



City of Phoenix

INVITATION FOR BID  
IFB-24-0035  
STATE FAIR TOWING

City of Phoenix  
Finance Central Procurement  
251 W Washington St  
8<sup>th</sup> Floor  
Phoenix, AZ  
85003

RELEASE DATE: March 8, 2024

DEADLINE FOR QUESTIONS: March 26, 2024

RESPONSE DEADLINE: April 5, 2024, 2:00 pm

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INVITATION FOR BID  
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Attachments:

A - Police Department Pricing\_Proposal

M - Acceptance Form 2023 rev 2-2023

N - Submittals - References rev 2-2023

O - Submittals - 24 Hour Emergency Contact rev 2-2023.

Q - Submittals - Conflict of Interest and Transparency rev 2-2023

R - Submittals - Costs and Payments rev 2-2023

S - Submittals - Debarment & Exclusion rev 2-2023

T - Submittals - Offer Page rev 3-2023

U - Submittals - Place of Business rev 2-2023

# 1. Introduction

## 1.1. Summary

This contract is for the supply of towing service to relocate or remove property, typically an illegally parked vehicle, in connection with the Arizona State Fair. All work performed under this contract will be pursuant to a specific request for service by a member of the Phoenix Police Department. This Contract will not be used for any purpose other than Police Department ordered tows and impoundments relating to the Arizona State Fair.

## 1.2. Contact Information

### Vicente Alonzo

Buyer

251 W Washington St

Phoenix, AZ 85003

Email: [vicente.alonzo@phoenix.gov](mailto:vicente.alonzo@phoenix.gov)

Phone: [\(602\) 534-5265](tel:(602)534-5265)

### Department:

Finance Central Procurement

## 1.3. 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 (Vicente Alonzo) at (602) 534-5265/Voice or 711/TTY, or [vicente.alonzo@phoenix.gov](mailto:vicente.alonzo@phoenix.gov), no later than two (2) weeks prior to the meeting.

<b>Solicitation Issue Date</b>	March 8, 2024
<b>Pre-Offer Conference (Non-Mandatory)</b>	March 20, 2024, 10:00am <a href="https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=m9c36052e375261066e487f6d23fadd5a">https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=m9c36052e375261066e487f6d23fadd5a</a>
<b>Written Inquiries Due Date</b>	March 26, 2024, 12:00pm
<b>Offer Due Date</b>	April 5, 2024, 2:00pm

## 2. Instructions

### 2.1. Description – Statement of Need

The City of Phoenix invites sealed offers for state fair towing services for a five-year contract commencing on or about May 1, 2024, 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.

#### **State Fair Towing Services**

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.
- E. Offerors are reminded that the specifications stated in the solicitation are the minimum level required and that offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Offers offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.
- F. Offer responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products offered. Offers submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.
- G. Prices will be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price will prevail unless obviously in error.

## 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, Finance Department, Central Procurement Division, 251 W Washington Street, 8th Floor, Phoenix, AZ. It is the Offeror's responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their Offer.

## 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 electronically by email to [procurement@phoenix.gov](mailto:procurement@phoenix.gov) and the following information should be noted in the email:

- A. Offeror's Name
- B. Offeror's Address (as shown on the Certification Page)
- C. Solicitation Number
- D. Solicitation Title
- E. Offer Opening Date
- F. 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.
- G. 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. Pre-Award Qualifications

Offeror must have been in operation a minimum of 5 years. The Offeror's normal business activity during the past 5 years has to be for providing the goods and/or services listed in this solicitation.

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

## 2.16. Award of Contract

Unless otherwise indicated, award(s) will be made to the most responsive, responsible Offeror(s) who are regularly established in the service, or providing the goods, contained in this solicitation and who have demonstrated the ability to perform in an acceptable manner.

- A. Factors that may be considered by the City include:
  - 1. Technical capability of the Offeror to accomplish the scope of work required in the Solicitation. This may include performance history on past and current government or industrial contracts; and,
  - 2. Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation; and,
  - 3. Safety record; and,
  - 4. Offeror history of complaints and termination for convenience or cause.
- B. Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.
- C. A response to a solicitation is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Offers do not become contracts until they are executed by the Chief Procurement Officer or Department Director. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.

## 2.17. 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.

## 2.18. 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.

## 2.19. 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.

## 2.20. 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 a late Offer.

## 2.21. 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.

## 2.22. Contract Award

In accordance with the City of Phoenix Code, Chapter 43, Section 43-12, Competitive Sealed Bidding, award(s) shall be made to the lowest responsible and responsive offeror(s) whose offer conforms in all material respects to the requirements set forth in this solicitation. 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.

## 2.23. Determining Responsiveness and Responsibility

Offers will be reviewed for documentation of any required minimum qualifications, and 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 will render an Offer nonresponsive.

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

## 2.24. Equal Low Offer

Contract award will be made by putting the names of the tied Offerors 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.

### 3. Scope of Work

#### 3.1. GENERAL

1. This contract is for the supply of towing service to relocate or remove property, typically an illegally parked vehicle, in connection with the Arizona State Fair. All work performed under this contract will be pursuant to a specific request for service by a member of the Phoenix Police Department. This Contract will not be used for any purpose other than Police Department ordered tows and impoundments relating to the Arizona State Fair.
2. The Contractor shall promptly comply with all lawful written instructions received from a person or company representing itself, in writing, as a representative of the owner of property towed under this contract. Acceptable evidence of representation is any statement to that or similar effect bearing the name of the representative that names the owner. A copy of this written evidence of representation shall be retained at the Contractor's place of business for ninety (90) days from the date of receipt.
3. The City will pay the contract towing and storage fees for any impounded vehicle seized by the Police Department in error. "If the citizen has paid the contracted vendor the city requires proof the refunded fees have been processed to the vehicle owner/payer (i.e. cleared check, proof of credit card refund) before payment is issued to the contracted vendor by the city."
4. The City does not guarantee that a minimum number of tows will occur. Tow services will be requested on an "as needed" basis. The approximate number of tows in previous fiscal years for the State Fair Towing Contract is as follows:

Fiscal Year	Approximate Number of Tows
2015-2016	344
2016-2017	480
2017-2018	395
2018-2019	484
2019-2020	Event not held due to Covid 19

2020-2021	704
2021-2022	393

### 3.2. SOLICITATION OF BUSINESS PROHIBITED

1. For purposes of this section, the term "Contractor," shall include all of the Contractor's officers, managers, employees, independent contractors and agents.
2. For purposes of this section, "access" shall mean the opportunity to inspect either the interior or exterior, as applicable, of the property or to review or receive any document or electronic file containing information relating to the property.
3. In connection with any property towed pursuant to this contract, the Contractor may not solicit business for, or contact the property owner, or his authorized agent, on behalf of, any body shop, repair facility, insurance company, insurance adjuster, towing company, wrecking yard, health care provider, lawyer, or other person or business of any description, during the tow process. For purposes of this section, the term "tow process" shall mean the period of time beginning when the Contractor receives a request for service under this contract and ending when the property's owner or the owner's authorized agent has removed the property from the Contractor's premises, or another storage location designated by the Police Department.
4. The Contractor shall not perform any services, beyond the original tow of the property, relating to citizen property towed pursuant to this contract for which payment is expected without the express written consent of the citizen before the service(s) is/are performed.

### 3.3. EQUIPMENT

1. At all times during the contract period, the Contractor must have a minimum of five (5) tow trucks available and qualified personnel to operate the trucks for service. The Contractor must provide heavy duty, medium duty, flatbed, and wheel lift car carrier type tow trucks to meet the needs of the contract and perform the duties in a safe and timely manner. Tow truck classifications are determined by City and State laws and DPS Tow Truck Rules and Regulations. The Police Department will indicate the number of trucks required to be at a designated staging area near the State Fair twenty-four hours prior to the opening of the State Fair on any particular day. If additional trucks are needed beyond the number requested in advance, the Police Department will first

request those trucks from the Contractor. If the Contractor is unable to provide those additional trucks, the City may select another towing company to serve as an alternative vendor. All additional trucks and service requested will be compensated at the standard contract rates.

2. Any assignment, subletting or transfer of the interest of the Contractor either in whole or in part, without such consent, shall give the City the right to immediately terminate the contract for default.

### 3.4. STORAGE FACILITIES

- A. The Contractor will tow all vehicles to a temporary storage facility designated by the City and provided by the City or State at no cost to Contractor. All vehicles towed will remain at this temporary storage facility, pursuant to Police Department direction, for approximately one (1) hour after the official closing time of the State Fair for any particular day. After this time period has passed, the Contractor will remove designated vehicles at the Police Department's request to the storage facility designated by the Contractor pursuant to this contract. All vehicles moved to the Contractor storage facility will be removed from the temporary lot within one hour of the Police Department's request.
- B. The Contractor will provide any needed equipment at the temporary storage facility to perform the duties of this contract. At a minimum, the Contractor will provide a portable office trailer, generator, tables, chairs, lights, and restroom facilities. Contractor will have internet with secure data connections to email all invoices, Vehicle Removal Forms, and other documents to the Public Records and Service Bureau the same calendar day the vehicle was towed. Contractor will provide signage leading up to temporary lot, and a waiting line for citizens, defined by a type of barricades.
- C. The Contractor will staff the City or State provided storage facility for purposes of payments, billing and vehicle releases with the appropriate personnel as long as this storage facility is directed by the Police Department to be open to the public. Contractor-provided towed property storage facilities shall be staffed for the purpose of contract property release or appraisal from 8:00 a.m. to 6:30 p.m., Monday through Friday and 8:00 a.m. through noon on Saturday and no staffing on Sundays, except the holidays named in this section: New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Cesar Chavez, Memorial Day, Juneteenth, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. No gate fees will be charged by Contractor until after 8:00 p.m., Monday through Saturday and after 12:00 p.m. on Sundays.

- D. The Contractor shall collect the fees and release all owner property to the customer or his agent within twenty (20) minutes of request if the owner or the owner's agent is present at the temporary or contractor storage facility.
- E. At all times during the contract period, Contractor shall maintain sufficient property storage facilities of its own to adequately service the contract. Storage facilities shall comply with all City of Phoenix zoning requirements and must be zoned either A-1 or A-2. The minimum acreage required to initiate the contract is one (1) acre. Additional acreage may be necessary, and the contractor will be obligated to secure, acceptable additional storage space as necessary. For bid purposes, the contractor shall only list storage facilities that it owns or leases, or for which it has an option to purchase or lease.
- F. All storage facilities provided by Contractor used to fulfill any requirement of this contract shall be on record with the Phoenix Police Department and property shall not be stored at any location other than the City or State provided storage facility or Contractor storage locations on record.
- G. The Contractor shall maintain property storage facilities within a fifteen (15) mile radius of the Arizona State Fair. Upon contract commencement, storage areas shall have a fence at least six feet (6') in height and have minimum lighting of one-half (1/2) watt for each square foot of storage lot facility.
- H. The Contractor shall maintain at all times a sign posted at the public entrance of each storage facility used for contract tows, including the City or State provided storage facility, clearly listing the City of Phoenix contract tow, daily storage rates, and Phoenix City Code 36 Fee for property stored at this facility. Lettering shall be a minimum of two (2) inches in height in a color clearly contrasting with the background. All signage shall be in conformance with all applicable laws.
- I. The Contractor shall maintain at all times a sign posted at the public entrance of each storage facility used for contract tows, including the City or State provided storage facility, clearly stating that the payment of all fees must be made before vehicles will be released pursuant to Arizona Revised Statute § 28- 872 (H) (2). Lettering shall be a minimum of two (2) inches in height in a color clearly contrasting with the background. All signage shall be in conformance with all applicable laws.
- J. The Contractor shall maintain at all times a sign posted at the public entrance of each storage facility used for contract tows, including the City or state provided storage facility, stating 'The Police Department may remove and impound any unoccupied vehicle of any kind or description found Violating any provisions of

the Phoenix City Code, or any of the ordinances of the City of Phoenix or the laws of the State of Arizona regulating the standing or parking of vehicles". Lettering shall be a minimum of two (2) inches in height in a color clearly contrasting with the background. All signage shall be in conformance with all applicable laws.

### 3.5. STORAGE

1. The Contractor shall not move property from the storage facility of record for a period of fourteen (14) calendar days, unless the property is claimed by the owner or an authorized agent of the owner, or the owner or an authorized agent of the owner directs that the property be moved to another designated location. If, after fourteen (14) calendar days, instructions have not been received from the property owner or authorized agent, The Contractor may move the property to an alternative storage lot that also meets the physical requirements of the contract. The Contractor shall not charge an additional towing fee in connection with the transfer of property to an alternative storage lot at the Contractor's discretion. the Contractor shall not charge a fee to remove property from a storage lot and shall make the property accessible to the owner or owner's authorized agent for purposes of removal from a storage lot, when the property is claimed by the owner or the owner's authorized agent.
2. The Contractor shall provide access to all towed property to the owner or the owner's authorized agent within thirty (30) minutes of request or at the time of vehicle relocation, whichever is earlier, for purposes of document or personal item removal, if the vehicle is located at the City or State provided storage facility.
3. The Contractor shall release all owner property to the customer or his agent within thirty (30) minutes of request if the owner or the owner's agent is present at the towed property storage facility between 8:00 a.m. to 6:30 p.m. Monday through Friday and 8:00 a.m. to 12:00 p.m. (noon) on Saturdays and none on Sundays, except the holidays named in this section.
4. There shall be no open lot fee charged by Contractor for releasing property as provided in this section, even if the property storage is not Contractor's regular place of business.

### 3.6. CONTRACTOR SERVICES

1. The Contractor shall have a minimum of 5 (five) years in business as a towing company in the State of Arizona.



2. The Contractor shall have experience working with a government and/or public agency that would require interacting with government personnel. This contract will require the contractor to work closely with many Phoenix Police and Public Works Department employees and to have a working relationship with Arizona Department of Transportation (ADOT), their permit office and maintenance staff.
3. The Contractor shall have experience providing services for short-term towing projects, such as fairs, political events and sporting events. This experience allows the Contractor to understand the need for flexibility, partnership and communication.
4. The Contractor shall be able to qualify for ADOT permit and ADOT's insurance requirements as the City uses ADOT lots as temporary storage facilities for the state fair. The Contractor shall be willing to supply ADOT with insurance documents each year of the contract.
5. The Contractor shall comply with all lawful written instructions received from the insurance company representing the owner of any property towed under this contract. Acceptable evidence of representation is any statement from the insurance company, on company letterhead, which names and purports to represent the owner. A copy of this written evidence of representation shall be retained at the Contractor's place of business for one (1) year from the date of receipt.
6. The Contractor shall provide towing services twenty-four (24) hours a day during the time frame of the Arizona State Fair. The Contractor shall maintain active business hours outside of the State Fair time frame to allow the registered owners to retrieve their impounded vehicles from the Contractor's lot.
7. The Contractor shall respond to all requests for the tow of abandoned or impounded property and cannot refuse to tow certain property.
8. The Contractor shall comply with all laws of the State of Arizona pertaining to the handling and disposal of abandoned impounded vehicles, including the submission of all required electronically filed reports to A.D.O.T.
9. The Contractor may recover from the registered owner of any abandoned vehicle any fee chargeable under state law that is paid for by the Contractor and is directly related to the Contractor's cost of applying for abandoned vehicle title.
10. The Contractor shall not perform any services beyond the original tow and storage of property without the express written consent of the citizen, or citizen's authorized agent, one (1) hour before the services are performed.

11. The Contractor shall provide the equipment needed to spray water and wet down the temporary storage lot. Contractor will perform this duty on a daily basis before the opening of the lot for the particular day.
12. The Contractor shall provide a vinyl sign stating "State Fair Impounded Vehicles" with an arrow pointing to the left. The sign will be no smaller than ten (10) feet in length by three (3) feet in height and will be secured to the fence before opening hours each particular day. The Contractor will remove the sign after the temporary lot has closed for the particular day. Contractor will be responsible for storing and securing the sign. The lettering on the sign will be no smaller than fifteen (15) inches in height in a color clearly contrasting with the background.

### 3.7. SAFEKEEPING OF PROPERTY

1. If a Contractor finds drugs or weapons, inside a vehicle after it has been towed, the Contractor shall contact the Phoenix Police Department immediately so an officer can respond and impound items. If a Contractor finds personal property, the Contractor will bag, tag, take a picture of contents, and will leave secured in vehicle or trunk until claimed. The Contractor may only remove property or other personal effects from inside of a towed or impounded vehicle if the contents of the vehicle cannot be locked securely in the vehicle or trunk. The Contractor may place the bagged and labeled vehicle contents in a secondary location at or within the same tow yard location to provide for the security and safekeeping of the items. Violations of this provision will constitute a material breach of the contract and will be grounds for immediate termination of this contract.
2. The Contractor shall be responsible for any damage caused to property as a result of Contractor's own actions, including, but not limited to, any damage caused as a result of moving the property to a storage lot, from a storage lot, or within a storage lot.
3. Notwithstanding any other provision of this contract, the removal of property from a vehicle or other property towed pursuant to this contract by the Contractor, or any other person acting with the permission, express or implied, of Contractor, without the express permission of the vehicle's or the property's owner, or the owner's authorized agent, is a serious and material breach of this contract and shall be grounds for immediate termination of this contract. The Contractor is responsible for the supervision of all persons who are granted or permitted access to the property to ensure that this provision is not violated. This provision shall apply regardless of whether the Contractor's management was aware of the unauthorized removal, and regardless of the purpose for the unauthorized removal.

4. Notwithstanding any other provision of this contract, any act on the part of the Contractor to disable, or further disable, property towed pursuant to this contract by the Contractor, unless done in specific furtherance of an obligation imposed on the Contractor by this contract, is a serious and material breach of this contract and shall be grounds for immediate termination of this contract. The Contractor is responsible for the supervision of all persons who are granted or permitted access to the property to ensure that this provision is not violated. This provision shall apply regardless of whether the Contractor's management was aware of the act to disable, and regardless of the purpose for the act to disable.
5. Notwithstanding any other provision of this contract, the intentional act of the Contractor to reduce the value of, or to lessen the cosmetic appearance of, property towed pursuant to this contract, without the express written permission of the property's owner, or the owner's authorized agent, is a serious and material breach of this contract and shall be grounds for immediate termination of this contract. The Contractor is responsible for the supervision of all persons who are granted or permitted access to the property to ensure that this provision is not violated. This provision shall apply regardless of whether the Contractor's management was aware of the act identified herein, and regardless of the purpose for the act identified herein. This provision shall not apply to the natural operation of time or the elements on the condition of the property.
6. For purposes of this section, the term "Contractor," shall include any and all of the Contractor's officers, managers, employees, independent contractors and/or agents.

### 3.8. CONTRACTOR PERSONNEL

1. The Contractor shall provide professional, polite and sufficiently qualified personnel to service the contract. Valid complaints will constitute a violation of this contract and will subject Contractor to the liquidated damages described herein.
2. All drivers shall be properly licensed and shall operate the tow trucks in a safe and prudent manner. Drivers shall refrain from using profane or vulgar language in a public area while performing work under this contract.
3. The Contractor cannot subcontract for tow truck driver labor services unless a form SS-8 has been filed with the IRS and the IRS has determined that tow truck driver position qualifies as that of an independent contractor. The Contractor shall be in full compliance with Circular E, Employers Tax Guide of the Internal Revenue Service Department and in full compliance with all State of Arizona

Worker's Compensation insurance regulations. Any bids submitted with the intention of subcontracting tow truck driver labor service must submit a completed IRS SS-8 form that has been so approved by the IRS.

4. The Contractor shall promptly provide a supervisor to the scene of a tow at City's request.
5. The Contractor shall ensure that at least one (1) person assigned to the temporary storage facility and Contractor storage facility responsible for interfacing with the public, be able to speak, read and write in English and Spanish in order to communicate with all City personnel, the citizen or the citizen's authorized agent.
6. All contractor personnel will have identification on their persons, clearly visible and identifying them as employees of the Contractor.

### 3.9. SERVICE RECORDS

1. The Contractor shall maintain records and/or computer files separate from all other records and/or computer files the Contractor may keep, of all property towed under this contract, showing, as applicable, the following:
  - a. Location where the property was picked up (Precinct No. and Address).
  - b. Location to which the property was taken.
  - c. The date and time of the tow.
  - d. Police Department Incident Number.
  - e. Make, model, and year of the property.
  - f. License plate number and State issued.
  - g. Vehicle identification number or serial number.
  - h. Signature and serial number of Police Department employee authorizing service.
  - i. Name and signature of individual or authorized agent to whom the property was released, or pursuant to whose instructions the property was disposed of.
  - j. Total charges to date.
  - k. Contractor invoice number.
2. If it should be determined that a vehicle was impounded under an incorrect VIN, either through an audit performed by the Arizona Department of Public Safety, an

inspection performed by the Arizona Department of Motor Vehicles, or otherwise, Contractor will immediately notify the Phoenix Police Department Public Records and Services Unit by facsimile or electronic transmission of the correct VIN ascertained through the audit, inspection or otherwise.

### 3.10. BILLING AND PAYMENTS

1. Billing is to begin when the truck reaches the staging area or the time designated by the Police Department for staging to begin, whichever is later. The Contractor will keep a log of each truck, when the truck is in service and when it is out picking up vehicles. Stand by time will only be calculated when trucks are not actively in-service towing vehicles. Billing will end when the truck is released from service by the Police Department. Any truck released from service before the passage of two (2) hours will be paid for two (2) hours.
2. Charge will be made by Contractor to the customer for tow and release of the vehicle at the City or State provided storage lot. Contractor will not charge if the vehicle is hooked but the tow is cancelled by a Phoenix Police Department representative before the vehicle is moved from its location.
3. Charge will be made by Contractor to customer for tow and release of the vehicle at Contractor's storage facility. Any vehicle that is towed to the City or State provided storage facility and then re-towed to the Contractor's storage facility is to be charged the tow, re-tow and storage rates only.
4. Charge will be made by Contractor for storage at Contractor's storage facility per day. Property that has reached the storage location may be charged for one (1) day's storage, regardless of the amount of time that the property remains at the storage location. An additional day's storage may only be charged beginning at 12:01 a.m. of the following day. For example, if a vehicle reaches the storage location at 2:00 p.m. on day 1 and is recovered at 4:00 p.m. on day 1, one day's storage may be charged. If that same vehicle is picked up at 11:00 a.m. of day 2, two day's storage may be charged. If the vehicle is picked up at 1:00 p.m. on day 3, three day's storage may be charged.
5. After hours gate fee: This fee is the charge for granting access to Contractor's storage location to a customer who arrives outside of the lot staffing hours established in the "Storage" section of this contract.
6. Supervisor charge: An hourly rate may be charged for the presence of a supervisor at the scene of a tow if the City requests the presence of a supervisor at the tow scene. An hourly rate should be bid. Contractor will be paid for the time that the supervisor actually spends at the tow scene at the hourly rate bid,

prorated to the nearest quarter hour with a one half (1/2) hour minimum. For example, if the hourly rate is \$40.00 and the supervisor spends 10 minutes at the scene, the charge will be \$20.00 (\$40.00 per hour x % hour). If the supervisor spends 1 hour and ten minutes, the charge would be \$50.00 (\$40.00 + (.25 x \$40.00)). Any invoice containing a charge for supervisor time must be approved by the on-scene Police Department employee by signature on the tow invoice, in addition to other invoice requirements. No compensation will be made by the City for a supervisor who appears at the scene of the tow upon request of a person other than the City.

7. The City will not be responsible for non-payment of bills tendered to the property or vehicle owners pursuant to this contract. Contractor shall comply with all laws relating to the collection of monies owed for services provided pursuant to this contract.
8. The Contractor shall submit all invoices electronically to: Phoenix Police Department, Public Records and Services Unit, 1717 East Grant Street, Suite 100, Phoenix, Arizona 85034 or [tristen.lattanzi@phoenix.gov](mailto:tristen.lattanzi@phoenix.gov) and [impound@phoenix.gov](mailto:impound@phoenix.gov). Contractor shall invoice the City within thirty (30) days of date service is provided and the City will pay all legitimate, authorized bills within sixty (60) calendar days from receipt of an acceptable invoice.
9. Invoices must contain: 1) the clearly-legible name and serial number of the Police Department employee authorizing the service; 2) the full name, employee ID number, if any, of the driver providing service and his or her truck number; 3) the arrival time of each truck at the staging area stated to the nearest quarter hour and the time that each truck was released from service by the Police Department stated to the nearest quarter hour; 4) the statement "State Fair"; and 5) the Contract and SAP numbers.
10. The Contractor is fully responsible for assuring that all tow services arising from the contract are billed the correct and applicable contract rate. Contractor is required to establish and maintain a process to monitor its billing practices and refund all over-charges that may occur. The City may audit the Contractor's sales, auction and disposal records at any time upon one (1) calendar day notice at the City's sole discretion, with or without cause, and for any purpose, including those stated herein. Contractors are on notice that the City may randomly audit to ensure contract compliance. If the audit identifies any unsupported charges that Contractor has not already identified through its monitoring process and refunded the over-charges, the contract may be terminated for default and the performance surety automatically forfeited. The failure of an audit to uncover

over-charges, or any other contract violation or deficiency, shall not be a defense to a subsequent action on the part of the City to terminate the contract for a breach occurring during the period of the audit.

11. All towing and storage charges will be paid by the owner or authorized agent of the property claimed, unless the property was impounded in error by the Police Department or a delay in the property owner claiming recovered stolen property was the result of the Police Department not promptly notifying the property owner of the recovery. In these instances, only, the Police Department will be responsible for payment of any towing and storage charges.
12. The City will publish the contracted towing rates on the Phoenix Police Department Web page for the convenience of City of Phoenix residents.
13. The vendor must accept, at a minimum, cash, Visa and MasterCard debit and credit cards as method of payment for towing and storage fees.
14. The fees listed on the bid price schedule are the only fees to ever be charged. No other charges are to be assessed to private citizens or to the City of Phoenix without an original letter authorizing the deviation from the price schedule issued by the City of Phoenix Procurement Office. Violation of this paragraph will constitute grounds to terminate the contract in its entirety. The City reserves the right to audit all invoices for all tows against this contract and may contact parties that have had their vehicle towed to survey how they were treated and verify how much they were charged for the service.
15. The Contractor is to collect the impoundment fee of Phoenix City Code (P.C.C.) § 36-8(G) in the amount of \$104.50 at the time of property release. This fee is to then be paid to the City of Phoenix with a written accounting. The written accounting must include the Contractor's invoice number, Vehicle Identification Number, impound date, fee collection date, amount collected, and payment type (e.g. cash, check, credit card). Payments are to be made to the City each Thursday for fees collected during the preceding week; the week is defined as Monday through Sunday. The police officer must note the applicability of the P.C.C. 36 fee on the City of Phoenix Vehicle Removal Report before the Contractor can collect the fee. The fee is to be paid by the person claiming the towed vehicle.
16. The Contractor shall pay to the City the impoundment fee of P.C.C. § 36-8(G) in the amount of \$104.50 for each vehicle for which the fee applies and for which the fee was not collected from a third party.

17. The Contractor shall pay to the City the impoundment fee of P.C.C. § 36-8(G) in the amount of \$104.50 for each vehicle for which the fee applies for any unclaimed vehicle when the Contractor is awarded abandoned title to the vehicle.
18. The Contractor will not charge for dry runs. Dry runs are defined as a request for a tow from a Phoenix Police Department representative, where the tow is cancelled before the vehicle is hooked, or before the vehicle is hooked and towed to the temporary City or State provided lot.

### 3.11. REPORTING

1. The Contractor shall make available to the Phoenix Police Department Public Records and Services Unit, for viewing in electronic format, each tow invoice and vehicle removal report signed by a Police Department employee within twelve (12) hours after the tow has been completed.
2. The Contractor shall provide an electronic report (Excel) of the vehicles towed during the previous day. The report will be due no later than 8:00 a.m. the next business day. The report will include all vehicles towed from the particular day's opening hour until the particular day's closing. The report must include the following information:
  1. 10 Number
  2. Contract Number
  3. Storage Report Number
  4. Police Department Request Date
  5. Police Department Request Time
  6. Tow Arrival Date
  7. Tow Arrival Time
  8. Vehicle Year, Make, Model, and Vehicle Identification Number (VIN)
  9. Precinct
  10. Towed To Location
  11. Type of Tow
  12. Contractor will submit the reports in an Excel format approved by the Phoenix Police Department. Dates will be in yyyy-mm-dd format and times will be in hh:mm format. Contractor will email all reports to [tristen.lattanzi@phoenix.gov](mailto:tristen.lattanzi@phoenix.gov) and [impound@phoenix.gov](mailto:impound@phoenix.gov).



3. The Contractor shall provide an electronic report (Excel) of the vehicles released during the previous day. The report will include those released at the temporary City or State provided lot and those released at the Contractor's storage lot. The report must include the following information:
  1. ID Number
  2. Contract Number
  3. Storage Report Number
  4. Vehicle Year, Make, Model, and Vehicle Identification Number (VIN)
  5. Precinct
  6. Impound Date
  7. Release Date
  8. Name of person property was released to
  9. Billing Level Number
  10. Amount paid for tow
  11. PCC 36 Fee Paid Amount
    - For purposes of this subsection, a day shall run from midnight to 11:59 p.m. and the report shall be due no later than 8:00 a.m. on the next business day. Contractor will submit the reports in a format approved by the Phoenix Police Department. Dates will be in yyy-mm-dd format and times will be in hh:mm format. Reports will be emailed to [tristen.lattanzi@phoenix.gov](mailto:tristen.lattanzi@phoenix.gov) and [impound@phoenix.gov](mailto:impound@phoenix.gov).
4. For tows in which the vehicle was not released within 10 days after the date of tow, Contractor shall submit a weekly report in electronic format to the Phoenix Police Department Public Records and Services Unit that includes, for all tows in this category, the following information:
  1. Storage Report Number
  2. Vehicle Year, Make and Model or Property Year, Make and Model (as available)
  3. Vehicle Identification Number (VIN) or Property Serial Number (as available)
  4. City equipment number (as available)
  5. Precinct

6. Impound Date
7. Whether a Department of Motor Vehicle Abandoned Vehicle Report was filed pursuant to A.R.S. ~ 28-4838 and, if so, on what date.
  - For purposes of this subsection, a week shall run from Sunday through Saturday and the report shall be due no later than 5:00 p.m. on the following Friday.
5. The Contractor shall provide an electronic report of all vehicles required to be inspected pursuant to A.R.S. § 28-4834 and AR.S. § 28-4838 in order to apply for an abandoned title application and submittal of the MVD Abandoned Vehicle Report. Contractor will submit the reports electronically to the Department Contact Person later by 6:00 a.m. the Monday of the week the vehicles are to be inspected. Reports will be sent to [tristen.lattanzi@phoenix.gov](mailto:tristen.lattanzi@phoenix.gov) and [impound@phoenix.gov](mailto:impound@phoenix.gov). Phoenix Police Department personnel will perform the inspections and provide the completed MVD Abandoned Vehicle Report to the Contractor.

### 3.12. CONTRACT VIOLATIONS

1. Unless otherwise provided in this Contract, the Contractor may accumulate up to 5 violations per year.
2. The City shall notify the Contractor in writing of a violation. The Contractor shall have ten (10) days from the date of mailing to respond in writing. The City's notice shall include a brief narrative apprising the Contractor of the time, place, and nature of the violation and shall set forth those facts in the possession of the City substantiating the violation. The Contractor's mailed response will be considered timely if post-marked within this ten (10) day period. Failure of the Contractor to respond within this time period will be deemed an admission that the violation occurred. Any response received will be evaluated by the Police Contract Monitoring Representative and the violation upheld or reversed in his or her sole discretion.
3. The parties agree that the harm caused to the City by the breach of the above-referenced contract terms is incapable or very difficult of accurate estimation. The parties further agree that the amount of liquidated damages fixed in this Contract is a reasonable estimate of just compensation for the harm caused to the City by the breach. The City may collect from the Contractor \$100 as liquidated damages for each violation upheld. All sums payable by the Contractor under this section shall be due and payable within thirty (30) days after a written

decision upholding the violation has been mailed. All sums unpaid after such thirty (30) day period shall accrue interest at the rate of ten percent (10%) per annum. If unpaid sums under this article, including accrued interest, exceed \$300, the Contract may be terminated for default.

## 4. Standard Terms and Conditions

### 4.1. 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 Offers, 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, Offers, 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.

## 4.2. 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.

#### 4.3. 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.

#### 4.4. 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.

#### 4.5. 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.

#### 4.6. 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.

#### 4.7. 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 Solicitation 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.

#### 4.8. 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 gives 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.

#### 4.9. 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>. 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.

#### 4.10. 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.

#### 4.11. 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.

#### 4.12. 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.

#### 4.13. 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.

#### 4.14. 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.

#### 4.15. 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.

#### 4.16. 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.



## 5. Special Terms and Conditions

### 5.1. Term of Contract

The term of this Contract will commence on or about May 1, 2024 and will continue for a period of five (5) years thereafter.

### 5.2. Price

All prices offered shall be firm and fixed for the entire term of the contract.

### 5.3. Method of Ordering

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

### 5.4. 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

### 5.5. Method of Payment

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

### 5.6. Partial Payments

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

### 5.7. 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.

### **5.8. 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.

### **5.9. 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.

### **5.10. 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.

### **5.11. 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.

### **5.12. 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.

### **5.13. 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. Defense and Indemnification**

### **6.1. 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.

## **7. Insurance Requirements**

### **7.1. 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.

### **7.2. 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.

### **7.3. Commercial General Liability: Occurrence Form (or Garage Liability)**

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

- The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor related to this Contract.
- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- City of Phoenix is an additional insured to the full limits of liability 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.
- Coverage must be endorsed to include Garagekeepers liability for vehicles being repaired, stored or transported by contractor, written on a Direct Primary basis with \$1,000,000 per Occurrence and \$100,000 for each Auto.

- Policy must include coverage for losses occurring on the garage premises or due to operations necessary and incidental to the garage business, or automobile service and repair operations.

#### 7.4. Automobile Liability

Bodily Injury and Property Damage coverage for any owned, hired, and non-owned vehicles incidental to the garage business 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, relating to this Contract.
- The policy must be endorsed to include coverage for towing (if towing services are included in the Scope of Services in the Contract or part of the normal operations of the Contractor.)
- 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.

#### 7.5. 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.

#### 7.6. 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 [procurement@phoenix.gov](mailto:procurement@phoenix.gov).

#### 7.7. 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.

## 7.8. 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 [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.**

## 7.9. Subcontractors

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

## 7.10. Approval

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

## 8. Submittals

### 8.1. Copies

Please submit one electronic copy 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).

### 8.2. 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 Proposal - A detailed proposal describing the firm or individual's qualifications and experience responsive to the requirements of the solicitation and evaluation criteria.
- 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.

### 8.3. Additional Quantities

The City anticipates considerable activity under the resultant contract(s). However, no guarantee can be made as to actual state fair towing services, 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.