non-responsive will not be evaluated or considered for award.

1. The following proposals will not be evaluated:
 - a. Proposals that do not conform to the minimum qualifications stated in **Section I, C.**
 - b. Proposals that contain altered or conditional cost information.
 - c. Proposals not received by the designated due date, place and time.
2. Proposals may be deemed non-responsive at any time in the evaluation process if in the sole opinion of the City:
 - a. Proposer does not meet the minimum required skill, experience or other conditions or terms set forth in this RFP.
 - b. Proposal does not comply with the submission requirements including any specified page limits.
 - c. Proposer does not have a past record of sound business integrity and a history of fulfilling contractual obligations.
 - d. Proposer is not financially stable, solvent, or have cash reserves to meet all financial obligations while waiting reimbursement from the City. (A Proposer who is borrowing any or all of the monies necessary to meet initial expenses between the start of the contract period



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and receipt of the first payment must provide a Letter of Commitment from the Proposer's creditor).

e. Proposal contains false, inaccurate, or misleading statements that in the opinion of the City, is intended to mislead the City in its evaluation of the proposal.

f. Proposals submitted by a Proposer who does not have valid certifications and/or licenses required by state, federal, or local law or regulations to perform the service requested at the time of the submittal but will acquire them before the contract is awarded.

F. RESPONSIVE PROPOSALS

Proposals 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.

Responsiveness: Nonresponsive Proposals will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, such as the Minimum Qualifications, and the solicitation includes terms and conditions that if included or excluded from Proposals (as the case may be) will render a Proposal nonresponsive. Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and a Proposal 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 Proposer remove the conditions, exceptions, reservations or understandings. If the Proposer fails to do so in writing, the City may determine the Proposal to be nonresponsive.

Proposals must meet all material requirements of the solicitation. All required elements of a submitted proposal will be evaluated on a pass/fail basis. The use of scoring or ranking cannot be used to evaluate non-responsive proposals. Only those proposals determined to be responsive will be evaluated and scored by members of an evaluation committee in accordance with the criteria set forth in this RFP.

In addition, the committee MAY request a formal presentation from the highest ranked Proposers before a final recommendation is made. If presentations are requested and presented, the evaluation team will re-convene, review, and re-score the evaluation categories based on the expanded information.

The Proposer'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 Proposer.

In the event interviews are conducted, information provided during the interview process shall be taken into consideration when evaluating the stated criteria. The City shall not reimburse the Proposer for the costs associated with the interview process.

The City reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any Proposer submitting a proposal. The Procurement Officer will review each Proposal to determine if the Proposer is responsible. The City's determination as to whether a Proposer is responsible will be based on all information furnished by the Proposer, interviews (if any), and information received from Proposer's references, including information about Proposer'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 Proposer agrees to permit by submitting its Proposal, is made by the City as it deems necessary. A review of responsibility may occur up to contract award.

Note: In addition to the foregoing information submitted by proposers, the City shall have the



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right to consider other verifiable information bearing on financial stability and strength including without limitation, information provided by former employees and/or creditors.

G. DISCUSSIONS

The City reserves the right to conduct discussions with Proposers for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal in order to clarify an offer and assure full understanding of, and responsiveness to solicitation requirements. If such a discussion is deemed necessary, the only City staff that is authorized to contact the Proposer is the contract representative listed on the front of this proposal. The contract representative shall document any such discussion in the City's file.

H. PREPARATION OF PROPOSAL

1. All forms provided in **Section XII. Attachments and Exhibits** must be completed and submitted with the proposal. The signed and completed Solicitation Disclosure form must be included or your proposal may be deemed non-responsive.
2. No proposal will be altered, amended or withdrawn after the specified proposal due date and time. The City is not responsible for Proposer's errors or omissions.
3. All time periods stated as a number of days will be calendar days.
4. It is the responsibility of all Proposers 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 a proposal. Negligence in preparing a proposal confers no right of withdrawal after due date and time. Proposers are strongly encouraged to:
 - Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
 - Study and carefully correlate Proposer's knowledge and observations with the solicitation and other related data.
 - Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies that Proposer has discovered in or between the solicitation and other related documents.
 - The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Proposals submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Proposer 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.
 - Proposers are reminded that the specifications stated in the solicitation are the minimum level required and that proposals submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Proposals offering less than any minimum specifications or criteria specified are not responsive and should not be submitted

I. ADDENDA

The City of Phoenix shall not be responsible for any oral instructions made by any employees or officers of the City of Phoenix in regard to the bidding instructions, plans, drawings, specifications, or contract documents. Any changes to the plans, drawings and specifications will be in the form of an addendum, which will be available at <https://www.phoenix.gov/solicitations> or by calling (602) 534-6986.



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J. BUSINESS IN ARIZONA

The City will not enter contracts with Proposers (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 Proposer asserts a statutory exception prior to entering a contract with the City.

K. LICENSES

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

L. CERTIFICATION

By signature is the **Affidavit in Section XII. Attachments and Exhibits**, proposer certifies:

- The submission of the offer did not involve collusion or other anti-competitive practices.
- The proposer shall not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- The proposer 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.

M. WITHDRAWAL OF PROPOSAL

At any time prior to the solicitation due date and time, a proposer (or designated representative) may withdraw their proposal by submitting a request in writing and signed by a duly authorized representative. Facsimiles, telegraphic or mailgram withdrawals shall not be considered.

N. SUBMISSION OF PROPOSAL

Proposals must be received by the Procurement Officer of the Department on or prior to the exact time and date indicated in the Schedule of Events. The City of Phoenix will accept proposals electronically ONLY via email as indicated in this solicitation, for this RFP process. No hardcopies will be accepted.

O. OFFER AND ACCEPTANCE RECORD

In order to allow for an adequate evaluation, the City requires an offer in response to this solicitation to be valid and irrevocable for [120] days after the proposal due date and time.

P. CONFIDENTIAL INFORMATION

The City of Phoenix is obligated to abide by all public information laws. If a Proposer believes that a specific section of its proposal is confidential, the Proposer shall isolate the pages marked confidential in a specific and clearly labeled section of its proposal. The Proposer shall include a written basis for considering the marked pages confidential including the specific harm or prejudice if disclosed and the Department will review the material and make a determination.

Q. AFFIDAVIT

By signature on the **Attachment A- Affidavit in Section XII. Attachments and Exhibits** pages, Proposer certifies:

1. The submission of the offer did not involve collusion or other anti-competitive practices.
2. The Proposer shall not discriminate against any employee, or applicant for employment in violation of Federal or State Law.



SECTION IV – PROPOSAL INSTRUCTIONS

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

3. The Proposer 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.
4. The Proposer is financially stable and solvent and has adequate cash reserves to meet all financial obligations while waiting reimbursement from the City.

R. PROPOSAL RESULTS

A preliminary tabulation will be posted on the Procurement Division's website, <https://www.phoenix.gov/finance/business-opportunities/bid-awards-and-recommendations> within five (5) calendar days of the proposal opening. The information on the preliminary tabulation will be posted to the website. The City makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the City has evaluated the proposals an award recommendation will be posted on the website. No further notification will be provided to unsuccessful proposers.

S. AWARD OF CONTRACT

Award will be made to the overall highest scoring Proposer. 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 proposals or portions thereof; or (3) reissue a solicitation.

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. Proposals do not become contracts until they are executed by the Parks and Recreation Director.



SECTION V – PROPOSAL EVALUATION

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

V. PROPOSAL EVALUATION

Proposals will be reviewed for documentation of minimum qualifications, completeness, and adherence to the RFP requirements to determine whether the minimal qualification(s) requirements have been met. Proposals that do not meet all minimal qualification(s) requirements will be considered non-responsive and will be rejected. The City reserves the sole right to determine the sufficiency of qualifications and experience of all proposers.

In accordance with the Administrative Regulation 3.10, competitive sealed proposal awards shall be made to the responsible Proposer whose Proposal is determined in writing to be the most advantageous to the City based upon the evaluation criteria listed below. All eligible, responsive, and responsible proposals will be evaluated based on the following criteria.

A. Evaluation Criteria

All eligible responsive and responsible proposals will be evaluated on the following:

A.	SECTION 1- Qualifications and Experience	0-500 Points
B.	SECTION 2- Method of Approach to Scope of Work	0-300 Points
C.	SECTION 3- Price	0-200 Points
Total Points		1000 Points

B. Evaluation Panel

The PRD Director will appoint an evaluation panel to review the submittals and recommend a proposer to be awarded the agreement resulting from this RFP. The PRD Director may accept this recommendation and forward it to the City of Phoenix City Council for approval or reject it.

The evaluation panel may interview the proposers or a short list of proposers or may evaluate the submittals solely on the materials submitted by the submittal deadline. In the event a short list process is used, the evaluation panel will use the evaluation criteria established in this RFP to identify the proposers most likely to be successful in the evaluation process. A detailed scope of work would be provided to the selected candidates and negotiated fees for services. These proposers will then be scheduled for interviews with the evaluation panel.

C. On-Site Demonstration (Discussions with Proposers in the Competitive Range)

The City will notify each Proposer whose Proposal is in the Competitive Range or made the 'short list' and provide in writing any questions or requests for clarification to the Proposer. Each Proposer 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 Proposal. The Proposers in the competitive range will be required to provide a demonstration of their product.

Demonstrations - Proposers in the competitive range will be invited to provide an on-site demonstration of the proposed system and presentation of their solution to 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).



SECTION VI – SOLICITATION TRANSPARENCY POLICY

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

VI. SOLICITATION TRANSPARENCY POLICY

Commencing on the date and time a solicitation is published, potential or actual proposers or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of Parks Board, 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 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 similar solicitation. As long as the solicitation is not discussed, Proposers may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff who is not involved in the selection process.

Proposers may discuss their proposal or the solicitation with the Mayor or one or more members of the Parks Board, provided such meetings are scheduled through the **Procurement Officer** conducted in person at 200 West Washington, Phoenix, Arizona, 85003, and are posted as open meetings with the City Clerk at least twenty-four (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.

With respect to the selection of the successful Proposers, 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 proposers.

This policy is intended to create a level playing field for all Proposers, assure that contracts are awarded in public, and protect the integrity of the selection process.

PROPOSERS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED. After official Notice is received by the City for disqualification, the Proposer may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.

"To discuss" means any contact by the proposer, regardless of whether the City responds to the contact. Proposers that violate this policy *shall 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 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.**



SECTION VII – SOLICITATION PROCESS AND PROCEDURES

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

VII. SOLICITATION PROCESS AND PROCEDURES

A. EVALUATION AND SELECTION

1. After evaluating all submissions, the City may require firms in the competitive range to participate in an interview process. Upon completion of the evaluation process, the City may assign a detailed scope of work to the selected candidate and negotiate fees for services.
2. RFP responses should be concise, well-organized according to the requested information, clearly written and limited to no more than 15 pages. The review process places considerable emphasis on the responsiveness of the RFP response to the requirements outlined. RFP responses that are not written specifically in response to this request cannot receive serious consideration.
3. RFP responses will be evaluated on the basis of the criteria listed in Section V. **PROPOSAL EVALUATION**. Firms that provide an RFP response will be notified when a selection is made.
4. The firms under consideration for this RFP, will be evaluated by an Evaluation Committee. The City reserves the right to request supplemental information that the Evaluation Committee deems necessary to make a selection. The Committee may be supplemented by outside professionals or professionals from other City departments who can provide additional expertise.

B. AGREEMENT

1. The City will require the selected Proposer to participate in negotiations and to submit such cost, technical or other revisions of the submittals as may result from negotiations. The City shall draft all final contracts and documents that result from this RFP.
2. The language contained in this RFP and the Proposer's proposal in response to the RFP will form the basis of any resulting Contract. However, this RFP does not commit the City to enter into a Contract, to pay any costs incurred in the preparation of a submittal to this request or in subsequent negotiations, or to procure a contract for the project(s).

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

The City reserves the right to disqualify any Proposer 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 Proposer on the basis of any real or apparent conflict of interest that is disclosed by the Proposer submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of an RFP response hereunder, the Proposer waives any right to object now or at any future time, before anybody or agency 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 Proposer.

D. NO VERBAL AGREEMENTS

No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, shall 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 Proposer. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.



SECTION VII – SOLICITATION PROCESS AND PROCEDURES

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

E. ORGANIZATION EMPLOYMENT DISCLAIMER

Any contract entered into as a result of this RFP shall set forth the relationship between the City and the Proposer, and the rights and obligations of the parties shall only be those expressly set forth therein. The Proposer will be required to agree as part of any contract entered into as the result hereof that no person supplied by it in the performance of the contract is an employee of the City, and further agrees that no rights of the City's Civil Service, Retirement or Personnel Rules accrue to any such persons. Any contracting party shall have the total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation and occupational disease compensation insurance, unemployment compensation, other benefits and taxes and premiums appurtenant thereto concerning such persons provided by such Proposers in the performance of the contract and shall save and hold the City harmless with respect thereto.

F. VIOLATIONS DISCLOSURE

1. Each time the Proposers enter into a contract with the City, the Proposers shall notify the City and specifically identify any notices from any regulatory authority with respect to any violation or alleged violation of any law or regulation by the Proposers or any subcontractor.
2. Further, the Proposers shall be required to immediately notify the City of any inspection, audit, or review by any regulatory authority or records procedure of the Proposers or its subcontractors and provide the City with a copy of any written findings prepared by such regulatory authority in connection with such inspection, audit, or review.

G. RESPONSIBILITY FOR COMPLIANCE WITH LEGAL REQUIREMENTS

The Proposer's products, services, and facilities shall be in full compliance with all applicable federal, state, and local health, environmental, and safety laws, regulations, standards, and ordinances, regardless of whether or not they are referred to by the City.

H. TRANSACTIONAL CONFLICTS OF INTEREST

The Proposers acknowledge that any contract resulting from this RFP submittal is subject to cancellation by the City pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

I. FUND APPROPRIATION CONTINGENCY

The Proposer recognizes that any agreement entered into shall 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 of Phoenix, which fiscal years end on June 30 of each year, shall be subject to the approval of the budget of the City of Phoenix 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.

J. EMPLOYEE IDENTIFICATION

Proposer agrees to provide an employee identification number or 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 federal identifier of the Proposer is a social security number, this number will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.



SECTION VIII – PROTEST PROCESS

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

VIII. PROTEST PROCESS

Staff recommendations to award the contract(s) to a particular proposer shall be posted on the Procurement Division's website <https://www.phoenix.gov/finance/business-opportunities/bid-awards-and-recommendations>. Any unsuccessful proposer may file a protest no later than seven (7) calendar days after the recommendation is posted on the website. All protests shall be in writing, filed with the Procurement Officer identified in the solicitation and include the following:

1. Identification of the RFP or other solicitation number.
2. The name, address, and telephone number of the protester.
3. A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents.
4. The form of relief requested.
5. The signature of the protester or its authorized representative.

The Procurement Officer will render a written decision within a reasonable period of time after the protest is filed. The City will not request Parks Board authorization to award the contract until the protest process is completed.

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

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



SECTION IX – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

IX. STANDARD TERMS AND CONDITIONS

A. DEFINITION OF KEY WORDS USED IN THE SOLICITATION

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

"Amendment"	Means a written document issued by the City and signed by the Contractor which alters the contract and identifies the following: (i) a change in the Scope of Work, (ii) a change in the Contract Amount, (iii) a change in the time allotted for performance, and/or (iv) an adjustment to the Agreement terms.
"A.R.S."	Arizona Revised Statute
"Broker, Packager, Manufacturer's Representative, Jobber"	A firm that is not a manufacturer or regular dealer as defined herein and whose role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain services, materials, equipment or product.
"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/Agreement"	The legal agreement executed between the City of Phoenix, AZ and the Contractor.
"Contract Representative"	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.
"Days"	Means calendar days unless otherwise specified.
"Department 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.
"Deputy Director"	The Deputy Director over the Department.
"Deputy Finance 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 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).



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“Hosted”	A hosted application is a software as a service (SaaS) solution that allows users to execute and operate a software application entirely from the cloud on a recurring subscription. Hosted applications are hosted and powered from the remote cloud infrastructure and are accessed globally through the Internet.
“Manufacturer”	A firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles or equipment required under the contract.
“May”	Indicates something that is not mandatory but permissible.
“Offer”	Means bid or quotation.
“Procurement Officer”	City of Phoenix, City Procurement staff person responsible for the solicitation.
“Proposer”	Means a vendor who responds to the Request for Proposal.
“Proposal”	Means a written response in offer of services in the Request for Proposal.
“Shall, Will, Must”	Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of proposal as non-responsive.
“Should”	Indicates something that is recommended but not mandatory. If the proposer fails to provide recommended information, the City may, at its sole option, ask the proposer to provide the information or evaluate the offer without the information.
“Solicitation”	Means a Request for Proposal (RFP).
“Subcontractor”	Means an individual, firm, partnership. Corporation, limited liability company, joint venture, or any other business entity having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor, or any tier for the performance of any part of the Agreement. When the City refers to Subcontractor(s) in this document, for the purpose of this Agreement and unless otherwise expressly states, the term “Subcontractor:” includes, at every level, and/or tier, all subcontractors, sub consultants, suppliers, and material men.
“Suppliers”	Firms, entities or individuals furnishing goods or services directly to the City.
“Vendor”	A seller of goods or services.



SECTION IX – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

B. CONTRACT INTERPRETATION

- i. **APPLICABLE LAW:** This Contract shall be governed by the law of the State of Arizona, and suits pertaining to this Contract shall be brought only in Federal or State courts in Maricopa County, State of Arizona.
- ii. **IMPLIED CONTRACT TERMS:** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.
- iii. **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 shall 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 shall 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 shall save and hold the City harmless with respect thereto.
- iv. **SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.
- v. **NON-WAIVER OF LIABILITY:** The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.
- vi. **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 shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract shall 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.

C. CONTRACT ADMINISTRATION AND OPERATION

- i. **RECORDS:** All books, accounts, reports, files and other records relating to the contract shall 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.



SECTION IX – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

- ii. **PUBLIC RECORD:** All proposals submitted in response to this invitation shall become the property of the City and become a matter of public record available for review pursuant to Arizona State law.

If a proposer believes that a specific section of its proposal response is confidential, the proposer shall isolate the pages marked confidential in a specific and clearly labeled section of its proposal response. The proposer shall include a written statement as to the basis for considering the marked pages confidential including the specific harm or prejudice if disclosed and the City will review the material and make a determination.

- iii. **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 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 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 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. Contractor further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by Contractor. If Contractor employees more than 35 employees, 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 employees, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

- iv. **LICENSES AND PERMITS:** Contractor shall 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.
- v. **ADVERTISING:** Contractor shall not advertise or publish news releases concerning this project without the prior written consent of the Parks Director, and the City shall not unreasonably withhold permission.
- vi. **OWNERSHIP OF INTELLECTUAL PROPERTY:** Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be considered work for hire and the City shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the City requesting the issuance of this contract shall own (for and on behalf of the City) the entire right, title and interest to the Intellectual Property throughout the world.



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Contractor shall notify the City, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the City and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the City. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any other entity without the express written authorization of the City. If by operation of law, the Intellectual Property is not owned in its entirety by the City automatically upon its creation, then Contractor agrees to assign and hereby assigns to the City the ownership of the Intellectual Property. The Contractor agrees to take such further action and execute and deliver such further agreements and other instruments as the City may reasonably request to give effect to this section. It is expressly agreed by the Contractor that these covenants are irrevocable and perpetual.

- vii. **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 or not they are 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.

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

- ix. **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 shall 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.

- x. **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 shall not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

- xi. **CONFIDENTIALITY AND DATA SECURITY:** When personal identifying information, financial account information, protected health information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. Proposer must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in



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connection with its disposal. This includes implementing and monitoring compliance with policies and procedures that require the redaction, destruction, erasure, or other disposal of paper documents and electronic media containing personal identifying information, financial account information, protected health information, or restricted City information so that these types of information cannot practicably be read or reconstructed. Proposer will provide the City with its information security policies and procedures regarding the redaction, destruction, erasure, or other disposal of documents and information.

In the event that data collected or obtained by the Proposer in connection with this Agreement is suspected to have been compromised, Proposer shall notify the contracting City department immediately. Proposer agrees to reimburse the City for any costs incurred by the City to investigate and respond to potential breaches of this data, including, where applicable, the cost of notifying individuals who may be impacted by the breach, attorneys' fees, and for any monetary damages or penalties the City is assessed. In case of a breach or critical breach of the City's information, it will be the City, not the Proposer that will inform any and all individuals affected by any such breach. Only upon prior written consent of the City, or at the specific direction of the City, will the Proposer notify individuals affected by a breach or critical breach of the City's information.

Proposer agrees to abide by all current applicable legal and industry data security and privacy requirements. These include, but are not limited to, Arizona Revised Statutes §44-7501 — Notification of breach of security system; Arizona Revised Statutes §44-7601 — Discarding and disposing of records containing personal identifying information; Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules; Health Information Technology for Economic and Clinical Health (HITECH) Act, and Payment Card Industry Data Security Standards.

By signing and entering this Agreement the Proposer specifically acknowledges that it is responsible for the security of cardholder data that Proposer possesses or otherwise stores, processes or transmits on behalf of the City. Additionally, as a requirement of this contract you must provide to the City a copy of your written Notice to customers that you are responsible for the security of cardholder data that you obtain and otherwise store, process or transmit. Proposer agrees to comply with all City information security and technology policies, standards, and procedures when accessing City networks and computerized systems whether onsite or remotely.

Proposer agrees that the requirements of this Section shall be incorporated into all subcontractor/sub-proposer agreements entered into by the Proposer. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

The obligations of Proposer under this Section shall survive the termination of this Agreement.

D. CONTRACT CHANGES

1. **CONTRACT AMENDMENTS:** Contracts shall be modified only by a written contract amendment signed by the Deputy Finance Director and persons duly authorized to enter into



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contracts on behalf of the Contractor. As per City Charter and City Code, contract amendments must also be signed as to form by the City Attorney and City Clerk.

2. **ASSIGNMENT - DELEGATION:** No right or interest in this contract nor monies due thereunder shall be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor shall be made without prior written permission of the Deputy Finance Director, which may be withheld for good cause. Any assignment or delegation made in violation of this section shall be void.
3. **NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Phoenix. The City reserves the right to obtain like goods or services from another source when necessary.
4. **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 shall be deemed waived unless asserted in writing within thirty (30) days from the receipt of the change. Price increases or extensions of delivery time shall not be binding on the City unless evidenced in writing and approved by the Deputy Finance Director prior to the institution of the change.

E. RISK OF LOSS AND LIABILITY

1. **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 shall 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 shall conform to the cancellation clause set forth in this document.
2. **INDEMNIFICATION – PATENT, COPYRIGHT AND TRADEMARK:** The Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or work performed under this contract.

The Contractor agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City of Phoenix and its agents for alleged infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this contract and the Contractor further agrees to indemnify the City against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein. The City may be represented by and actively participate through its own counsel in any such suit or proceedings if it so desires. It is expressly agreed by the seller that these covenants are irrevocable and perpetual.

3. **FORCE MAJEURE:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of



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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 shall 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 shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall 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.

4. **LOSS OF MATERIALS:** The City does not assume any responsibility, at any time, for the title and risk, or protection of or for loss of materials or services, from the time that the contract operations have commenced until the final written acceptance of the work by the City.
5. **DAMAGE TO CITY PROPERTY:** Contractor shall perform all work so that no damage to the building or grounds results. Contractor shall repair any damage caused to the satisfaction of the City at no cost to the City.

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

F. WARRANTY ON DELIVERABLES

1. **QUALITY:** Contractor expressly warrants that all goods or services furnished under this contract shall conform to the specifications, appropriate standards, and will be new and free from defects in material or workmanship. Contractor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose which goods or services of that kind are normally used. If Contractor knows or has reason to know the particular purpose for which City intends to use the goods or services, Contractor warrants that goods or services furnished will conform in all respect to samples. Inspection, test, acceptance of use of the goods or services furnished hereunder shall not affect the Contractor's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Contractor's warranty shall run to City, its successors, and assigns.
2. **RESPONSIBILITY FOR CORRECTION:** It is agreed that the Contractor shall be fully responsible for making any correction, replacement, or modification necessary for specification or legal compliance. In the event of any call back, Contractor agrees to give the City first priority. Contractor agrees that if the product or service offered does not comply with the foregoing, the City has the right to cancel the purchase at any time with full refund within



SECTION IX – STANDARD TERMS AND CONDITIONS

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30 calendar days after notice of non-compliance and Contractor further agrees to be fully responsible for any consequential damages suffered by the City.

3. **LIENS:** Contractor shall hold the City harmless from claimants supplying labor or materials to the Contractor or his subcontractors in the performance of the work required under this contract. Contractor shall provide written certification that all liens against materials and labor have been satisfied, before the City will make payment.
4. **QUALITY STANDARDS OF MATERIAL AND SERVICES:** If desired by the City, items/services proposal shall be subjected to testing, dissection or analysis by a recognized testing laboratory or consultant selected by the City to determine that the material(s) submitted for proposal conform to the proposal specifications. The cost of testing, dissection or analysis shall be borne by the proposer.

G. CITY'S CONTRACTUAL RIGHTS

1. **RIGHT TO ASSURANCE:** 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 (5) days, the demanding party may treat this failure as an anticipatory repudiation of this contract.
2. **NON-EXCLUSIVE REMEDIES:** The rights and remedies of the City under this Contract are non-exclusive.
3. **DEFAULT:** In case of default by the proposer, 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 proposal and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.
4. **AUDIT:** If, following an audit of this Agreement, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, the Contractor shall be liable for reimbursement of the reasonable, actual cost of the audit.
5. **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 shall have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.
6. **COST JUSTIFICATION:** In the event only one response is received, the City may require that the proposer submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the proposal price is fair and reasonable.



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7. **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 that all materials prepared under this contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to City all rights and interests Contractor may have in the materials it prepares under this contract, including any right to derivative use of the material.

H. CONTRACT TERMINATION

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 shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.
2. **CONDITIONS AND CAUSES FOR TERMINATION:** This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving ninety (90) days 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 shall 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 Contractor shall submit detailed cost claims in an acceptable manner and shall permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

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

In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;

In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;

In the opinion of the City, Contractor attempts to deliver to 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.



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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.

I. INDEMNIFICATION

Contractor shall indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees (hereinafter referred to as “Indemnatee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers’ Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, the Contractor agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the City.

J. INSURANCE REQUIREMENTS

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

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

1. Minimum Scope and Limits of Insurance

Contractor shall 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 minimum liability requirements provided that the coverage is written on a “following form” basis.

a. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

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



SECTION IX – STANDARD TERMS AND CONDITIONS

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Each Occurrence \$1,000,000

Policy shall be endorsed to include the following additional insured language: "The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

b. Worker's Compensation and Employers' Liability

Contractor shall provide Workers' Compensation Statutory Employers' Liability

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

Policy shall contain a waiver of subrogation against the City of Phoenix.

This requirement shall not apply when a contractor or subcontractor is exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

c. Professional Liability (Errors and Omissions Liability)

Contractor's policy shall cover professional misconduct or lack of ordinary skill in performing the services defined in the Scope of Services of this Contract.

Each Claim \$2,000,000
Annual Aggregate \$2,000,000

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

2. Additional Insurance Requirements

The policies shall include, or be endorsed to include the following provisions:

On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

K. NOTICE OF CANCELLATION

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice, including the name and subsequent contract number, shall be mailed, emailed or hand-delivered to City of Phoenix, Parks and Recreation Department, 16th Floor, Phoenix, AZ 85003.



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L. ACCEPTABILITY OF INSURERS

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

M. VERIFICATION OF COVERAGE

Contractor shall 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.

Upon notification of an award the Proposer will have ten (10) calendar days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this solicitation. Insurance requirements are non-negotiable.

All certificates required by this Contract shall be sent directly to the City of Phoenix Parks and Recreation Department, 200 West Washington, 16th Floor, Phoenix, Arizona 85003, and Attn: MSD Contracts. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

N. SUBCONTRACTORS

Contractors’ certificate(s) shall include all subcontractors as additional insureds under its policies or Contractor shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

O. PERFORMANCE INTERFERENCE

Contractor shall notify the department contact immediately of any occurrence and/or condition that interferes with the full performance of the contract and confirm it in writing within twenty-four (24) hours.

P. CONTRACTOR’S PERFORMANCE

Contractor shall furnish all necessary labor, tools, equipment, and supplies to perform the required services. The City will evaluate issues which may arise as to the quality and acceptability of any work performed under the Contract. If, in the City’s opinion, performance becomes unsatisfactory, the City shall seek assurance from Contractor of Contractor’s intent to perform and Contractor’s plan for corrective action. This contract provision does not alter or affect the Contract Termination provisions provided herein.

The Contractor will have ten (10) days from that time to correct any specific instances of unsatisfactory performance. In the event the unsatisfactory performance is not corrected within the time specified above, the City shall have the immediate right to complete the work to its satisfaction



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and shall 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.

Q. EMPLOYEE IDENTIFICATION AND ACCESS

Except as set forth in Sections IX (N) and IX (R), Contractor employees are forbidden access to designated restricted areas. Beyond meeting rooms and other areas open to the public, access to particular operational premises shall be as directed by the City's authorized representative.

Only authorized Contractor employees are allowed on the premises of the City of Phoenix buildings. Contractor employees are not to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person is an authorized Contractor employee.

R. ACCOUNT STAFFING

The Contractor agrees to assign experienced personnel to provide for successful and timely accomplishment of the Scope of Work. The City reserves the right at any time and for any reason during the Contract to reject any Contractor staff from performing services on behalf of the City.

S. TIME IS OF THE ESSENCE

The parties agree that time is of the essence in the performance of the Scope of Work.

T. CONTRACTORS' DEFAULT; LIQUIDATED DAMAGES; RESERVATION OF REMEDIES FOR MATERIAL BREACH:

Contractor's default under this Section shall include, but is not limited to the following: (i) Contract Worker gains access to a City facility(s) without the proper badge or key; (ii) Contract Worker uses a badge or key of another to gain access to a City facility; (iii) Contract Worker commences services under this Agreement without the proper badge, key or Background Screening; (iv) Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable Background Screening; or (v) Contractor fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement. Contractor acknowledges and agrees that the access control, badge and key requirements in this Section are necessary to preserve and protect public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this Section within three (3) business days from the date notice of default is sent by the City. The parties agree that Contractor's failure to properly cure any default under this Section shall constitute a breach of this Section. In addition to any other remedy available to the City at law or in equity, the Contractor shall be liable for and shall pay to the City the sum of one thousand dollars (\$1,000.00) for each breach by Contractor of this Section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Agreement in the event that Contractor breaches this Section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages in the event that Contractor breaches this Section. The parties further agree that three (3) breaches by Contractor of this Section arising out of any default within a consecutive period of three (3) months or three (3) breaches by Contractor of this Section arising out of the same default within a period of twelve (12) consecutive months shall constitute a material breach of this Agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this Agreement, at law and in equity including, but not limited to, termination of this Agreement.



SECTION X – GENERAL TERMS AND CONDITIONS

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

X. GENERAL TERMS AND CONDITIONS

A. MATERIALS SUBMITTED

All materials submitted in response to this RFP become the property of the City. Each proposer, as an express condition for the City's consideration of such proposal, waives any right to access such proposals until 30 days after Parks Board or City Council awards the agreement. No submission or supporting documentation will be returned to proposers except rejected or nonresponsive proposals. Proposers should note that the City is subject to the disclosure requirements of Arizona's public records law.

B. CITY RESERVATION OF RIGHTS

1. The City is not obligated to accept any submittal or to negotiate with any Proposer. The City reserves the right to accept submittals which are deemed most favorable and in the best interests of the City after all submittals have been examined and canvassed, to reject any or all submittals, and to be the sole judge of the best proposer suited for the City.
2. The issuance of this RFP and the acceptance of an RFP response do not constitute an agreement by the City that any contract shall actually be entered into by the City. The City expressly reserves the right to:
 - a. Waive any immaterial defect or informality in any RFP response or proposal procedure.
 - b. Reject any or all RFP responses.
 - c. Reissue a RFP.
 - d. Procure any service by any other means.
 - e. Request additional information and data from any or all companies.
 - f. Negotiate with any qualified Proposer.
3. The City may confirm any information provided in the Proposer's submittal or inspect any of the Proposer's facilities that would be utilized in connection with performing services under any resulting contract.

C. PROPOSER(S) INCURRED COSTS

Each Proposer will be responsible for all costs incurred in or preparing for a response to this RFP. All materials and documents submitted by the Proposer in response to this RFP or any additional requests for materials and documents made by the City for evaluation pursuant to this RFP will become the property of the City and will not be returned. The selected Proposers shall be responsible for all costs incurred by it during negotiations.

D. RIGHT TO INVESTIGATE

In addition to the references and any information submitted with the proposal, the City may obtain information on past performance.

The City's determination as to whether the proposer is qualified and responsible will be based on the information furnished by the proposer, interviews (if applicable), and other sources determined to be valid by the City. Award will not be made until such investigations, which each proposer agrees to permit by submitting its proposal, are made by the City.

E. PROPOSER CERTIFICATION

By submission of a proposal, each proposer certifies it has not paid or agreed to pay any fee or commission, or any other item of value contingent on the award of a contract to any employee, official,



SECTION X – GENERAL TERMS AND CONDITIONS

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

or current contracting consultant of the City.

F. APPLICABLE LAW

Any and all disputes arising under any contract or out of the RFP herein called for, shall be governed according to the laws of the State of Arizona, and the Proposer submitting an RFP response agrees that the venue for any such action brought to enforce provisions of the Contract shall be brought only in Federal or State courts in Maricopa County, State of Arizona.

G. LEGAL WORKER REQUIREMENTS

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

1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.
2. A breach of a warranty under paragraph 1 shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.
3. The City retains the legal right to inspect the papers of the contractor or subcontractor employee(s) who work(s) on this Agreement to ensure that contractor or subcontractor is complying with the warranty under paragraph 1.

H. CONFIDENTIALITY AND DATA SECURITY

All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor/Consultant in connection with this Agreement is confidential, proprietary information owned by the City. Except as specifically provided in this Agreement, the Contractor/Consultant shall not disclose data generated in the performance of the service to any third person without the prior written consent of the City Manager, or his/her designee.

Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Contractor/Consultant must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

In the event that data collected or obtained by the Contractor/Consultant in connection with this Agreement is believed to have been compromised, Contractor/Consultant shall notify the City Privacy Officer immediately. Contractor/Consultant agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

Contractor/Consultant agrees that the requirements of this Section shall be incorporated into all subcontractor/subconsultant agreements entered into by the Contractor/Consultant. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.



SECTION X – GENERAL TERMS AND CONDITIONS

**CITY OF PHOENIX
PARKS AND RECREATION
DEPARTMENT**

Contractor/Consultant shall indemnify, defend, save and hold harmless the City and its officers, officials, agents, and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and cost of claims processing, investigation and litigation) for any loss caused, or alleged to be caused, in whole or in part, by Consultant's or any of its owners', officers', directors', agents' or employees' failure to comply with the requirements of this Section. This indemnity includes any claim arising out of the failure of contractor/consultant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree.

The obligations of Contractor/Consultant under this Section shall survive the termination of this Agreement.

I. NON-WIAVER OF LIABILITY

The City, as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Proposer submitting an RFP response 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.

J. EXECUTION OF CONTRACT

Within 30 days of the notice from the City that the contract has been finalized, the successful proposer shall fully execute and deliver such contract. Should the successful proposer fail to deliver the agreement within 30 days, the award may be canceled by the City. In the event the successful proposer defaults, or refuses or fail to timely execute the formal contract or provide required documents, the City shall consider award to the next highest qualified proposer who is ready and willing to provide services.



SECTION XI – SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT

XI. SPECIAL TERMS & CONDITIONS

A. INQUIRIES

To adhere to the solicitation transparency policy and avoid disqualification, all questions that arise relating to this solicitation shall be directed in writing to the Procurement Officer:

Isis Sanchez
City of Phoenix, Parks and Recreation Department
200 W. Washington Street, 16th Floor
Phoenix, Arizona 85003
isis.sanchez@phoenix.gov

To be considered, written inquiries shall be received at the above email address by the date listed in the Schedule of Events. The City will respond to inquiries in an addendum published on the Procurement Website. If you need clarification to a solicitation, you are expected to send a written inquiry.

No informal contact initiated by Proposers on the proposed service will be allowed with members of the City's staff from date of distribution of this solicitation until after the closing date and time for the submission of proposals. Such communication will be deemed a violation of the transparency policy and you will be disqualified. All questions concerning, or issues related to, this solicitation shall be presented **in writing**.

B. SUSPENSIONS OF WORK

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

C. COMMUNICATION IN ENGLISH

It is mandatory that the Contractor's lead person assigned to any City's facility be able to speak, read and write in English in order to communicate as the site contact.

D. PERFORMANCE INTERFERENCE

Contractor shall notify the City's department contact immediately of any occurrence and/or condition that interferes with the full performance of the contract and confirm it in writing within twenty-four (24) hours to the identified contact in the agreement.

E. CONTRACT PERFORMANCE

Proposer shall furnish all necessary labor, tools, equipment, and supplies to perform the required services at the City facilities designated. 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 shall notify the Proposer.

The Proposer will have 4 hours from that time to correct any specific instances of unsatisfactory performance. In the event the unsatisfactory performance is not corrected within the time specified above, the City shall have the immediate right to complete the work to its satisfaction and shall deduct the cost to cover from any balances due or to become due the Proposer. Repeated incidences of



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unsatisfactory performance may result in cancellation of the agreement for default.

F. HOURS OF WORK

All work under this contract shall be coordinated with the City's designated contact provided to the selected proposer and subsequent vendor. Any changes to the established schedule must have prior written approval by the City's designated contact.

G. CONTRACT WORKER ACCESS CONTROLS, BADGE AND KEY ACCESS REQUIREMENT:

1.1 Background Screening Level: Because of the varied types of services performed, the City has established two levels of risk and associated backgroundscreening: Standard and Maximum risk. The current risk level and backgroundscreening required is **MAXIMUM RISK**.

1.2 Maximum Risk Level: A maximum risk background screening will be performed every five years when the Contract Worker's work assignment will:

- 1.2.1 work directly with vulnerable adults or children, (under age 18); or
- 1.2.2 any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or
- 1.2.3 unescorted access to:
 - City data centers, money rooms, high-value equipment rooms; or
 - unescorted access to private residences; or
 - access to critical infrastructure sites/facilities; or
- 1.2.4 direct or remote access to Criminal Justice Information Systems (CJIS) infrastructure.

1.3 Requirements: The background screening for maximum risk level will include a background check for real identity/legal name and will include felony and misdemeanor records from any county in the United States, the State of Arizona, plus any other jurisdiction where the Contractor worker has lived at any time in the preceding seven years from the Contract Worker's proposed date of hire. In addition, Maximum screening levels may require additional checks as included herein, depending on the scope of work, and may be amended if the scope of work changes.

1.4 Additional Maximum Risk Background Checks: Maximum screening will additionally require fingerprint verification through the Arizona Department of Public Safety as mandated by Phoenix City Code § 2-27.

2. Terms of This Section Applicable to all of Contractor's Contracts and Subcontracts: Contractor will include the terms of this section for Contract Worker background screening in all contracts and subcontracts for services furnished under the Contract.

2.1 Materiality of Background Screening Requirements; Indemnity: The background screening requirements are material to City's entry into the contract and any breach of these provisions will be deemed a material breach of this contract. In addition to



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the indemnity provisions set forth in this agreement, Contractor will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Contractor. The background screening requirements are the minimum requirements for the Contract. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor's services under the Contractor Contractor's failure to comply with this section. Therefore, Contractor and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under the Contract.



SECTION XII – ATTACHMENTS AND EXHIBITS

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ATTACHMENT A AFFIDAVIT

Assurances

The undersigned proposer hereby submits to the City of Phoenix (City) the enclosed proposal based upon all terms and conditions set forth in the City's Request for Proposals (RFP) and referenced materials. Proposer further specifically agrees hereby to provide services in the manner set forth in the proposal submitted by the proposer.

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

1. The City is relying on proposer's submitted information and the representation that proposer has the capability to successfully undertake and complete the responsibilities and obligations submitted in its proposal and in the resulting contract.
2. The City has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by proposer.
3. Proposer has read and fully understands all the provisions and conditions set forth in the RFP documents, upon which its proposal is based.
4. The forms and information requested in the RFP are complete and made part of the proposal. The City is not responsible for any proposer errors or omissions.
5. This proposal may be withdrawn by requesting such withdrawal in writing at any time prior to the proposal deadline but may not be withdrawn after such date and time.
6. The City reserves the right to reject any and all proposals and to accept the proposal that, in its judgment, will provide the best quality development to the City.
7. This proposal is valid for a minimum of 180 days after the RFP proposal deadline.
8. All costs incurred by proposer in connection with this proposal shall be borne solely by proposer. Under no circumstances shall the City be responsible for any costs associated with proposer's proposal or the RFP process.
9. Proposer has not in any manner, directly or indirectly, conspired with any person or party to unfairly compete or compromise the competitive nature of the RFP process.
10. The contents of this proposal have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this proposal.
11. To the best of the proposer's knowledge, the information provided in its proposal is true and correct and neither the undersigned proposer nor any partner, corporate officer or managing employee have ever been convicted of a felony or a crime involving moral turpitude.



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Legal Status

1. Proposer intends to operate the business as (check one):

Corporation* () Non-Profit 501(c)(3) ()
Government Entity () Partnership* ()
Limited Liability Corporation* () Sole Proprietorship ()
Other (Please describe: _____) ()

* Identify the members, if LLC, partners, if a partnership, or officers, if a corporation, of the proposer (add lines as needed).

For the purpose of this RFP, addenda and exhibits, any questions regarding the principals are referring to the officers, partners and members as disclosed.

2. In the past 10 years, have you personally, or any business with which you have been involved, been declared bankrupt, filed a petition in any bankruptcy court, filed for protection from creditors in bankruptcy court, or had involuntary proceedings filed in bankruptcy court? If "Yes," provide date, court jurisdiction, case name, case number, amount of liabilities, amount of assets and the status of each occurrence. **Yes () No ()**
3. Has the proposer or any of its principals or its principal's affiliates been declared to be in default under any obligation to or contract with the City? If "Yes," please provide details concerning the nature of the default, including the City contract number. **Yes () No ()**
4. Are there any pending liens, claims or litigation in excess of \$500,000 involving proposer, or any corporation or other entity that has, directly or indirectly, a controlling interest in the proposer, or any subsidiary of the proposer or other entity in which the proposer has a controlling interest or any of the proposer's principals, officers, or directors? If "Yes," provide detailed information regarding complaints. **Yes () No ()**
5. Has the proposer, or any corporation or other entity that has, directly or indirectly, a controlling interest in the proposer, or any subsidiary of the proposer or other entity in which the proposer has a controlling interest or any of the proposer's principals, officers, or directors, been involved in any lawsuits in the past 10 years? If "Yes," provide list. **Yes () No ()**
6. Has the proposer's or any of its principals or its principals' affiliate's contracts been terminated prior to their expiration terms, voluntarily or involuntarily, within the last 10 years? If "Yes," provide name, location, and date of the contract(s). **Yes () No ()**
7. Has the proposer, or any corporation or other entity that has, directly or indirectly, a controlling



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interest in the proposer, or any subsidiary of the proposer or other entity in which the proposer has a controlling interest or any of the proposer's principals, officers, or directors ever been barred from bidding on federal, state, or local government contracts? If "Yes," provide the current status of such suspension or debarment proceedings. **Yes () No ()**

8. **Disclosure of Conflict of Interest:** Are you aware of any fact(s) with regard to this solicitation or resulting contract that would raise a "conflict of interest" issue under City Code Section 43-34? "An elected City official or a City employee 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:
-

9. **Notice Regarding Prohibited Interest in Contracts:** State law and the Phoenix City Charter and Code prohibit public officers or employees, their close relatives, and any businesses they, or their relatives, own from (1) representing before the City any person or business for compensation, (2) doing business with the City by any means other than through a formal procurement, and (3) doing business with the City without disclosing that the person has an interest in the contract. This prohibition extends to subcontracts on City contracts and also applies to parent, subsidiary, or partner businesses owned by a public officer or employee. See Arizona Revised Statutes (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 A.R.S. regarding conflict of interest at www.azleg.gov).

☐ I am not aware of any conflict(s) of interest under A.R.S. Sections 38-501 thru 38-511.

☐ I am aware of the following conflict(s) of interest:

10. **Acknowledgements:**

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

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



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- ☐ This “no-contact” provision only concludes when the contract is awarded at a Parks Board 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 is, set out in City Code Sections 2-190.4 and 43-36, by respondents, or their agents, will lead to **disqualification**.

Oath:

I affirm that the statements contained in this form, 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.

SIGNATURE(S)

Proposer's Contracting Entity (Legal Name¹): _____

¹The successful proposer must be authorized to transact business in Arizona and be in good standing prior to contract award.

Printed Name of Authorized Representative*: _____

Title: _____

Business Mailing Address: _____

Telephone and Email Address: _____

Signature: _____

**Proposal must be signed by an individual authorized to contractually bind the proposer.*

Name of Joint Venture Partner (if applicable): _____

Printed Name of Authorized Representative*: _____

Title: _____

Business Mailing Address: _____

Telephone and Email Address: _____

Signature: _____

**Proposal must be signed by an individual authorized to contractually bind the joint venture partner.*



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NOTARIZED

Signed and sworn before me this _____, day of _____, _____

Notary Signature: _____

My Commission Expires: _____

Affix Seal



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ATTACHMENT B PRICING SCHEDULE

1. **BID PRICE SCHEDULE**

Item No.	Fireworks Display Event	Annual Quantity	Total Price for Event	Cancellation Fee
1	After Dark in the Park Event	1	\$	
2	Light Up the Sky Event	1	\$	
3	Phoenix Fabulous Fourth Event	1	\$	