



**City of Phoenix**

REQUEST FOR QUALIFICATION

RFQu-23-0170

FENCE SUPPLY AND SERVICE

City of Phoenix

Finance Central Procurement

Finance Department-Procurement

251 W. Washington Street, 8th floor

Phoenix, AZ

85003

RELEASE DATE: August 18, 2023

DEADLINE FOR QUESTIONS: August 31, 2023

RESPONSE DEADLINE: September 8, 2023, 2:00 pm

City of Phoenix  
REQUEST FOR QUALIFICATION  
RFQu-23-0170  
Fence Supply and Service

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Attachments (Submittal Forms):

- A- Pricing Proposal (Attached separately)
- B- Offer Page
- C- Contractor Licensing Requirements
- D- Costs and Payments
- E- Debarment & Exclusion
- F- Conflict of Interest and Transparency
- G- References
- H- Place of Business
- I- 24-Hour Emergency Contact
- J- Warranty

## 1. INTRODUCTION

### 1.1. Summary

The purpose of this contract is to provide all materials, labor, equipment, permits, and services necessary to replace, furnish, fabricate, install, and repair block, ornamental, and chain-link or any combination of fencing to Citywide departments on an as-needed basis to include new construction, repairs, and maintenance.

### 1.2. Background

Historically, some of the services provided under this contracts are:

- Removing and hauling away existing fencing.
- Installing new fencing.
- Repairing existing fencing.
- Maintaining existing fencing.
- Obtaining any necessary permits.
- Providing all necessary materials and equipment.

### 1.3. Contact Information

#### **Project Contact:**

#### **Sabina Moore**

Procurement Manager  
Finance Department-Procurement  
251 W. Washington Street, 8th floor  
Phoenix, AZ 85003  
Email: [sabina.budimlija.moore@phoenix.gov](mailto:sabina.budimlija.moore@phoenix.gov)  
Phone: [\(602\) 626-7794](tel:(602)626-7794)

#### **Procurement Contact:**

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Phone: [\(602\) 626-7794](tel:(602)626-7794)

#### **Department:**

Finance Central Procurement

1.4. Timeline

**Schedule of Events**

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

To request a reasonable accommodation or alternative format for any public meeting, please contact the Procurement Officer (Sabina B. Moore) at (602) 626-7794/Voice or 711/TTY, or [sabina.budimlija.moore@phoenix.gov](mailto:sabina.budimlija.moore@phoenix.gov), no later than two (2) weeks prior to the meeting.

<p><b>Solicitation Issue Date</b></p>	<p>August 18, 2023</p>
<p><b>Pre-Offer Conference (Non-Mandatory)</b></p>	<p>August 24, 2023, 10:00am          Webex meeting</p> <p>Join from the meeting link  <a href="https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=mb2814922178d044ef7264cb9f08baf1b">https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=mb2814922178d044ef7264cb9f08baf1b</a></p> <p>Join by meeting number          Meeting number (access code): 2631 627 2862          Meeting password: asHJdrYg394</p> <p>Tap to join from a mobile device (attendees only)          +1-415-655-0001,,26316272862## US Toll</p> <p>Join by phone          +1-415-655-0001 US Toll          Global call-in numbers</p>

<b>Written Inquiries Due Date</b>	August 31, 2023, 2:00pm
<b>Offer Due Date</b>	September 8, 2023, 2:00pm <a href="mailto:Procurement@phoenix.gov">Procurement@phoenix.gov</a>

## **2. INSTRUCTIONS**

### **2.1. Description – Statement of Need**

The City of Phoenix invites sealed offers for fence supply and service for a five-year period commencing on or about October 31, 2023, in accordance with the specifications and provisions contained herein or the “Effective Date” which is upon award by City Council, conditioned upon signature and recording by the City Clerk’s department, as required by the Phoenix City Code, whichever is later.

This solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800-367-8939 for assistance.

Notwithstanding the foregoing, this Agreement will terminate upon the earliest occurrence: by reaching the end of the term including any extensions exercised, or termination pursuant to the provisions of this Agreement.

### **2.2. City’s Vendor Self-Registration and Notification**

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

### **2.3. Preparation of Offer**

All forms provided in Submittal Section must be completed and submitted with the Offer. The signed and completed Conflict of Interest and Transparency form must be included or your Offer may be deemed non-responsive.

It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of the Offer must be initialed in original ink by the authorized person signing the Offer. No offer will be altered, amended or withdrawn after the specified offer due date and time. The City is not responsible for Offeror’s errors or omissions.

All time periods stated as a number of days will be calendar days.

It is the responsibility of all Offerors to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:

- A. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
- B. Study and carefully correlate Offeror’s knowledge and observations with the solicitation and other related data.
- C. Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in or between the solicitation and other related documents.

- D. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.

#### 2.4. Fixed Offer Price Period

All offers shall be firm and fixed for a period of 180 calendar days from the solicitation opening date.

#### 2.5. Obtaining a Copy of the Solicitation and Addenda

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

#### 2.6. Exceptions

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

#### 2.7. Inquiries

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

No informal contact initiated by Offerors on the proposed service will be allowed with members of City's staff from date of distribution of this solicitation until after city council awards the contract. All questions concerning or issues related to this solicitation must be presented in writing.

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

#### 2.8. Addenda

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

## 2.9. Business in Arizona

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

## 2.10. Licenses

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

## 2.11. Certifications

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

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

## 2.12. Submission of Offer

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

Offers must be submitted in one of the following ways:

- A. Submitted in a sealed envelope and the following information should be noted on the outside of the envelope:
  1. Offeror's Name
  2. Offeror's Address (as shown on the Certification Page)
  3. Solicitation Number
  4. Solicitation Title
  5. Offer Opening Date
  6. Such offers must be completed in ink or typewritten. Include the number of copies that are required as indicated in the Submittal section.



- B. Submitted electronically by email to [procurement@phoenix.gov](mailto:procurement@phoenix.gov) and the following information should be noted in the email:
1. Offeror's Name
  2. Offeror's Address (as shown on the Certification Page)
  3. Solicitation Number
  4. Solicitation Title
  5. Offer Opening Date
  6. Due to file size limitations for electronic transmission (for sending or receiving), Offers sent by email may need to be sent in parts with multiple emails. It is the responsibility of the Offeror to ensure that the Offer (including all parts if sent in multiple emails) is timely and to confirm that there are no technical reasons that any offer submitted electronically may be delayed. The date and time on the email(s) as received/stamped by the City's inbox will provide proof of submission and verification whether the Offer was received on or prior to the exact time and date indicated in the Schedule of Events.
  7. Any original documents (such as bonds, guaranties, powers of attorney), if required by the solicitation, must be separately delivered to and received by the City on or prior to the exact time and date indicated in the Schedule of Events, with a clear indication of the Offer for which it is attributed.
- C. If available for this solicitation, submitted electronically by file transfer site. For instructions to upload a digital offer, Offeror must first indicate its intent to apply (and submit a completed "intent to apply" form, if provided in the solicitation) by email to [procurement@phoenix.gov](mailto:procurement@phoenix.gov) and the following information should be noted in the email:
1. Offeror's Name
  2. Offeror's Address (as shown on the Certification Page)
  3. Solicitation Number
  4. Solicitation Title
  5. Offer Opening Date
  6. It is the responsibility of the Offeror to ensure that the Offer is timely and to confirm that there are no technical reasons that any offer submitted electronically may be delayed. The date and time on the upload as received/stamped by the City's file transfer site will provide proof of submission

and verification whether the Offer was received on or prior to the exact time and date indicated in the Schedule of Events.

7. Any original documents (such as bonds, guaranties, powers of attorney), if required by the solicitation, must be separately delivered to and received by the City on or prior to the exact time and date indicated in the Schedule of Events, with a clear indication of the Offer for which it is attributed.

#### 2.13. Withdrawal of Offer

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

#### 2.14. Offer Results

Offers will be opened on the offer due date, time and location indicated in the Schedule of Events, at which time the name of each Offeror, and the prices may be read. Offers and other information received in response to the solicitation will be shown only to authorized City personnel having a legitimate interest in them or persons assisting the City in the evaluation. Offers are not available for public inspection until after the City has posted the award recommendation on the City's website.

The City will post a preliminary offer tabulation on the City's website, <https://solicitations.phoenix.gov/Awards> within five business days of the offer opening. The City will post the information on the preliminary tabulation as it was read during the offer opening. The City makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the City has evaluated the offers, the City will post an award recommendation on the website. By signing and submitting its Offer, each Offeror agrees that this posting of the award recommendation to the City's website effectively serves as the Offeror's receipt of that notice of award recommendation. The City has no obligation to provide any further notification to unsuccessful Offerors.

#### 2.15. Qualification Criteria

Statement of Qualifications shall relate specifically to the following items, listed in general order of importance, for evaluation and selection purposes:

### **Enter Qualification Criteria**

#### **Capacity**

The Offeror shall demonstrate that they possess adequate capacity and the organizational structure to support and coordinate services with multiple departments within the City.

### **Method of Approach**

The Offeror shall describe a method of approach for meeting the requirements as it relates to Fence Supply and Service requirements.

### **Experience**

Offeror shall have at least three (3) years of experience providing these services to local governments.

### **Cost.**

#### 2.16. Content of Response

The Offerors' response will include the following:

- A. Description of how the work would be performed.
- B. Cost estimate for completing requested work, including hourly or daily rates where appropriate.
- C. Names and resumes of the proposed staff, including managers and supervisors.
- D. Brief assessment of the present workload capacity.
- E. Offeror's proposed time frame for completion of the work.
- F. List of current business references.

#### 2.17. Evaluation and Selection

After evaluating all submissions, the City may ask some or all the firms that submitted a response to participate in interviews. Upon completion of the evaluation process, the City may assign a detailed scope of work to the selected candidate and negotiate fees for services.

RFQu responses should be concise, well-organized per the requested information, clearly written and limited to no more than 20 pages including resumes. The review process places considerable emphasis on the responsiveness of the RFQu response to the requirements outlined above. RFQu responses that are not written specifically in response to this request cannot receive serious consideration.

All RFQu responses will be evaluated based on the criteria listed above in the Qualifications Section of this RFQu.

The firms under consideration for this RFQu, 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.

#### 2.18. Agreement

The City will require the selected Offeror 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 RFQu.

The language contained in this RFQu and the Offeror's statement of qualifications will form the basis of any resulting Contract. However, this RFQu does not commit the City to enter 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).

#### 2.19. Solicitation Transparency Policy

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

As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff. Offerors may not discuss the solicitation with any City employees or evaluation panel members.

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

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

This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED. After official Notice is received

by the City for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.

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

## 2.20. Protest Process

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

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

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

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

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

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

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

#### 2.21. Public Record

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

#### 2.22. Late Offers

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

#### 2.23. Right to Disqualify

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

#### 2.24. Contract Award

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

#### 2.25. Determining Responsiveness and Responsibility

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

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

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

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

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

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

#### 2.26. Equal Low Offer

Contract award will be made by putting the names of the tied vendors in a cup for a blind drawing limited to those bidders with tied offers. If time permits, the offerors involved will

be given an opportunity to attend the drawing. The drawing will be witnessed by at least three persons, and the contract file will contain the names and addresses of the witnesses.

#### 2.27. Evaluation of Competitive Sealed Offers

The City will use its discretion in applying the following processes to this solicitation. Any ties in scoring will be resolved with a best and final price request and the lowest price will prevail.

#### 2.28. Detailed Evaluation of Offers and Determination of Competitive Range

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

#### 2.29. Offers Not Within the Competitive Range

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

#### 2.30. Discussions with Offerors in the Competitive Range

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

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

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

To the fullest extent permitted by law, the City will not provide any information, financial or otherwise, to any Offeror about other Offers received in response to this solicitation. During discussions with Offerors in the Competitive Range, the City will not give Offerors



specific prices or specific financial requirements that Offerors must meet to qualify for further consideration. The City may state that proposed prices are too high with respect to the marketplace or otherwise unacceptable. Offerors will not be told of their relative rankings before Contract award.

### 2.31. Best and Final Offers (BAFO)

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

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

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

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

### **3. SCOPE OF WORK**

#### *3.1. Purpose*

3.1.1 The purpose of this contract is to provide all materials, labor, equipment, permits, and services necessary to replace, furnish, fabricate, install, and repair block, ornamental, and chain-link or any combination of fencing to Citywide departments on an as-needed basis to include new construction, repairs, and maintenance.

3.1.2 The contract will also provide the following services:

- Removing and hauling away existing fencing
- Installing new fencing.
- Repairing existing fencing.
- Maintaining existing fencing.
- Obtaining any necessary permits
- Providing all necessary materials and equipment.

#### *3.2. General Requirements*

The Contractor shall:

3.2.1 Possess three (3) or more years of experience providing requested services.

3.2.2 Ensure that service technicians have at least three (3) years of experience providing fence services, as specified.

A. Ensure adequate staffing levels, with enough experienced and certified staff to ensure no lapse or delay in service.

3.2.3 Provide a designated person to respond to all City of Phoenix inquiries within four (4) hours.

3.2.4 Make every effort to schedule work during regular working hours. Unless stated otherwise for a specific department, regular times/normal working hours are from 5:00 A.M. until 5:00 P.M.

3.2.5 Verify that all aspects of the service comply with applicable provisions of the City of Phoenix Building Code. The more stringent code shall be followed where national or local regulations conflict with the above specifications.

3.2.6 Have certified welders accessible for on-site requests, as required.

A. The Contractor shall ensure a certified welder completes all welding. Welds used in the fence fabrication shall be ground smooth and brushed clean, then painted with zinc-rich

paint such as ZRC; please refer to MAG (Maricopa Association of Governments) <https://azmag.gov/Programs/Public-Works/Specifications-and-Details>

B. All surplus weld metal shall be removed.

C. Repairs shall be abraded or otherwise, and zinc coating shall be made similarly.

3.2.6 Be equipped with all the tools, supplies, and equipment ready to commence work.

3.2.7 Provide and install fencing where appropriate:

A. vacant homes, properties (other than single-family homes),

B. construction sites,

C. fire-damaged sites, and

D. other City of Phoenix properties.

3.2.8 Notify the City of Phoenix staff who placed the order by telephone or email within 48 hours if there will be a delay in receiving materials and/or parts.

3.2.9 Travel to the City of Phoenix locations on an as-needed basis to determine what materials and or parts will be needed to repair or replace an existing ornamental fence.

3.2.10 Remove and haul away existing fencing made of wood, chain-link, block, or other materials, as required. Replacement materials shall be new, like kind and quality.

3.2.11 Secure the area with temporary fencing if the City determines it is necessary.

3.2.12 Provide all equipment, including equipment not customary to the trade and miscellaneous materials required to complete the fencing service satisfactorily.

3.2.13 Ensure that any possible safety hazards to workers or the public shall be corrected immediately and left in a safe condition at the end of each work day.

3.2.14 Ensure that the fabrication and installation of furnished and installed materials shall be first-class and show carefully finished workmanship in all aspects of the acceptable methods within the industry.

3.2.15 All materials shall meet the ASTM (ASTM International, formerly known as the American Society for Testing and Materials, is an international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems, and services) and MAG standard ornamental fencing repair and replacement specifications.

A. All posts must be set in concrete and adhere to industry standards.

3.2.16 Provide concrete coring and cutting as required.

3.2.17 Ensure that the following steps are completed when providing a quote:

- A. Determine the following at the site inspection: exact linear footage, number of gates, need for temporary fencing, and time frame of job completion.
- B. Ensure that the City acceptance of the quotation is in writing.
- C. Have sole responsibility for the accuracy of all measurements and estimates.
- D. Contact the city project manager or delegate upon arrival and departure at the job site.
- E. Sign in and out with the city project manager or delegate upon arrival and departure at the job site.
- F. Document each service request with a written checklist/service ticket. The service report is required for payment and must accompany the invoice.
- G. Ensure that the invoice includes only actual material and services rendered.
- H. The Contractor will not charge a fee for estimates.
- I. Ensure that the Contractor and the City agree upon the format of the service ticket. The service ticket must include the following as a minimum:
  - a. Date
  - b. Location
  - c. City requestor's full name, phone number, department, and City representative signature
  - d. Service Technician's full Name, phone number, and Phoenix badge number
  - e. On-site Arrival Time
  - f. On-site Departure Time
  - g. Description of work: Materials and parts used.

3.2.18 Be responsible for arranging on-site services with the appropriate Department representative.

3.2.19 Keep the premises clean of all rubbish and debris generated by the work involved and leave the premises neat and clean. The Contractor shall dispose of all surplus material, waste, and debris at the Contractor's expense. The work area shall be cleaned at the end of each workday.

- A. Remove and haul away existing fencing made of wood, chain-link, block, or other materials, as required. Replacement materials shall be new, like kind and quality.
- B. Demolish and remove its debris legally, by all City, State, and Federal regulations.
- C. Ensure that the work site must be cleared of debris and secured at the end of each working day and not use on-site debris containers.

3.2.20 Ensure that all materials, tools, equipment, etc., shall be removed or safely stored.

- A. The City is not responsible for theft or damage to the Contractor's property. Schedule work during regular working hours unless otherwise stated for a specific department.

3.2.21 Once a project starts, the Contractor shall continue to work every business day until the project is completed.

3.2.22 Repair any damage caused by construction including, but not limited to, utilities, electric, gas, CCTV, plumbing, sprinkler irrigation system, telephone concrete, finish grade, ground cover, and any situation relating to the original condition of the site.

A. The Contractor shall be responsible for paying any/all associated costs.

3.2.23 Except for Gated Alley Program jobs, the Contractor shall be responsible for procuring any required permit.

3.1.24 Coordinate delivery with City's authorized representative to avoid disrupting the City of Phoenix operations.

A. The City will pay for the permit through an internal voucher system or reimbursement.

B. For reimbursement, the Contractor shall include the actual charge for the permit on their invoice and backup documentation of the original fee.

3.2.25 Ensure that the City's authorized representative conducts a site inspection after the project is complete.

A. The City's authorized representative will prepare a "punch list" of findings that need to be corrected during the inspection and forward a copy of the "punch list" to the Contractor.

B. If correction of a "punch list" is needed, the Contractor shall correct all punch-list items within seventy hours. After correcting the "punch-list" items, the Contractor will request a final inspection with the City's authorized representative and written approval/ acceptance.

### 3.3. *Site Inspection*

The Contractor shall:

3.3.1 Conduct the site inspection prior to any work and determine the exact linear footage, number of gates, and time frame of job completion at the site inspection.

3.3.2 Report any inconsistencies before providing an estimate. The total price shall list tax separately. The contractor shall submit the written quotation per the contracted unit prices. Emergency repairs may be quoted verbally to expedite the service requested but must be followed up with a written quote within twenty-four (24) hours.

A. Ensure delivery of materials in sufficient quantity to allow continuity of work, and

B. Coordinate delivery with City's authorized representative to avoid disrupting the City of Phoenix operations.

### 3.4. *New Fence*

The Contractor shall:

3.4.1 Respond to the City of Phoenix within four (4) hours of the initial call or e-mail request. On-site response (physical presence) shall be within three (3) business days.

3.4.2 Respond to City's request for new construction by preparing a drawing with pertinent facts. The estimate should be forwarded to the requestor within ten (10) days of the site inspection.

3.4.3 Notify the City representative at least five (5) days before starting the job.

- A. Start new fence construction jobs within two (2) weeks of notice to proceed or as agreed upon with the City representative.
- B. New projects shall be completed within five (5) working days of notification.
- C. Notify the City representative immediately if unable to meet the expected timeline.

### 3.5. *Fence Repairs*

The Contractor shall:

3.5.1 For a routine Fence Repair

- A. Provide a response to City of Phoenix requests on the same day of the request.
- B. immediately schedule a site inspection, prepare an estimate, and forward it to the City requestor within three (3) business days.
- C. Ensure the mutual agreement with the City representative upon a schedule for fence repairs.
- D. All fence repairs must be started within five (5) days of request.

3.5.2 For Urgent Repairs

- A. Provide a response to the City of Phoenix within one (1) hour of the initial call or e-mail request. On-site response (physical presence) shall be within four (4) hours.
- B. Complete the repair within twenty-four (24) hours of initial notification or the same day if classified as a Critical Infrastructure site by the City representative.

3.5.3 All repair requests for the Water Services, Fire Department, and Gated Alley Program locations shall be considered URGENT, and repairs shall be completed within twenty-four (24) hours of initial notification unless otherwise agreed upon by the City and the Contractor at the time of the call.

### 3.6. *Block and Masonry Fencing Requirements*

The Contractor shall

3.6.1 Ensure that Materials and Parts meet the following requirements:

- A. Fence block shall be 4"x8"x16" or 8"x8"x16" standard cinder block

B. The top fence block shall be packed solid block with mortar as well as security mortared to the surrounding blocks.

C. Pillar blocks made of H-block shall be a minimum of twelve feet (12') apart and filled with cement.

D. Pillar columns made of U block must be placed where gates are to be mounted.

E. Corners: Pillar columns must be installed at each corner.

F. Rebar: Rebar shall be used in accordance with MAG specifications.

### 3.6.2 Gates:

A. Gate Placement: All new and existing gates must be securely and rigidly hung. They must close and latch securely and operate without dragging on the ground.

B. Gate Construction: The gate must be steel frames with redwood slates. The gate frame and anchor/mounting posts shall be made of square metal stock (1"x1" 18 gauge steel). All metal gate parts shall be primed and then painted with exterior enamel semi-gloss black paint. Rust/corrosion-resistant primer and paint must be used.

C. The gate outside surface must have 1" x4" redwood screwed, with #10 or #12 galvanized screws, to the 1"x2" 18-gauge steel frame. The spacing of the redwood must not exceed 1/4"

D. Latches: All latching systems must be located at the top of the gate.

E. Footings: Footing must be a minimum of 12"x12" x 12" cement footing with rebar at the calumet and the corners.

F. Pillars Caps: All columns (pillars) must have a two-inch-thick sealed cap.

### 3.7. *Demolishing and Access Control*

The Contractor shall:

3.7.1 Demolish and remove its debris in a legal fashion.

3.7.2 The work site must be cleared of debris and secured at the end of each working day.

3.7.3 Limit access to the construction area and backyard area of a property with appropriate devices at the Contractor's expense. Control devices may be orange construction fencing, temporary chain-link fence, etc., as deemed necessary by the Contractor.

3.7.3 Ensure that gates are positioned in approximately the same place as the replaced gate.

3.7.4 Verify that all work is completed in accordance with MAG specifications.

### 3.8. *Ornamental Steel Fencing Requirements*

The Contractor shall

3.8.1 For material and parts, ensure that the materials and parts meets the following requirements:

- A. Posts: 2 ½" S.Q. X 11 G.A. / Galvanized / 2' X 8" Concrete / spaced 8' O.C.
- B. Rails: 1 ½" S.Q. X 14 G.A. / Galvanized
- C. Pickets: 1" S.Q. X 16 G.A. / spaced 5" O.C. or spaced 3 ½" O.C.
- D. Finish: Plain Steel / Gray Oxide Primer / Black Enamel / Powder Coated
- E. Top-Rail: 1-1/2" S.Q. x 14GA. X 94"
- F. Middle Rail: 1" x 1/8" x 94" strap
- G. Bottom Rail: 1-1/2" S.Q. x 14GA. X 94"

3.8.2 Ensure that:

- A. All materials shall meet the ASTM and MAG standard specifications for ornamental fencing repair and replacement.
- B. All posts must be set in concrete and adhere to industry standards.
- C. The Contractor is prepared with all the tools, supplies, and equipment ready to commence work at contract execution.
- D. The City of Phoenix staff who placed the order is notified by telephone or email within 48 hours if there will be a delay in materials and parts getting delivered.
- E. The Contractor travels to the City of Phoenix locations on an as-needed basis to determine what materials and or parts will be needed to repair or replace an existing ornamental fence.

### 3.9. *Chain Link Fencing (Permanent Fencing) Requirements*

The Contractor shall

3.9.1 Ensure that Materials and Parts meet the following requirements:

- A. Chain-link fence: Material shall conform to the requirements of Maricopa County Association of Governments (MAG) specifications Section 772.
- B. Cement: Portland cement concrete shall conform to the requirements of Section 725.
- C. Posts, Rails, and Braces (Commercial Application):
- D. Line Posts: For fabric 5' or less, 1-7/8" o.d., 2.72 # l.f.



- E. For fabric 6' or more, 2-3/8" o.d., 3.65 # l.f.
- F. End & Corner Posts: For fabric 5' or less, 2-3/8" o.d., 3.65 # l.f.
- G. And Slide Gate Posts: For fabric 6' or more, 2-7/8" o.d., 5.79 # l.f.
- H. Swing Gate Posts (all heights): Leaves up to 6' wide, 2-7/8" o.d., 5.79 # l.f.
- I. Leaves over 7' to 12' wide, 4" o.d., 9.10 # l.f.
- J. Leaves over 12' wide, 6-5/8" o.d., 18.97# l.f.
- K. Top Rail, Braces: As required, 1-5/8" o.d., 2.27 # l.f.
- L. Gate Frames: Leaves up to 6' wide, 1-5/8" o.d., 2.27 # l.f.

3.9.2 Ensure that the chain-link fence shall be measured on the fence line along the bottom strain wire from center to center of end posts, deducting the widths of gates and openings.

3.9.3 All pipes used in construction must meet the requirements of ASTM-A-120.

3.9.4 Ensure that all materials are of good quality and artistry.

- A. All welds shall be smooth and free of slag.
- B. All materials shall be free of rust, scale, and other defects.

### *3.10. The Fabric Requirements*

The Contractor shall

3.10.1 Ensure that Materials and Parts of Commercial Chain-Link fabric is:

- A. A nine-gauge woven, 2" mesh, galvanized steel.
- B. The weight shall be 1.2 ounces.
- C. Top and bottom salvage shall be knuckle finished.
- D. Fabric must be coated by the hot-dipped process after weaving.
- E. Fabric shall meet the requirements of ASTM-A-392.
- F. Chain-Link fabric shall be 11 gauge, 1 1/4" mesh galvanized steel or vinyl coated. Four-pointed Barb Wire, three stands; Line Posts - 2- 3/8 o.d.; End and Corner Posts 8' 3" o.d.; Top Rail Scheduled 40 1.9" o.d.; Bottom Rail 1 1/4" o.d.

3.10.2 Ensure that Materials and Parts of Light Commercial Chain-Link fabric is:

- A. Woven, 2" mesh and 11 gauge, or 2-1/8" mesh and 11 1/2 gauge.
- B. Fence height may vary from three feet to six feet.

- C. Top and bottom salvage shall have knuckled or twisted finished.
- D. Fabric must be coated by the hot-dipped process after weaving.
- E. Fabric shall meet the requirements of ASTM-A-392.

3.10.3 When installing fabric, the fabric must be placed on the outward-facing side of the posts. 3.10.4 The fabric must be installed so that the top edge projects above the top rail of the fence to form a knuckled or barbed projection.

3.10.5 The fabric must be stretched tight, approximately 2 inches above the ground from the terminal posts.

3.10.6 The fabric must be fastened to the line posts by ties spaced at intervals of not more than 14 inches and 24 inches for the top rail.

3.10.7 The fabric must be cut and fastened to each terminal post independently by a tension bar with bands at 14-inch intervals.

3.10.8 If a tension wire is used in place of the top rail and/or at the bottom of the chain link, it must be fastened by means of hog rings made of 12-gauge steel wire or 9-gauge zinc-coated wire spaced approximately 24 inches apart.

A. A single strand of fabric must join fabric rolls to form a continuous fence line.

3.10.9 Ensure that additional requirements are met as follows:

- A. Fittings: Shall be pressed steel or malleable iron. No aluminum fittings shall be used.
- B. Concrete: Shall be Class C with a minimum of 2500 psi or greater and crowned to shed water.
- C. Tension wire, ties, etc.: Tension wire shall be made of a 7-gauge coil spring. Ties should be 11-gauge steel.
- D. Gates: Shall be installed at the locations and swing in the direction of the requestor.

### *3.11. Rental Fencing (Temporary Fencing) Requirements*

The Contractor shall

3.11.1 Ensure that Materials and Parts meet the following requirements:

- A. Approximately 80% of the temporary chain-link rental fence required will be fencing panels made of 11-gauge or heavier wire fabric, seven-foot high composed of six-foot high fencing plus one-foot posts with three strands of barbed wire on the top fence panels.

- B. Approximately 18% of the temporary chain-link fence required will be six- feet in height without barbed wire.
- C. Approximately 2% of the temporary rental fence requirement will be four-foot high traffic-control guard rails or specialty fencing.
- D. All fencing shall be galvanized or vinyl coated.
- E. All posts shall be galvanized or vinyl-coated steel.
- F. All gates shall be equipped with self-closing hinges.
- G. All fencing shall be installed in accordance with the manufacturer's instructions.
- H. All fencing shall be inspected and maintained on a regular basis.

### 3.12. *Gated Alley Program Requirements*

The Contractor shall

- 3.12.1 Provide weekly status updates.
- 3.12.2 Attend any necessary meetings and site visits.
- 3.12.3 Respond to communications within 48 hours.
- 3.12.4 Provide an estimate within ten business days.
- 3.12.5 Coordinate utility clearances necessary for safe installation
- 3.12.6 Install gates according to effective building codes.
- 3.12.7 Gated Alley Program staff will supply the Contractor with all necessary permits.
- 3.12.8 Gated Alley Program staff will supply the Contractor with necessary padlocks and Knox locks.
- 3.12.9 Ensure that Gates (Materials and Parts) meet the following requirements:
  - A. Gates shall be six feet in height but no higher.
  - B. Vertical slats/bars shall be a minimum  $\frac{3}{4}$  inch square tubing with a .083- inch wall thickness no farther than 4 inches apart.
  - C. There shall be a minimum of 45 inches between horizontal bars, toeholds, or handholds to prevent climbing.
  - D. Maximum vertical clearance between the grade and the bottom of the gate shall be two inches over soft (unpaved) surfaces and four inches when the grade is a solid surface (concrete or asphalt).

- E. Gate sections should be standard combined width of 16 feet with standard widths between pivot footings.
- F. The top of the gate shall have vertical members that then curve at terminate at approximately 33 degrees away from the vertical towards the alley entrance while the gate is in the closed position.
- G. The gate shall have a 180-degree swing. If site conditions are such that a 180-degree swing is not possible, the Gated Alley Program Manager must approve modifications. Post and gate hinges shall be of galvanized steel of adequate strength for the gate. The hinge action shall be such that one person may open and close gates easily. Hinges shall be either of such construction or positioned such that the gates may not be lifted off the hinges.
- H. Gates shall be designed to withstand a concentrated live load of 300 pounds applied vertically downwards at any point along horizontal members.
  - a. Gates, posts, pickets, and rails shall be powder-coated semi-gloss black finish.
- I. All materials shall be installed according to effective building codes.
- J. Any modifications to standard Gated Alley specifications must be approved by Gated Alley Program Manager.

#### 3.12.10 Materials Requirements

- A. Gates: 16' X 6' TALL ORNAMENTAL WROUGHT IRON STEEL DOUBLE DRIVE GATES WITH DROP ROD ASSEMBLY. GATES AND PICKETS shall be SPEARED AND CURVED.
- B. Hinges: The gate shall have a 180-degree swing. Post and gate hinges shall be of galvanized steel, heavy pattern, and adequate strength for the gate.
- C. Posts: 3" SQ X 11GA POST.
- D. Rails: 1 ½" SQ X 14GA.
- E. Pickets: ¾" SQ X 16GA SPACED 4" O.C.
- F. Panels: 6' ORNAMENTAL IRON FILLER PANEL WITH ¾" SQ X 16GA CURVED AND SPEARED PICKET(S) SPACED 4" O.C.
- G. Locking Bar: Three-way padlock bar and provisions for padlocks located near the center point of the gate.

- H. Locks: Padlocks and Knox locks will be provided to the contractor by the Gated Alley Program. The two combination locks are to be welded to a chain and the gate to prevent the lock from theft and/or drop to the ground during use.
- I. Gated Alley Program signage dimensions 4" X 10" 1/8" Sintra with holes will be provided to the Contractor by the City of Phoenix staff.
- J. Access Signage dimensions 4" X 10" 1/8" Sintra with holes will be provided to the Contractor by the City of Phoenix staff.

3.12.11 Ensure that gates are reviewed and inspected by the Gated Alley Program Manager and accepted upon completion.

3.12.12 Ensure that Materials and Parts meet the following requirements:

- A. Gates shall be constructed of galvanized steel frame.
- B. Welds shall be painted with zinc base paint such as ZRC.
- C. Each gate leaf shall have one (1) horizontal center brace. Vertical interior bracing shall be installed as required, so spaced that no members are more than 8' apart.
- D. Gate leaves 10,' or more shall have a horizontal brace and one 3/8" diagonal galvanized steel truss rod.
- E. Fabric for the gates shall be the same as specified for the fence and shall be attached securely inside the gate frame on both sides using tension bars and tension galvanized ties at intervals not to exceed 15".
- F. The frame shall be welded at all corners.
- G. The gate shall have a 180-degree swing.
- H. Post and gate hinges shall be of galvanized steel, heavy pattern, adequate strength for the gate, and large bearing surfaces for clamping or bolting in position.
  - a. The hinge action shall be such that one person may open and close gates quickly.
  - b. Hinges shall be either of such construction or positioned such that the gates may not be lifted off the hinges.
- I. All latches shall be of galvanized steel. Single gate latches may be fork-type or plunger bar-type of full gate height.
  - c. Latches for double drive gates shall be a combination fork-type latch and center drop rod or the plunger bar-type of full gate height, arranged to engage the gate stop or a positive locking gravity device.

- J. Locking devices shall be designated in such a manner so that the center drop rod or plunger bar cannot be raised when closed. A 7 1/8" diameter malleable iron gate center stops shall be provided for all double drive gates and shall have a device arranged to be set up concrete or with anchors for the enter drop rod or plunger bar.
- K. Drop rod holders set below grade will not be accepted.
- L. Where required, the Contractor shall provide 2 3/8" o.d. x 4' high gate lock posts for locking gates in the open position.
- M. All gates shall have provisions for locking by use of padlocks.
- N. Gate assemblies shall not require the use of chains to secure the gate.
- O. Vehicle drive gates exceeding 18' shall have one semi-pneumatic rubber wheel per gate having a diameter of 8" and a minimum tread width of 1 3/4"
- P. The wheel shall have a zerk fitting for greasing.
- Q. Wheel axles shall have a minimum diameter of 4/8" and be run in 1"x 2" steel tubing, and the entire steel assembly shall be firmly braced to prevent twisting.
- R. Barbed wire shall only be installed on the fence when specifically required by the plans or special provisions. It shall be installed on extension arms specified under MAG Section 772 when needed.

### *3.13. Installation for Commercial & Light Commercial Application Requirements*

The Contractor shall

- 3.13.1 Ensure that Post Setting Materials and Parts meet the following requirements:
  - A. All posts must be set in concrete.
  - B. The diameter of the post will depend on its location.
  - C. The depth of the post will depend on its diameter.
  - D. All posts must be set plumb, in line, and to the correct height.
  - E. Corner posts will be required when the line of fence direction changes or the line of grade changes by 30 degrees or more.
  - F. All posts must have a cap or eye top.
  - G. Posts set in existing concrete slabs must be placed in a core-drilled hole to a depth of 24 inches.

- H. Gate posts in existing concrete slabs must be set in a 12-inch square saw cut to a depth of 42 inches.

### 3.13.2 Top Rail and Brace Installation

- A. Top rails must be in lengths of not less than 18 feet and coupled with a 6-inch long sleeve.
- B. Fences with fabric 6 feet or higher must be braced as follows:
- C. At every end, corner, or gate post, a brace must be positioned midway between the top rail and ground level extending from the terminal post to the adjacent line post.
- D. There must be a 3/8-inch galvanized adjustable truss rod assembly running diagonally from the end of the brace to the bottom of the terminal post. Corner posts require double mount and truss assembly.
- E. Unless otherwise specified, all fencing must be installed with a top rail and a bottom tension wire, and the post tops must be secured to the post by bolts or rivets. A top and bottom tension wire must be used when the top rail is omitted.
- F. The fabric must be fastened to the end, corner, slope, and gate posts with 3/16-inch x 3/8-inch high carbon steel tension bars and not less than 12-gauge x 1-inch steel tension bar bands spaced at 16-inch intervals.
- G. The fabric must be fastened to the line posts, top rail, and tension wire with 11-gauge or heavier tie wires or metal bands. Tie wires or metal bands must be placed on line posts at intervals of approximately 16 inches and on the top rail and tension wire at intervals of roughly 18 inches.

### 3.14. Usage Reporting

The Contractor shall:

3.14.1 Provide a Spend Management Program that provides usage and spending information to individual customers to analyze spending patterns.

- A. After the analysis, the Contractor shall provide suggestions and identify changes that would reduce customer expenditures, such as identifying best-value products, house brand equivalents, etc.

3.14.2 The eligible agency using this program shall be able to implement these suggestions by modifying or customizing their ordering process and monitoring the results.

3.14.3 Provide the City of Phoenix, Finance Department, and Central Procurement Division (CPD) with a usage report delineating the acquisition activity governed by the contract.

- A. The City shall approve the final format of the report and

B. The Contractor shall disclose each contract item's quantity and dollar value broken down by individual Department's purchasing unit.

3.14.4 The Contractor shall create usage reports every quarter, which shall be due by the end of the month following the end of the quarter.

A. Usage report quarters are:

- January through March (Q1)
- April through June (Q2)
- July through September (Q3)
- October through December (Q4)

### 3.15. Pricing

The Contractor shall

3.15.1 Measure the fence line along the bottom strain wire from center to center of end posts, deducting the widths of gates and openings.

3.15.2 Total compensation for clearing the line of the fence and disposing of the resulting material, excavating high points in the existing ground between posts, excavating and furnishing and placing concrete footings, connecting new fences to structures and existing fences, and any other related work shall be considered as included in the price bid per linear foot of the fence, and no additional allowance will be made.

Approved fence repairs will be paid in accordance with the unit price for on-site labor rates of one crew with a truck, additional laborer(s), plus the cost of materials allowed in the pricing schedule. A crew is defined as two laborers, one of which is also the driver.

3.15.3 Gates will be paid for at the unit price bid for each size of gate required by the plans or special provisions.

A. The price shall include total compensation for furnishing the gates, together with all necessary gate posts, fittings, and hardware, and all the work involved in installing the gates entirely in place, as specified.

B. If double gates are required, each double gate will be paid for at the unit price bid, and such unit price shall include furnishing and installing both leaves.

C. Approved fence repairs will be paid in accordance with the unit price for on-site labor rates of one crew with a truck, additional laborer(s), plus the cost of materials allowed in the pricing schedule.

a. A crew is defined as two laborers, one of which is also the driver.

D. This contract will not permit travel hours, mileage, Contractor's equipment, licensing, permits, overhead, environmental disposal, or any other incidental fees.

E. No trip charge will be allowed. Any/all Travel time shall not be reimbursable. All mileage and travel costs, including per diem, shall be included in the hourly labor rate.



#### 4. EVALUATION PROCESS

##### Evaluation Criteria

No.	Evaluation Criteria	Scoring Method	Weight (Points)
1.	<p><b>Capacity</b></p> <ul style="list-style-type: none"> <li>• Please provide a statement of Qualifications (SOQ). Please include a cover letter, a company profile, and highlight your team's qualifications, including key personnel performing such work.</li> <li>• Describe your company's approach to providing a designated person to respond to all City of Phoenix inquiries and coordinate services with multiple Departments within the City as described in 3.2.3</li> <li>• Provide a narrative describing your process in hiring and retaining experienced and certified staff to ensure no lapse or delay in service. SOW 3.2.2</li> </ul>	Points Based	<p>400  <i>(40% of Total)</i></p>

2.	<b>Method of Approach</b>  Describe your company's process for meeting required response times for routine and emergency services described in SOW 3.5  Describe how the Offeror will ensure that the fabrication and installation of furnished and installed materials are first-class and show carefully finished workmanship in all aspects of the acceptable methods within the industry. SOW 3.2.14  Describe how the Offeror will ensure that the City of Phoenix staff is notified if there will be a delay in receiving materials and/or parts. SOW 3.2.8 and 3.8.2 D&E  Describe how the Offeror will ensure that any possible safety hazards to workers or the public shall be corrected immediately and left in a safe condition at the end of each workday. SOW 3.2.13	Points Based	300 <i>(30% of Total)</i>
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3.	<p><b>Experience and Expertise</b></p> <p>Describe your company's experience with the following services: Removing and hauling away existing fencing, installing new fencing, repairing existing fencing, maintaining existing fencing, obtaining any necessary permits, and providing all necessary materials and equipment, as required by the contract.</p> <p>Provide a narrative on how the Offeror will make every effort to schedule work during regular working hours from 5:00 A.M. until 5:00 P.M. 3.2.C</p> <p>Describe how well the current or proposed staffing levels meet the needs of this contract.</p>	Points Based	200 <i>(20% of Total)</i>
4.	<p><b>Price</b></p> <p>Offeror shall provide their pricing proposal in the Attachment - Pricing Proposal.</p>	Points Based	100 <i>(10% of Total)</i>

## 5. STANDARD TERMS AND CONDITIONS

### 5.1. Definition of Key Words Used in the Solicitation

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

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

**May:** Indicates something that is not mandatory but permissible.

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

"A.R.S." Arizona Revised Statute

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

"City" The City of Phoenix

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

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

"Days" Means calendar days unless otherwise specified.

"Chief Procurement Officer" 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).

"Offer" Means a response from a Supplier, Contractor, or Service Provider to a solicitation request that, if awarded, binds the Supplier, Contractor, or Service Provider to perform in accordance with the contract. Same as bid, proposal, quotation or tender.

"Offeror" Any Vendor, Seller or Supplier submitting a competitive offer in response to a solicitation from the City. Same as Bidder or Proposer.

"Solicitation" Means an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Quotations (RFQ), Request for Qualifications (RFQu) and request for sealed bids, or any

other type of formal procurement which the City makes public through advertising, mailings, or some other method of communication. It is the process by which the City seeks information, proposals, bids or quotes from suppliers.

“Suppliers” Firms, entities or individuals furnishing goods or services to the City.

“Vendor or Seller” A seller of goods or services.

## 5.2. Contract Interpretation

- A. **Applicable Law:** This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.
- B. **Contract Order of Precedence:** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:
1. Federal terms and conditions, if any
  2. Special terms and conditions
  3. Standard terms and conditions
  4. Amendments
  5. Statement or scope of work
  6. Specifications
  7. Attachments
  8. Exhibits
  9. Instructions to Contractors
  10. Other documents referenced or included in the Solicitation
- C. **Organization – Employment Disclaimer:** The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor’s obligations under the agreement are considered to be City’s employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen’s compensation, occupational disease compensation, unemployment compensation, other employee

benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.

- D. **Severability:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.
- E. **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.
- F. **Parol Evidence:** This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

### 5.3. Contract Administration and Operation

- A. **Records:** All books, accounts, reports, files and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Phoenix office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements Contractor has in place.
- B. **Discrimination Prohibited:** Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended. Any Contractor, in performing under this contract, will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age or disability nor otherwise commit an unfair employment practice. The supplier and/or lessee will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and adhere to a policy to pay equal compensation to men and women who perform jobs that require

substantially equal skill, effort and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this agreement entered into by supplier/lessee.

- C. **Equal Employment Opportunity and Pay:** In order to do business with the City, Contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Contractor will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.
1. **For a Contractor with 35 employees or fewer:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, Contractor agreements or subleases of this agreement entered into by supplier/lessee.
  2. **For a Contractor with more than 35 employees:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to

- pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-Contractor agreements or subleases of this Agreement entered into by supplier/lessee. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.
3. **Documentation:** Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
  4. **Monitoring:** The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.
- D. **Legal Worker Requirements:** The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:
1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.
  2. A breach of a warranty under paragraph 1 will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
  3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that



the Contractor or subcontractor is complying with the warranty under paragraph 1.

- E. Health, Environmental, and Safety Requirements:** The Contractor's products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City. At the request of City representatives, the Contractor will provide the City:
1. Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract.
  2. A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.
  3. The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement. The City further reserves the right to make unannounced inspections of the Contractor's facilities (during normal business hours).
- F. Compliance with Laws:** Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance. Because the contractor will be acting as an independent contractor, the City assumes no responsibility for the Contractor's acts.
- G. 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.

- H. **Continuation During Disputes:** Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.
- I. **Emergency Purchases:** The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

#### 5.4. Costs and Payments

- A. **General:** Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Offer.
- B. **Payment Deduction Offset Provision:** Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.
- C. **Late Submission of Claim by Contractor:** The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.
- D. **Discounts:** Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.
- E. **No Advance Payments: Advance** payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.
- F. **Fund Appropriation Contingency:** The Contractor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Contractor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.

G. **Maximum Prices:** The City will not be invoiced at prices higher than those stated in any contract resulting from this Offer. Contractor certifies, by signing this Offer that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Offer and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.

H. **F.O.B. Point:** All prices are to be quoted F.O.B. destination, unless specified elsewhere in this solicitation.

#### 5.5. Contract Changes

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

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

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

#### 5.6. Risk of Loss and Liability

A. **Title and Risk of Loss:** The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.

B. **Acceptance:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract

will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.

- C. **Force Majeure:** Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition. If either party is delayed at any time in the progress of the work by force majeure, the delayed party will notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be hand-delivered or mailed certified-return receipt and will make a specific reference to this provision, thereby invoking its provisions. The delayed party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.
- D. **Loss of Materials:** The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the City.
- E. **Contract Performance:** Contractor will furnish all necessary labor, tools, equipment, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor. The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the work to its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

- F. **Damage to City Property:** Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City. Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.

#### 5.7. City's Contractual Rights

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

- A. **Non-Exclusive Remedies:** The rights and remedies of the City under this Contract are non-exclusive.
- B. **Default in One Installment to Constitute Breach:** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.
- C. **On Time Delivery:** Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.
- D. **Default:** In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.
- E. **Covenant Against Contingent Fees:** Seller warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

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

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

#### 5.8. Contract Termination

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

#### B. **Conditions and Causes for Termination:**

1. This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.
2. The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:
  - In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;

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

C. **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.

#### 5.9. State and Local Transaction Privilege Taxes

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

#### 5.10. Tax Indemnification

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

compensation insurance, Social Security and Worker's Compensation, and require the same of all subcontractors.

#### 5.11. Tax Responsibility Qualification

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

#### 5.12. No Israel Boycott

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

#### 5.13. No Forced Labor of Ethnic Uyghurs

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

#### 5.14. Advertising

Except as required by law, Contractor shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party any information or documents concerning this Agreement or any part thereof without the prior written consent



of the City. The name of any City site on which services are performed by the Contractor pursuant to this Agreement shall not be used in any advertising or other promotional context by Contractor without the prior written consent of the City.

#### 5.15. Strict Performance

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

#### 5.16. Authorized Changes

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

## **6. SPECIAL TERMS AND CONDITIONS**

### **6.1. Term of Contract**

The term of this Contract will commence on or about October 31, 2023, and will continue for a period of five (5) years thereafter.

### **6.2. Free on Board (FOB)**

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

### **6.3. Price**

All prices submitted shall be firm and fixed for the initial one-year of the contract. Thereafter, price increases will be considered annually provided the adjustments are submitted in writing with 60 days' notice to the Procurement Officer. Price increase requests shall be accompanied with written documentation to support the increase, such as a letter from the manufacturer, published price index, applicable change in law, etc. Price decrease requests do not require supporting documentation and are allowed at any time during the contract term.

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

### **6.4. Discounts from Published Catalogs / Price Lists**

Contractor must indicate and provide with its submittal, if reasonable, the manufacturer's price list, or catalog that will be in effect at the commencement of the contract and from which the discounts offered will be evaluated. The Procurement Officer must be informed 60 days in advance of any new price list or catalogs and the respective date(s).

Any terms and conditions contained in the parts price list(s) or catalog(s) will not take precedence over the City's terms and conditions specified herein.

- A. All discounts offered will be firm and fixed for the entire contract period. Discounts offered must be expressed as a single percentage (%) figure for each contract item. Offers containing chain or multiple discounts may be considered non-responsive.
- B. Offers will be submitted based on a discount from a manufacturer's most recent Published Price List(s) or Catalog which is common to, and accepted by, the industry in general. The lists must be printed or available online, properly identified, and dated as to issuance and effectiveness.

Revised Price Lists or Catalogs may be used as a means of price adjustment. However, all offers are to be firm for a period of one-year after the solicitation due date and pricing

cannot be revised during that time. Revised pricing will be accepted only in the event of an industry-wide price change, as evidenced by the issuance of revised price lists, by the manufacturer. Price adjustments will not be made for changes in freight costs. New pricing will not become effective until revised list(s) are submitted to the City under Contractor cover letter identifying the applicable contract number. Contractor cover letter and pricing list(s) must be date, signed, and submitted to the Procurement Officer. One of revised price list will be required.

- A. All invoices must include the manufacturer's part number, list price and discount percentage, net price extended and totaled. The City reserves the right to request a hard copy of the manufacturer's documented price listing for any item(s) invoiced.

#### 6.5. Method of Ordering

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

#### 6.6. Method of Invoicing

Invoice must be emailed in .pdf format to [invoices@phoenix.gov](mailto:invoices@phoenix.gov) and must include the following:

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

#### 6.7. Method of Payment

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

#### 6.8. Partial Payments

Partial payments are authorized on individual purchase orders. Payment will be made for actual goods and services received and accepted by the City.

#### 6.9. Supplier Profile Changes

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

#### 6.10. Estimated Quantities or Dollar Amounts (Requirements Contracts Only)

Quantities and dollar amounts listed are the City's best estimate and do not obligate the City to order or accept more than City's actual requirements during the period of this agreement, as determined by actual needs and availability or appropriated funds. It is expressly understood and agreed that the resulting contract is to supply the City with its complete actual requirement for the contract period.

#### 6.11. Suspensions of Work

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

#### 6.12. Hours of Work

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

#### 6.13. Post Award Conference

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

#### 6.14. Performance Interference

Contractor shall notify the City's authorized Department representative immediately of any occurrence and/or condition that interferes with the full performance of the contract and confirm it in writing within 24 hours.

#### 6.15. Cooperative Agreement

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

#### 6.16. Exclusive Possession

All services, information, computer program elements, reports, and other deliverables which may be created under this contract are the sole property of the City of Phoenix and

will not be used by the Contractor or any other person except with prior written permission by the City.

#### 6.17. Licenses and Permits

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

#### 6.18. Delivery

All deliveries shall be made between the hours of 5:00 a.m. and 5:00 p.m., local time, Monday through Friday, excluding City holidays. City holiday calendar:

<https://www.phoenix.gov/calendar/holidays>

#### 6.19. Delivery / Service Ticket

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

- Date
- City purchase order number
- Written description of services which were provided
- Itemized list of materials which were delivered, including quantity
- A unique identification number and Contractor name
- Signature of City employee who accepted for the materials/services

#### 6.20. Miscellaneous Fees

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

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

#### 6.21. Hiring of Each Other's Personnel

Without the prior written consent of the other party, each party shall not actively target for hire personnel of the other party through the term of this Agreement and for six (6) months after the expiration or termination of the last Statement of Work executed by the parties. This prohibition does not apply to or affect in any way the City's standard recruitment processes. The City will not pay a fee or owe any compensation whatsoever to the Contractor if Contractor's employee files an employment application, competes

successfully and is hired into a City position. Individuals who are employed by Contractor agency and who are on assignment at the City may file an application for regular City employment and be considered on the same merits and qualifications as would all other applicants. For this reason, compensation to Contractor would not be appropriate and not incurred if such worker succeeds in the selection process and is appointed to a regular City position.

#### 6.22. Warranty

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

Warranty work requirements shall be performed by a technician on-site with a guaranteed response time of n/a, seven days a week, 24 hours per day. City acceptance will be determined by the date of actual installation and start-up. Since some of the items will be inventoried for emergency purposes, the City will notify the Contractor of actual start-up date which will be within one year of item receipt.

#### 6.23. Evaluation Literature

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

#### 6.24. Industry Standards

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

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

The City reserves the right to waive minor variations if, in the opinion of the City's authorized Department representative, the basic unit meets the general intent of these specifications.

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

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

#### 6.25. Inspection and Acceptance

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

#### 6.26. Inventory Levels

Contractor's inventory levels of the items may be a factor in the City's award decision. Contractor will be required to maintain sufficient local inventory to provide daily support of the City's requirement. Failure to supply sufficient support may result in cancellation of the contract.

#### 6.27. New Equipment

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

#### 6.28. Repair and Replacement Parts Guarantee

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

#### 6.29. Replacement Parts Availability

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

#### 6.30. Samples

Upon request, Offerors are required to furnish a sample of the goods to be supplied. Any sample submitted shall create an express warranty that the whole of the goods shall

conform to the sample submitted. All samples become the property of the City unless designated otherwise by the Offeror.

#### 6.31. Substitution of Specified Items

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

#### 6.32. Communication in English

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

#### 6.33. Contractor Assignments

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

#### 6.34. Final Inspection and Approval

The Contractor will request the City's authorized Department representative to conduct a site inspection after the project is complete. City's authorized Department representative will prepare a "punch-list" during the inspection and will forward a copy to the Contractor.

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

#### 6.35. Pre-Construction Conference

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

#### 6.36. Specifications

The specifications and/or drawings associated with this project are intended to generally describe a complete installation. Any additional materials or labor required for the



complete project as intended shall be provided by the Contractor, even if it has not been detailed in this document.

#### 6.37. Storage Space

The Contractor may store supplies, materials and equipment in a storage area on the City facility premises designated by the City's authorized Department representative during work. The Contractor agrees to keep its portion of this storage area in accordance with all applicable fire regulations. The use of City storage facilities will be on a space available basis and subject to the approval of the City's authorized Department representative.

No materials or equipment will be stored or temporarily set in restrooms, under stairwells or other spaces accessible to the public. Hazardous chemicals such as solvent based strippers and cleaners will not be stored on City property.

If storage is in an electrical closet, a minimum of 36 inches shall be provided in front of all electrical panels. The width shall be a minimum of 30 inches or the width of the panel. The width of working space in front of the electrical equipment shall be the width of the equipment or 30 inches, whichever is greater. In all cases, the work space shall permit at least a 90-degree opening of equipment.

#### 6.38. Transition of Contract

Contractor will, without limitation, provide important information to a successor Contractor and the City to ensure continuity of service at the required level of proficiency and agrees to provide to the City all files, supplies, data, records, and any other properties or materials of the City, which the City owns or has rights to pursuant to this contract and which are in the possession of Contractor. The provisions of this section will survive the expiration or termination of this contract.

#### 6.39. Types of Work Supervision

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

#### 6.40. Background Screening

Contractor agrees that all Contractor and subcontractors' workers (collectively "Contract Worker(s)") pursuant to this Agreement will be subject to background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense, unless otherwise provided for in the scope of work. Contractor's background screening will comply with all applicable laws, rules and regulations. Contractor further agrees that the background screening is necessary to preserve and protect the public health, safety and welfare. The City requires a completed Contract Worker Badge/Key/Intrusion Detection Responsibilities Agreement for each Contract Worker who requires a badge or key.

#### 6.41. Background Screening Risk Level

The City has established two levels of risk: Standard and Maximum risk. If the scope of work changes, the City may amend the level of risk, which could require the Contractor to incur additional contract costs to obtain background screens or badges.

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

#### 6.43. Materiality of Background Screening Requirements; Indemnity

The background screening requirements are material to City's entry into this agreement and any breach of these provisions will be deemed a material breach of this contract. In addition to 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 Agreement. 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 this Agreement or 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 this Agreement.

#### 6.44. Continuing Duty; Audit

Contractor's obligations and requirements will continue throughout the entire term of this Agreement. Contractor will maintain all records and documents related to all background screenings and the City reserves the right to audit Contractor's records.

#### 6.45. Employee Identification and Access

Contract Workers are forbidden access to designated restricted areas. Access to each building will be as directed by the authorized Phoenix authorized representative. Contract Workers are not authorized to access other than during scheduled hours. Access to the building will be directed by the City's authorized representative.

Only authorized Contract Workers are allowed on the premises of the City facilities/buildings. Contract Workers are not to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person is an authorized Contract Worker.

Unless otherwise provided for in the scope of work:

- Contract Workers must always have city issued badges and some form of verifiable company identification (badge, uniform, employee id).

- Contractor will supply a list of the names and titles of all employees requiring access to the buildings. It is the Contractor's responsibility to provide updates and changes of personnel as necessary.

#### 6.46. Key Access Procedures

If the Contractor Worker's services require keyed access to enter a City facility(ies), a separate key issue/return form must be completed and submitted by the Contractor for each key issued. Contractor must submit the completed key issue/return form to the appropriate badging office.

#### 6.47. Stolen or Lost Badges or Keys

Contractor must immediately report lost or stolen badges or keys to the City's appropriate badging office. If the badge/key was stolen, Contract Worker's must report the theft to their local police department. Prior to issuance of a new badge or key, a new badge application or key issue form must be completed, submittal of a police department report for stolen badges, and applicable payment of the fee(s) listed herein.

#### 6.48. Return of Badge or Key

All badges and keys are the property of the City and must be returned to the City at the badging office within one business day (excluding weekends and City holidays) of when the Contract Worker's access to a City facility is no longer required to furnish the services under this agreement. Contractor will collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contractor Worker's services are no longer required at a City facility(s); or upon termination, cancellation or expiration of this agreement.

#### 6.49. Badge and Key Fees

The following constitute the badge and key fees under this agreement, which shall be paid for at the Contractor's sole cost and expense, unless otherwise provided for in the scope of work. The City reserves the right to amend these fees upon a 30-day prior written notice to Contractor.

Initial Badge Fee: \$55.00 per application

Replacement Badge Fee: \$55.00 per badge

Lost/Stolen Badge Fee: \$55.00 per badge

Replacement Key Fee: \$55.00 per key

Replacement Locks: \$55.00 per lock

#### 6.50. Background Screening – Standard Risk

- A. Determined Risk Level:** The current risk level and background screening required is STANDARD RISK LEVEL

- B. Standard Risk Level:** A standard risk background screening will be performed when the Contract Worker's work assignment will:
1. require a badge or key for access to City facilities; or
  2. allow any access to sensitive, confidential records, personal identifying information or restricted City information; or
  3. allow unescorted access to City facilities during normal and non-business hours.
- C. Requirements:** The background screening for this standard 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.
- D. Contractor Certification; City Approval of Background Screening:** Unless otherwise provided for in the Scope, Contractor will be responsible for:
1. determining whether Contract Worker(s) are disqualified from performing work for the City for standard risk level background checks; and,
  2. for reviewing the results of the background check every five years; and,
  3. to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
  4. Submitting the list of qualified Contract Workers to the contracting department.
  5. For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
  6. By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current. Also, by executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all background screening requirements for the standard risk background screening, and verified legal worker status, as required.

6.51. Background Screening – Maximum Risk

- A. Determined Risk Level:** The current risk level and background screening required is MAXIMUM RISK.

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

1. work directly with vulnerable adults or children, (under age 18); or
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
3. unescorted access to:
  - a. City data centers, money rooms, high-value equipment rooms; or
  - b. unescorted access to private residences; or
  - c. access to critical infrastructure sites/facilities; or
  - d. direct or remote access to Criminal Justice Information Systems (CJIS) infrastructure.

**C. 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.

#### 6.52. Contractor Certification; City Approval of Maximum Risk Background Screening

Unless otherwise provided for in the Scope of Work, Contractor will be responsible for:

- A. determining whether Contract Worker(s) are disqualified from performing work for the City for maximum risk level background checks; and,
- B. submitting pass/fail results to the City for approval; and,
- C. reviewing the results of the background check every three to five years, dependent on scope; and,
- D. to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
- E. Submitting the list of qualified Contract Workers to the contracting department; and,
- F. If, upon review of the background information, the City will advise the Contractor if it believes a Contract Worker should be disqualified. The Contractor will evaluate the Contract Worker and if the Contractor believes that there are extenuating

circumstances that suggest that the person should not be disqualified, the Contractor will discuss those circumstances with the contracting department. The contracting department decision on disqualification of a Contract Worker is final.

- G. For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
- H. By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current.
- I. The City final documented decision will be an “approve” or “deny” for identified Contract Workers.
- J. The City will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the Contractor, or any contracted agency that assists with review, after the City’s completed review.
- K. By executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all such background screening requirements for the maximum risk background screening, and verified legal worker status, as required.
- L. Contract Workers will not apply for the appropriate City of Phoenix identification and access badge or keys until Contractor has received the City’s written acceptance of Contract Worker’s maximum risk background screening. The City may, in its sole discretion, accept or reject any or all the Contract Workers proposed by Contractor for performing work under this Agreement. A Contract Worker rejected for work at a maximum risk level under this agreement will not be proposed to perform work under other city contracts or engagements without city’s prior written approval.
- M. For any childcare or health worker positions, or Criminal Justice Information Systems access in the scope of work, Contractor is required to send the City updated background checks every three years.
- N. The Contractor will submit prior to scheduling any services, a current list of names, addresses, and social security numbers of all employees requiring access to the facility. The Contractor is responsible for obtaining security clearance from the Police Department for all employees. The City reserves the right to change the restricted areas as needed. The Contractor grants the rights to the Police Department to conduct background checks of all employees entering the building. All employees will submit to the background check before access to the facility is given.

- O. The background checks will be conducted prior to any employee entering to work and will be based upon information provided to the Police Department including, but not limited to: name, address, date and place of birth, social security number, INS number if applicable, and a copy of a valid photo identification. The information will be provided to the City's authorized Department representative at least five business days (excluding weekends and holidays) in advance of the need for access. The form will be provided by the City's authorized Department representative. The City's authorized Department representative will conduct the security check.
- P. The City may, at any time, in its sole discretion, refuse to allow an employee access to an area for any of the following reasons, but not limited to:
  - 1. Conviction of a felony.
  - 2. Conviction of a misdemeanor (not including traffic or parking violation).
  - 3. Any outstanding warrants (including traffic and parking violations).
  - 4. A person currently on parole or probation.
  - 5. A person currently involved in an investigation.

#### 6.53. Contract Worker Background Screening

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

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

#### 6.54. Legal Worker Background Check

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

#### 6.55. City Rights Regarding Security Inquiries

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

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

#### 6.56. Contractor Certification

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

#### 6.57. Contractor's Contracts and Subcontracts

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

#### 6.58. Materiality of Background Screening Requirements and Indemnity

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



#### 6.59. Continuing Duty and Audit

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

#### 6.60. Contract Worker Access Controls and Airport Security Badge Requirements

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

#### 6.61. Security Identification Display Area (SIDA) Badge Process

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

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

and 05-09 of the Aviation Department Rules and Regulations for a complete definition of the foregoing terms.

#### 6.62. Risk-Based Background Check Process

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

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

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

- A. Before any work is performed under this Contract, Contractor shall provide the City with a list of its Contract Workers.
- B. If any dispute arises related to a background check process or criminal history check information, then Contractor and the affected Contract Worker will resolve the dispute. The City will not get involved in resolving any such dispute.
- C. In making the determination whether information in a background check renders the Contract Worker disqualified, Contractor should be guided by the following principles and guidelines:
  1. Disqualification should not be based solely on a criminal conviction, unless the conviction related to performance under this Contract.
  2. Arrests that did not result in a conviction being entered or charges being filed may not be considered.
  3. Not all criminal convictions or other negative information obtained in a background check will disqualify a Contract Worker from working under this Contract.
  4. Contractor must evaluate the relevance of the information to the work the Contract Worker will perform under this Contract.
  5. Contractor must consider the following factors in determining whether negative background information disqualifies a Contract Worker:

- Duties of the position
  - Time, nature, and number of negative events and convictions
  - Attempts and extent of rehabilitation efforts
  - The relation between the duties of the position and the nature of the crime committed
- D. The analysis of whether any information in a background check is a potentially disqualifying factor involves looking at the requirements of the Contract, the Scope of Work, where the work will be performed, the need for access to restricted areas, and the type of persons or places the Contract Worker will encounter. Contractor should review the background check results and determine whether the nature of the conviction or crime reported would create a risk to the City based on the Contract's requirements.
1. For a Contract Worker requiring a standard risk background check, potentially disqualifying convictions include a record of theft, identity theft, computer fraud or abuse, burglary, arson, crimes against property, violent crimes, or other crimes involving dishonesty, or embezzlement.
  2. For a Contract Worker requiring a maximum risk background check, potentially disqualifying convictions include a record of child molestation, assault, sexual assault, crimes against a person, public indecency, drug offenses, forgery, theft, burglary, arson, crimes against property, violent crimes, crimes for financial gain, identity theft, computer fraud or abuse, and embezzlement.
- E. If a background check shows that the disposition of an arrest is unknown, then Contractor must determine the disposition of the arrest.
- F. Contractor will obtain a Contract Worker disclosure from each Contract Worker who will perform work under this Contract. Contractor will provide the Contract Worker disclosures to the City upon request. "Contract Worker disclosure" means an affidavit by a Contract Worker disclosing his or her prior criminal record. The Contract Worker disclosure must list all criminal convictions, including the nature of the crime, the date of the conviction, and the location where the crime and conviction occurred. The Contract Worker disclosure also grants to the City the right to review the background check results. (City of Phoenix A.R. 4.45)
- G. In a standard risk background check, Contractor must review the results of the background check and decide if a Contract Worker should be disqualified for work under this Contract. Contractor must engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker. After

Contractor has made its decisions, a list of names of qualified Contract Workers will be provided to the City.

- H. In a maximum risk background check, Contractor must conduct the same review as in a standard risk background check. However, when submitting its list of qualified Contract Workers, Contractor must also submit the results of the background checks to the City for review. After its review, the City will either approve or deny each Contract Worker.
1. If the City approves a Contract Worker, then the City will notify Contractor of that fact and the Aviation Department will issue the appropriate airport security badge to the Contract Worker.
  2. If the City denies a Contract Worker, then the City will notify Contractor of that fact and Contractor will reevaluate the Contract Worker to determine whether the person should be disqualified. If Contractor believes there are extenuating circumstances that suggest that the Contract Worker should not be disqualified, then Contractor will discuss those circumstances with the City. The City will review the matter and its decision on disqualification is final.
  3. The City may set up a secure folder or drop box for confidential materials related to maximum risk background checks. The City will not keep records related to maximum risk background checks after they are reviewed.
- I. If Contractor is a sole proprietor, Contractor must submit to the City a copy of his or her own background check and a background check for all business partners, member, and employees that will work under this Contract and for whom the background check requirements of City of Phoenix A.R. 4.45 apply.
- J. Contractor shall determine whether a Contract Worker is disqualified from performing work under this Contract.

#### 6.63. Standard Risk Background Check

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

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

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

#### 6.64. Scope of the Standard Risk Background Check

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

#### 6.65. Maximum Risk Background Check

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

- Working directly with a vulnerable adult or child under age 18,
- Any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation,
- Unescorted access to City data centers, money rooms, high-value equipment rooms,
- Access to a private residence,
- Access to Homeland Defense Bureau-identified critical infrastructure sites or facilities, or
- Responsibility or access to City-identified critical infrastructure sites, City networks or data, cyber/IT/network assets, digital or cyber assets, workstations, or servers, by either remote or direct access.

#### 6.66. Scope of the Maximum Risk Background Check

The maximum risk background check conducted by Contractor must include the search criteria conducted under a standard risk background check in addition to a search for all felony and misdemeanor convictions (not including traffic or parking violations), a sex offender check, and a search for all outstanding warrants. Based on the Scope of Work, Contractor shall also conduct a credit check (for cash handling, accounting, and compliance positions only), driving records check (for driving positions only), and fingerprint verification when the Contract Worker is working directly with a child under age 18 or a vulnerable adult or the work under the Contract will take the Contract Worker to a criminal justice information system (CJIS) location.

Maximum risk background checks are valid for the term of this Contract or three (3) years, whichever is shorter.

#### 6.67. Maximum Risk Background Check for Child Care Staff Members

If the Scope of Work of this Contract involves work as a child care staff member, then Contractor will conduct a maximum risk background check.

#### 6.68. Airport Security Badge Handling Procedures

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

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

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

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

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

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

#### 6.69. Contractor's Breach

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

- A Contract Worker gains access to a City facility or a restricted or secured area of the Airport without the proper airport security badge or key
- A Contract Worker uses another person's airport security badge or key to gain or attempt to gain access to a City facility or a restricted or secured area of the Airport
- A Contract Worker begins work under this Contract without passing the appropriate Background Screening and being issued the proper airport security badge or key

- A Contract Worker or Contractor submits false, incomplete, or misleading Background Screening information or submits any false, incomplete, or misleading information in an attempt to improperly obtain an airport security badge or key
- Contractor fails to collect and timely return a Contract Worker's airport security badge or key to the City within three days of the (1) date the Contract Worker's employment terminates, (2) the date the Contract Worker is assignment to another City facility, or (3) when this Contract terminates, is cancelled, or expires, whichever occurs first

#### 6.70. Liquidated Damages and Remedies for Breach of Aviation Security Procedures

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

#### 6.71. Contractor Certification

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

#### 6.72. Supplemental Terms and Conditions to All Airport Agreements

#### 6.73. Confidentiality

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

Confidential Information includes, but is not limited to: user contents, electronic data, meta data, employment data, network configurations, information security practices, business operations, strategic plans, financial accounts, personally identifiable information, protected health information, protected criminal justice information, and any other information that by the nature and circumstance of the disclosure should be deemed confidential. Confidential Information does not include this document or information that: (a) is now or subsequently becomes generally available to the public through no wrongful act or omission of Recipient; (b) Recipient can demonstrate by its written records to lawfully have had in its possession prior to receiving such information from the City; (c)

Recipient can demonstrate by its written records to have been independently developed by Recipient without direct or indirect use of any Confidential Information; (d) Recipient lawfully obtains from a third party who has the right to transfer or disclose it; or (e) the City has approved in writing for disclosure.

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

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

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

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

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

#### 6.74. Data Protection

The parties agree this Section shall apply to the City's Confidential Information and all categories of legally protected personally identifiable information (collectively "PII") that Contractor processes pursuant to the Agreement. "Personally identifiable information" is



defined as in the Federal Privacy Council's Glossary available at:  
<https://www.fpc.gov/resources/glossary/>.

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

- A. When Contractor processes PII pursuant to the Agreement, Contractor shall, at no additional cost to the City:
1. process PII only within the United States and only in accordance with the Agreement and not for Contractor's own purposes, including product research, product development, marketing, or commercial data mining, even if the City's data has been aggregated, anonymized, or pseudonymized;
  2. implement and maintain appropriate technical and organizational measures to protect PII against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure, including at a minimum, and as applicable, those measures specified by the National Institute of Standards and Technology (NIST) SP800-53; A.R.S. § 18-552 (Notification of Security System Breaches); A.R.S. § 44-7601 (Discard and Disposal of Personal Identifying Information Records); Health Information Technology for Economic and Clinical Health (HITECH) Act; Payment Card Industry Data Security Standards; and good industry practice; (When considering what measures are appropriate and in line with good industry practice, Contractor shall keep abreast of current regulatory trends in data security and the state of technological development to ensure a level of security appropriate to the nature of the data to be protected and the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, damage, theft, alteration or disclosure. At minimum, Contractor will timely remediate any vulnerabilities found within its network that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS); however, Contractor must remediate vulnerabilities that are rated critical within 14 days and vulnerabilities that are rated high within 30 days. If requested by the City, Contractor shall promptly provide a written description of the technical and organizational methods it employs for processing PII.)
  3. not subcontract any processing of PII to any third party (including affiliates, group companies or sub-contractors) without the prior written consent of the

- City; and Contractor shall remain fully liable to the City for any processing of PII conducted by a sub-processor appointed by Contractor;
4. as applicable, implement and maintain appropriate policies and procedures to manage payment card service providers with whom Contractor shares sensitive financial information or cardholder data; and provide the City with a Qualified Security Assessor Attestation of Compliance for Payment Card Industry Data Security Standards on an annual basis, but no later than within 30 days of attestation report completion;
  5. take reasonable steps to ensure the competence and reliability of Contractor's personnel or sub-processor who have access to the PII, including verifications and background checks appropriate to the security level required for such data access;
  6. maintain written records of all information reasonably necessary to demonstrate Contractor's compliance with this Agreement and applicable laws;
  7. allow the City or its authorized agents to conduct audit inspection during the term of the Agreement, but no more than once per year, which may include providing access to the premises, documents, resources, personnel Contractor or Contractor's sub-contractors use in connection with the Services; provided however, the City may at its sole discretion accept a qualified and industry recognized independent third-party assessment report or certification (such as SSAE 18 SOC 2 or ISO/IEC 27001) provided by Contractor at no cost to the City in lieu of the audit inspection rights of this Section;
- B. If the Contractor becomes aware of any actual or potential data breach (each an "Incident") arising from Contractor's processing obligations pursuant to the Agreement, Contractor shall notify the City at SOC@phoenix.gov without undue delay within 48 hours; and:
1. provide the City with a detailed description of the Incident, the type of data that was the subject of the Incident, and the identity of each affected person as soon as such information can be collected or otherwise becomes available;
  2. take action immediately, at Contractor's own expense, to investigate the Incident and to identify, prevent, and mitigate the effects of the Incident and to carry out any recovery or other action necessary to remedy the Incident;
  3. cooperate with the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable laws or as otherwise required by the City; and

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

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

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

#### 6.75. Security Inquiries

Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor's expense, be subject to background and security checks and screening at the request of the City. Contractor shall perform all such security inquiries and shall make the results available to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Contractor for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City's prior approval.

The City, in its sole discretion, reserves the right, but not the obligation to:

- require an employee/prospective employee of the Contractor to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. 41-1750 (G) (4);
- act on newly acquired information whether or not such information should have been previously discovered;
- unilaterally change its standards and criteria relative to the acceptability of Contractor's employees and/or prospective employees; and

- object, at any time and for any reason, to an employee of Contractor performing work (including supervision and oversight) under this Agreement. Contractor will bear the costs of all inquiries requested by the City.

#### 6.76. Intellectual Property Rights

The Contractor hereby irrevocably transfers, conveys, and assigns to the City all right, title, and interest (including any and all copyrights) in any software and other technology assets created pursuant to or as a result of this Agreement (collectively, the "Work Product"). The City shall have the exclusive right to apply for or register any copyrights and other proprietary protections with respect to the Work Product. The Contractor shall execute such documents, render such assistance, and take such other action as the City may reasonably request, at the City's reasonable expense, to apply for, register, perfect, confirm, and protect the City's foregoing ownership interests and copyright and other proprietary protections. To the extent that the foregoing transfer does not provide the City with full ownership, right, title, and interest in and to the Work Product, the Contractor hereby grants the City a perpetual, irrevocable, fully paid, royalty-free, worldwide license to reproduce, create derivative works from, distribute, publicly display, publicly perform, and use the Work Product, with the right to transfer and/or sublicense each and every such right. The rights granted in this section will survive any termination or expiration of this Agreement.

#### 6.77. Dust Control

Contractor shall not cause or allow any dust generating operation, use of property, or any other operation which cause fugitive dust emissions that exceed the 20% visible emission opacity limit in Rule 300 of Maricopa County's Air Pollution Control Regulations. The Contractor shall suppress emission of dust to comply with this limit.

The Contractor shall NOT use grading, blading, disking, a gannon or like equipment to control weeds without prior written authorization from the City's authorized Department representative. Earthmoving activities shall be conducted in accordance with the standards and work practices defined in Maricopa County Fugitive Dust Rule 310. Contractor shall obtain a Maricopa County Dust Control Permit for each site where there is earthmoving on areas greater than 0.1 acres. Contractor may submit invoices for reimbursement of dust control permit fees when necessary, provided documentation is included to verify the fee.

The use of leaf blowers is strictly prohibited. Acceptable alternatives to leaf blowers include: brooms, rakes, walk behind leaf vacuums, and PM-10 Compliance Sweepers. Debris shall not be swept into the street.

#### 6.78. Equipment / Safety

The Contractor shall be responsible for providing and for the placement of barricades, tarps, plastic, flag tape, and other safety/traffic control equipment required to protect its employees, the public, surrounding areas, equipment and vehicles. The flow of vehicular

traffic shall not be impeded at any time during this project. The safety of the Contractor's employees and the public is of prime concern to the City and the Contractor must take all necessary steps to assure proper safety during the performance of the Contractor.

## 7. FEDERAL CONTRACT CLAUSES - HOUSING HUD SPECIFIC

### 7.1. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Disadvantaged Business Enterprises

Pursuant to national and City policy to award a fair share of contracts to small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises, Contractor shall take affirmative steps to assure that small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises are utilized when possible as sources of supplies, equipment, construction, and services. Such affirmative steps shall include the following:

- A. Include qualified small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises on solicitation lists.
- B. Assure that small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises are solicited whenever they are potential sources.
- C. When economically feasible, divide total requirements into small tasks or quantities so as to permit maximum participation from small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises.
- D. Where the requirement permits, establish delivery schedules which encourage participation by small and minority businesses, women's business enterprises, and Disadvantaged Business Enterprises.
- E. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce and the Community Services Administration as required.
- F. Comply with the applicable requirements of the Small and Disadvantaged Business Enterprise Policy Plan for the City of Phoenix.
- G. Include affirmative steps, one through six in any subcontract.

### 7.2. Debarment and Suspension (Executive Orders 12549 and 12689)

in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension," Contractor agrees that neither it, nor its principals is presently debarred, suspended proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction evidenced by this Contract by any federal department, and agrees to comply with the requirements of 2 CFR 180 and **24 CFR 2424**.

### 7.3. Access to Records

The City, **FEDERAL AGENCY**, the Comptroller General of the United States, the Government Accounting Office or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Contractor which are pertinent to any activity performed under this Contract as required under 2 CFR 200.333 et seq. and **24 CFR 570.502(7)(ii)** for the purpose of making audit, examination, excerpts and transcriptions. The Contractor shall keep and maintain such books, documents, papers and records in accordance with 2 CFR 200.333 et seq. and for a period of at least three (3) years after the expiration or termination of this Agreement **or three (3) years after the submission of the annual performance and evaluation report as prescribed in 24 CFR 91.520**. The Contractor shall permit independent auditors access to its records and financial statements as necessary to comply with federal audit requirements.

### 7.4. Termination for Cause and for Convenience

- A. The City may terminate this contract in whole, or from time to time in part, for the City's convenience or the failure of the Contractor to fulfill the contract obligations (cause/default). The City shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the City all information, reports, papers, and other materials accumulated or generated in performing the contract, whether completed or in process.
- B. If the termination is for the convenience of the City, the City shall be liable only for payment for services rendered before the effective date of the termination.
- C. If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (cause/default), the City may (1) require the Contractor to deliver to it, in the manner and to the extent directed by the City, any work described in the Notice of Termination; (2) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the City; and (3) withhold any payments to the Contractor, for the purpose of set-off or partial payment, as the case may be, of amounts owned by the City by the Contractor. In the event of termination for cause/default, the City shall be liable to the Contractor for reasonable costs incurred by the Contractor before the effective date of the termination. Any dispute shall be decided by the Contracting Officer.

### 7.5. Byrd Anti-Lobbying Certification (31 U.S.C. 1351)

In all contracts in excess of \$100,000 the Contractor hereby certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
- B. Each Contractor tier must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization or influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C, 1352.
- C. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. Such disclosures are forwarded from tier to tier up to the non-Federal award.

#### 7.6. Clean Air Act and Federal Water Pollution Control Act

Applicable to all contracts in excess of \$150,000. The Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387). Violations must be reported to the City, **FEDERAL AGENCY**, and the San Francisco Regional Office of the Environmental Protection Agency (EPA).

#### 7.7. Procurement of Recovered Materials

- A. In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable time period; (2) fail to meet reasonable performance standards, which shall be determined the basis of the



guidelines of the National Institute of Standards and Technology, if applicable to the item, or (3) are only available at an unreasonable price.

- B. Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

7.8. Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Apr 2014)

- A. This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.
- B. The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
- C. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

7.9. Audit

The Contractor shall submit a financial audit within ninety (90) days after the close of any Contractor fiscal year in which the aggregate of federal grant funds expended from all sources both inclusive and exclusive of this agreement is Seven Hundred-Fifty Thousand Dollars (\$750,000) or more. The audit shall be in conformance with the audit requirements of 2 CFR Part 200.501. No funds resulting from this Contract shall be expended for the purpose of an audit without the prior written consent of the City. The decision to provide such consent shall be in the sole discretion of the City.

7.10. Conflicts of Interest

All parties hereto agree to abide by the provisions of 2 C.F.R. 200.318, which include (but are not limited to) the following:

- A. The Contractor shall maintain a written code or standards or conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds.

- B. No employee, officer, or agent of the Contractor shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent would be involved. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
- C. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Contractor.

#### 7.11. Drug-Free Workplace Act of 1988

The Contractor must comply with drug-free workplace requirements in Subpart B of 2 CFR § 2429, which adopts the government-wide implementation (2 CFR part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

#### 7.12. Department of Labor Wage Decision

All Proposers should carefully review the Department of Labor Wage Decision and the applicable rates for Maricopa County and Residential. Applicable Wage Decisions are updated by the Department of Labor periodically. The current wage decision is: General Decision Number: AZ20230001 01/06/2023

To see the current wage decision for Maricopa County and Residential, go to:

<https://www.wdol.gov/dba.aspx>

#### 7.13. HUD Form 5369

All Proposers should carefully review HUD Form 5369, incorporated herein by reference. In the context of this procurement the term PHA as used in HUD Form 5369 refers to the City of Phoenix.

<https://www.hud.gov/sites/documents/5369.pdf>

#### 7.14. HUD Form 5369-B

All Proposers should carefully review HUD Form 5369B, incorporated herein by reference. In the context of this procurement the term PHA as used in HUD Form 5369B refers to the City of Phoenix.

<http://portal.hud.gov/hudportal/documents/huddoc?id=5369-b.pdf>

#### 7.15. HUD Form 5370-C, Section 1

All Proposers should review the provisions in HUD Form 5370C, Section 1, incorporated herein by reference and is incorporated in the Contract between the successful Proposer and the City of Phoenix.

<https://www.hud.gov/sites/dfiles/OCHCO/documents/5370-C1.pdf>

7.16. HUD Form 5370-C, Section 2

All Proposers should review the provisions in HUD Form 5370C, Section 2, incorporated herein by reference and is incorporated in the Contract between the successful Proposer and the City of Phoenix.

<https://www.hud.gov/sites/dfiles/OCHCO/documents/5370-C2.pdf>

7.17. HUD Form 5370

All Proposers should carefully review HUD Form 5370, incorporated herein by reference. In the context of this procurement the term PHA as used in HUD Form 5370 refers to the City of Phoenix.

<https://www.hud.gov/sites/dfiles/OCHCO/documents/5370.pdf>

7.18. HUD Form 5370-EZ

All Proposers should carefully review HUD Form 5370-EZ, incorporated herein by reference. In the context of this procurement the term PHA as used in HUD Form 5370-EZ refers to the City of Phoenix.

<https://www.hud.gov/sites/dfiles/OCHCO/documents/5370-EZ.pdf>

7.19. HUD Form 4010

All Proposers should carefully review HUD Form 4010, incorporated herein by reference and is incorporated in the Contract between the successful Proposer and the City of Phoenix.

<http://portal.hud.gov/hudportal/documents/huddoc?id=4010.pdf>

7.20. HUD Table 5.1

All Proposers should carefully review HUD Table 5.1, incorporated herein by reference. In the context of this procurement the term PHA as used in HUD Form 5370 refers to the City of Phoenix.

<https://www.hud.gov/sites/documents/74608C05PIHH.pdf>

7.21. Federal Funding Accountability and Transparency Act (FFATA)

The AGENCY will comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The AGENCY must have an active registration in SAM in accordance with 2 CFR part 25, appendix A, and have a Unique Entity Identifier (UEI). The AGENCY will also comply with the provisions of FFATA which includes requirements on executive compensation, and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

## **8. DEFENSE AND INDEMNIFICATION**

### **8.1. Standard General Defense and Indemnification**

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

### **8.2. Construction Contracts**

To the maximum extent allowed by law, including Title 34 A.R.S., Contractor (“Indemnitor”) agrees to defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents and employees (and any jurisdiction or agency issuing permits for any work included in the project, and its officers, agents and employees) (“Indemnitee”) from any and all claims, actions, liabilities, damages, losses or expenses, (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever (“Losses”) caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees, or subcontractors (Indemnitor’s Agents”) arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amount arising out of or recovered under any state’s workers’ compensation law or arising out of the failure of Indemnitor or Indemnitor’s Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation, or court decree. Indemnitor’s duty to defend Indemnitee accrues immediately at

the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee's own negligent or willful acts or omissions. Indemnitor is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the City's award of this Contract, Indemnitor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to any work performed by Indemnitor or Indemnitor's Agents for the City of Phoenix under this Contract. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

## **9. INSURANCE REQUIREMENTS**

### **9.1. Contractor's Insurance**

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

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

### **9.2. Scope and Limits of Insurance**

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

### **9.3. Commercial General Liability – Occurrence Form**

General Aggregate \$2,000,000

Products – Completed Operations Aggregate \$1,000,000

Personal and Advertising Injury \$1,000,000

Each Occurrence \$1,000,000

- The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations, and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor, related to this Contract.
- Coverage must include XCU coverage.
- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.
- Contractor’s policies must be endorsed to provide an extension of the completed operations coverage for a period of nine (9) years.

#### 9.4. Automobile Liability

Bodily injury and property damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

- The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, related to this contract.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

#### 9.5. Worker's Compensation and Employers' Liability

Workers' Compensation Statutory

Employers' Liability

Each Accident \$100,000

Disease – Each Employee \$100,000

Disease – Policy Limit \$500,000

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

#### 9.6. Builders' Risk Insurance

Policy must be in an amount equal to the initial Contract Amount plus additional coverage equal to Contract Amount for all subsequent change orders.

- The City of Phoenix, the Contractor and subcontractors, must be named insureds on the policy.
- Special Causes of Loss coverage must be written on a replacement cost basis and must include coverage for soft costs, flood and earth movement.
- Policy must be maintained until whichever of the following must first occur: (1) final payment has been made; or, (2) until no person or entity, other than the City of Phoenix, has an insurable interest in the property required to be covered.
- Policy must be endorsed such that the insurance must not be canceled or lapse because of any partial use or occupancy by the City.

- Policy must provide coverage from the time any covered property becomes the responsibility of the Contractor, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.
- Policy must contain a waiver of subrogation against the City of Phoenix.
- Contractor is responsible for the payment of all policy deductibles.

#### 9.7. Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to City of Phoenix Finance Department, Procurement Division, 251 W Washington Street, Phoenix, AZ 85003 OR [procurement@phoenix.gov](mailto:procurement@phoenix.gov).

#### 9.8. Acceptability of Insurers

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

#### 9.9. Verification of Coverage

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

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

All certificates required by this Contract must be sent directly to City of Phoenix Finance Department, Procurement Division, 251 W Washington Street, Phoenix, AZ 85003 OR [procurement@phoenix.gov](mailto:procurement@phoenix.gov). The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to review complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

#### 9.10. Subcontractors

Contractor's certificates shall include all subcontractors as additional insureds under its policies OR Contractor shall be responsible for ensuring and verifying that all



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

#### 9.11. Approval

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

## 10. SUBMITTALS

### 10.1. Copies

Please submit one original, two copies, and one electronic copy (portable drive or CD) of the Submittal Section and all other required documentation. Please do not lock the electronic copy with password protection so that the CITY may digitally incorporate the successful offer into the awarded contract.

**Please submit only the Submittal Section, do not submit a copy of the entire solicitation document.** This Offer will remain in effect for a period of 180 calendar days from the opening date, and is irrevocable unless it is in the City's best interest to release offer(s).

### 10.2. Solicitation Response Check List

Use this check list as a tool to review your submission to ensure that all required documents and forms are included.

The written offer should be:

- Typewritten for ease of evaluation
  - Signed by an authorized representative of the Offeror
  - Submitted with contact information for the individual(s) authorized to negotiate with the City
- A. Offeror's Statement of Qualifications - A detailed proposal describing the firm or individual's qualifications and experience responsive to the requirements of the solicitation and evaluation criteria as listed on pages 33-35
  - B. Pricing Proposal - A completed pricing proposal with all requested prices, quantities, and/or discounts completed.
  - C. Submittal Forms - All submittal forms are completed and signed.
  - D. Addenda - Signed copies of all published addenda.

Offers must be in possession of the Department on or prior to the exact time and date indicated in the Schedule of Events. Late offers will not be considered. Electronic submission is preferred. Due to file size limitations for electronic transmission, offers sent by email may need to be sent in parts with multiple emails. It is the responsibility of the Offeror to ensure that the offer is received timely and that there are no technical reasons for delay. Please refer to the Instructions Section for complete information regarding the submission of offers.

### 10.3. Additional Quantities

The City anticipates considerable activity under the resultant contract(s). However, no guarantee can be made as to actual fence supply and service, that will be purchased under this contract. The City reserves the right to add, change or delete quantities or items as circumstances may require.

Note: Offers taking exception to this option for additional quantities clause shall indicate in their offer.

### 10.4. Catalogs and Price Lists

Contractor must provide with its submittal the date of the current manufacturer's price list, and must identify the catalog that will be in effect at the commencement of the contract and from which the discounts offered will be evaluated. City's Finance Procurement Division must be informed 60 days in advance of any new price list or catalogs and the respective date(s). Any terms and conditions contained in the parts price list(s) or product catalog(s) submitted shall not take precedence over the City's terms and conditions specified herein. All invoices must include the manufacturer's part number, list price and discount percentage, net price extended and totaled. The City reserves the right to request a hard copy of the manufacturer's documented price listing for any item(s) invoiced.