



City of Phoenix

REVENUE CONTRACT SOLICITATION
AVN RCS-24-0207
TERMINAL 4 LOBBY RETAIL CONCESSION
AT PHOENIX SKY HARBOR INTERNATIONAL AIRPORT

City of Phoenix
Aviation Department
2485 East Buckeye Road
Phoenix, AZ 85034

RELEASE DATE: July 15, 2024
DEADLINE FOR QUESTIONS: August 8, 2024
RESPONSE DEADLINE: September 23, 2024

City of Phoenix
REQUEST FOR PROPOSAL
RCS-24-0207
Terminal 4 Lobby Retail Concession
at Phoenix Sky Harbor International Airport

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1. Summary

1.1. Summary

The City of Phoenix (City) Aviation Department (Aviation) is seeking responses from qualified Respondents to operate and manage a Retail concession in the Terminal 4 (T4) Lobby at Phoenix Sky Harbor International Airport (Airport or PHX). The Successful Respondent will enter a Concession Lease Agreement (Lease) with the City. A copy of the draft Lease is attached as **Exhibit 1**. The Premises, identified in **Exhibit 2**, will be developed, operated, and managed by the Successful Respondent.

1.2. Contact Information

Annie Sleeper

Contracts Specialist II*Lead
2485 East Buckeye Road
Phoenix, AZ 85034

Email: annie.sleeper@phoenix.gov

Phone: [\(602\) 273-4389](tel:(602)273-4389)

Department:

Aviation

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-Response Meeting or Site Visit. All times in the Schedule of Events are Local Phoenix, AZ time.

To request a reasonable accommodation or alternative format for any public meeting, please contact the Procurement Officer (Annie Sleeper) at (602) 273-4389/Voice or 711/TTY, or annie.sleeper@phoenix.gov, no later than seven (7) days prior to the meeting.

Solicitation Issue Date	July 11, 2024
Pre-Response Meeting (Non-Mandatory)	July 31, 2024, 11:00am **To RSVP / register, please visit: https://cityofphoenix.webex.com/weblink/register/r23b09bc1ed5491756829a267ba7eae1 For any issues registering or signing into the Pre-Offer Conference, please contact busopps.aviation@phoenix.gov or 602-273-3390.
Written Inquiries Due Date	August 8, 2024, 5:00pm

Offer Due Date	September 23, 2024, 3:00pm Offer Opening to begin at 3:15 p.m.
Evaluation of Responses/Offers	November 2024
Interview (if required)	November 2024
Award Recommendation (protest period begins - 7 days)	December 2024
City Council Approval	March 2025

** Please note: Registration or RSVP to participate in the Pre-Response Meeting is required in order to obtain the Pre-Response Meeting information. A Respondent who wishes to join the Pre-Response Meeting for this solicitation is required to register using the weblink or access code provided prior to the meeting. Upon completion of registration, the Pre-Response Meeting information will be forwarded to the registered email address.

2. Introduction

2.1. Introduction

The City is seeking responses from qualified Respondents to operate and manage a Retail concession in the T4 Lobby at PHX. The Successful Respondent will enter a Lease with the City. A copy of the draft Lease is attached as **Exhibit 1**. The Premises, identified in **Exhibit 2**, will be developed, operated, and managed by the Successful Respondent.

There is **one (1)** Retail concession contracting opportunity in this Revenue Contract Solicitation (RCS). The available Retail concession space is:

- **T4 Lobby (L-R1)** 1,715 square feet: News and Convenience

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

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

Selection will be based on the entire Response and the Evaluation Criteria and will not be solely based upon the highest financial return to the City. All Respondents must demonstrate not only airport Retail concessions experience and financial capability but also creativity in proposing a retail concept and quality merchandise that will enhance the customer buying experience.

To support a healthy and productive concession workforce, it is also important to the City that the concessionaires offer access to affordable quality health insurance, livable wages, and safe working conditions.

2.2. Background

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

PHX is among the busiest airports in the United States, serving over 48.9 million passengers in 2023. In November 2023, PHX was named Best Large U.S. Airport in the Wall Street Journal's annual Airports Ranking study. This is the second time PHX has received this prestigious ranking, having previously been ranked number 1 in 2019. The Airport encourages Respondents to consider including modern urban elements in its concepts along with innovative technology.

T4 Gross Sales and T4 enplaned passengers by airline and calendar year are shown in the tables below.

TERMINAL 4 GROSS SALES							
Category	CY 2018	CY 2019	CY 2020	CY 2021	CY 2022	CY 2023	CY 2024 (Thru Apr.)
Food & Beverage	\$144,540,897	\$153,082,411	\$65,055,216	\$106,440,996	\$150,133,509	\$163,632,950	\$61,653,782
Retail	\$ 61,287,946	\$ 65,057,375	\$29,393,933	\$ 55,452,549	\$69,538,716	\$76,273,017	\$27,537,239
Total	\$205,828,843	\$218,139,786	\$94,449,149	\$161,893,545	\$219,672,225	\$239,905,967	\$89,191,021

TERMINAL 4 ENPLANED PASSENGERS BY AIRLINE							
Airline	CY 2018	CY 2019	CY 2020	CY 2021	CY 2022	CY 2023	CY 2024 (Thru Apr.)
Air Canada	150,512	160,588	13,286	-	-	-	-
American Airlines	10,409,354	10,696,105	4,947,935	8,375,346	9,118,434	9,827,234	3,543,111
British Airways	120,960	92,785	11,960	14,452	86,463	85,500	32,614
Condor	9,101	18,206	-	-	6,567	10,839	-
Southwest Airlines	7,719,923	7,704,179	3,654,287	6,755,728	7,769,072	7,958,290	2,806,034
Volaris	29,018	37,004	17,325	29,165	32,869	53,508	19,441
WestJet	233,716	225,037	77,043	41,984	135,205	209,207	110,899
Flair Airlines	-	-	-	-	-	1,343	15,893
Lynx Air	-	-	-	-	-	15,770	3,547
TOTAL	18,672,584	18,933,904	8,721,836	15,216,675	17,148,610	18,161,691	6,531,539

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

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

2.3. Definitions

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

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

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

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

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

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

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

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

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

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

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

RESPONSE/OFFER means a written response to this Revenue Contract Solicitation.

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

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

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

RIGHT OF WAY means the surface of and the space above and below any public street, sidewalk, alley, right-of-way easement, or other public way of any type whatsoever, that is owned, leased or managed by a government entity, but does not include any City-owned bridge, now or hereafter existing as such within the City.

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

SUBTENANT a person or entity that leases property from Respondent.

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

2.4. Minimum Qualifications

Each Respondent must submit documentation in its Response to demonstrate it meets the required minimum qualifications and include all information requested in this section or the Response will be rejected as non-responsive. **The City of Phoenix Aviation Department reserves the sole right to determine if Respondents meet the minimum qualifications.**

- A. Respondent must have three (3) or more continuous years in the last five (5) years of ownership or executive management of a Retail business operation in an airport with active involvement in the day-to-day management of the retail business operation (qualifying business). Executive management is defined as the president, vice president, officer (including chief operating officer, chief executive officer, and chief financial officer), majority owner or stockholder, joint venture partner, managing partner, controlling partner, controlling owner or any individuals with authority to make decisions on behalf of an organization that will impact the overall direction of the organization. If Respondent is a newly formed entity, Respondent must demonstrate that owners, which may include JV partners, of Respondent who, in the aggregate, own 51% or more of the entity each satisfies this experience requirement.
- B. Respondent's qualifying business must have achieved minimum gross sales of \$2.5 million dollars for one (1) of the last five (5) years.
- C. Respondent must include a Sustainability Program for the proposed concessions that is consistent with the goals of the Aviation Department's Sustainability Management Plan (SMP) and describes how the Respondent will assist Aviation in meeting its sustainability goals. Aviation's goals are highlighted in the Aviation Department's Sustainability Focus (ASF) document available on Aviation's website at <https://www.skyharbor.com/about/Sustainability>.

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

2.5. Good Standing

Any Respondent and Partners, as defined in Section 2.19 – Response Limitation to This RCS, that currently contracts with the City must be in good standing for its Response to be considered responsive. For purposes of this RCS, good standing refers to compliance with all contractual provisions, including payment of financial obligations.

2.6. Outreach Requirements

To be considered for an award, each Respondent must conduct and document Small Business Outreach Efforts in compliance with the Airport Concession Disadvantaged Business Enterprise (ACDBE) Program, Race- and Gender-Neutral Lease Clause (See **Exhibit 3**) and USDOT in 49 CFR Parts 23 and 26. Although there are no ACDBE or Small Business participation goals set for this RCS, the City strongly encourages each Respondent to utilize small businesses in its response.

The Small Business Outreach Efforts Forms, **EO1-200** – Statement of Outreach Commitment, **EO2-200** – Small Business Outreach Efforts, and **EO3-300** – Small Business Utilization Commitment, marked in **Exhibit 4**, are due with the Response at the time of submittal. Small Business Commitment forms received from a Respondent that does not meet the outreach requirements will be deemed non-responsive. The Successful Respondent will be held to the small business participation commitment percentages proposed in Form EO3-200.

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

Every year on the anniversary of the Contract Execution Date of the Lease, the Successful Respondent must provide the City with an updated Small Business Participation Plan (SBPP), detailing their continued commitment to reaching out to ACDBEs and small businesses. The SBPP shall contain strategies to foster small business participation and information concerning the small businesses, including any changes to the initial Airport-approved Plan (EO2-200 and EO3-200).

Successful Respondents are required to comply with the Airport ACDBE Program Plan and 49 CFR Parts 23 and 26. Successful Respondents shall track and report all ACDBE and small business participation that occurs at the Airport as a result of the lease, procurements, purchase orders, subleases, joint ventures, goods and services or other arrangements involving sub-tier participation. Such documentation must be entered monthly into the internet-based reporting program, City of Phoenix Certification & Compliance System at <https://phoenix.diversitycompliance.com/>.

For all Post-Award Outreach Requirements, see **Exhibit 3**.

2.7. Equal Pay Requirements

In 2015, the Phoenix City Council amended Phoenix City Code Section IV, Article V, 18-21 Equal Opportunity Requirements, known as the Equal Pay Act, to define expectations of all lessees with the City of Phoenix. **Exhibit 5** details the Act, as well as Federal and State provisions. As part of the Response for this RCS, Respondents are required to provide information on how they support, communicate, ensure and comply with these requirements. Respondents are expected to be as detailed as possible when completing Section 5.3 – Organization of Response, Tab 4.

2.8. Lease Term and Contractual Relationship

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

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

Respondents are advised to read the draft Lease included as **Exhibit 1**, to which the Successful Respondent and its Partners, as defined in Section 2.19 – Response Limitation To This RCS shall be bound. See **Exhibit 6** – Affidavit, Paragraph 12 of Assurances.

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

2.9. Execution of the Lease

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

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

2.10. Guarantee Instruments

- A. Response Guarantee: Responses must be accompanied by a ten-thousand-dollar (\$10,000.00) Response Guarantee in the form of a cashier's check payable, without condition or restrictive endorsement, to the "City of Phoenix". **Each Respondent's Response Guarantee must be submitted in a separate sealed envelope clearly marked "Response Guarantee" along with the Response.**
1. Response Guarantees submitted by unsuccessful Respondents, including Respondents whose submittals were deemed non-responsive, will be returned, without interest, immediately after formal award of the Lease has been made by the Phoenix City Council or after all responses have been rejected by the City.
 2. The Response Guarantee of the Successful Respondent will be returned, without interest, immediately after Successful Respondent has furnished the City with the Performance Guarantee instruments and insurance policies required by the Lease. Should the Successful Respondent fail to execute the Lease or furnish the Performance Guarantee instruments or insurance within 30 days from the date the Lease was sent, then the Successful Respondent's Response Guarantee will be forfeited as liquidated damages.
- B. Performance Guarantee: Prior to execution of the Lease, the Successful Respondent will be required to post and maintain with the City a Performance Guarantee in the form of a Letter of Credit (LOC) in the amount of six (6) months' Minimum Annual Guarantee (MAG) rent or a Cash Deposit in the amount of six (6) months' MAG rent. The LOC shall be in the form provided in **Exhibit 7**. The Cash Deposit shall be submitted in the form provided in **Exhibit 8**.
1. Adjustments to Performance Guarantee: City may increase the amount of the Performance Guarantee from time to time so that it is equal to or greater than six (6) months of MAG paid to the City then in effect. City may increase the amount of the Performance Guarantee by giving the Successful Respondent at least thirty (30) days prior notice of the amount of the increase. The amount of the Performance Guarantee may be increased for any reason the City deems appropriate, including (1) an increase of the Successful Respondent's financial obligations under the Lease, (2) Successful Respondents failure to pay any MAG, Additional Payment, or any other amount when due, or (3) Successful Respondent's financial condition changes to the extent that City is concerned about Successful Respondent's ability to perform under the Lease. Successful Respondent shall pay to City the additional amount necessary to increase the Performance Guarantee upon notice from City.
 2. Letter of Credit or Cash: If the Performance Guarantee is in the form of an irrevocable standby Letter of Credit (LOC), then the Successful Respondent shall use the City's **LOC form**, attached hereto and marked **Exhibit 7**. The LOC shall be issued by either: (1) a financial institution with counters in the Phoenix metropolitan area at which the City may make draws on the LOC; or (2) a financial institution with

- headquarters in the United States on which City may make telefacsimile draws. Unless City receives a written extension of the LOC in a form acceptable to City at least sixty (60) days before the end of the term of the LOC, City, without notice to Successful Respondent, may draw upon the full amount of the LOC and retain all proceeds as a cash performance guarantee. Any changes to the LOC required provisions must be approved in advance by the Aviation Director. If the Performance Guarantee is in the form of cash, Successful Respondent shall deliver to City a completed Cash Deposit for Performance Guarantee Form attached hereto and marked **Exhibit 8**.
3. **Duty to Restore:** The Performance Guarantee ensures the full and timely performance by Successful Respondent of all its obligations under the Lease and is security for payment by Successful Respondent of all claims by City. City may draw on or make a claim against the Performance Guarantee if Successful Respondent breaches or fails to perform under the Lease. If City draws on or makes a claim against the Performance Guarantee, then Successful Respondent, upon demand from City, shall replenish the Performance Guarantee to its previous amount within thirty (30) days of City's draw or claim.
 4. **Return:** After the expiration or earlier termination of the Lease, City will return the Performance Guarantee to the Successful Respondent less any Fees, Additional Payment, or any other amount due to City.
- C. **Employee Fidelity Bond:** Upon execution of the Lease, the Successful Respondent will be required to post and maintain with the City a bond covering employees required to handle money in the amount of ten-thousand-dollars (\$10,000.00).

2.11. Pre-Response Meeting

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

To request a reasonable accommodation, please contact the Procurement Officer (Annie Sleeper), no later than seven (7) calendar days prior to the date and time listed in the Schedule of Events, at 602-273-4389/Voice or 7-1-1/TYT or email annie.sleeper@phoenix.gov.

2.12. Questions and Answers (Q&A) Process

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

If Respondents discover any mistakes, improprieties or defects, they should submit a report of any mistakes, improprieties or defects in writing to the Procurement Officer no later than the question deadline listed in the Schedule of Events.

Respondents and their Partners, as defined in Section 2.19 – Response to the RCS Limitation, are encouraged to submit questions as a team rather than individually to avoid submitting repetitive questions, which will allow Aviation to answer all questions more efficiently.

All questions about this RCS, including the draft Lease, should be directed via email to avn.solicitations@phoenix.gov and the Procurement Officer and must be received by the due date indicated in the Schedule of Events. All written questions will be responded to in writing and available at <https://solicitations.phoenix.gov/Solicitations/Details/1837>.

2.13. Addendum to the RCS

Aviation may amend this RCS before or after the solicitation deadline listed in the Schedule of Events. Changes to this RCS will be in writing as an addendum and posted at <https://solicitations.phoenix.gov/Solicitations/Details/1837>. Respondents are responsible for checking the website and reviewing all updates and postings.

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

2.14. Respondent Exceptions

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

2.15. Airport Security

Individuals assigned to work at PHX as a result of this RCS must pass a fingerprint-based Criminal History Records Check, pass a Federally-mandated Security Threat Assessment, and obtain an Aviation-issued security credential or badge.

Successful Respondents must comply with all airport security requirements.

Visit: <https://www.skyharbor.com/airport-business/security-badging/> for current information and <https://www.skyharbor.com/airport-business/phx-information/rules-regulations/> for current Airport Rules and Regulations.

2.16. Exclusive Beverage Rights

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

2.17. Consolidated Receiving and Distribution Center (CRDC)

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

2.18. Commercial Delivery on the Airfield

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

2.19. Response Limitation to this RCS

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

The following shall be deemed Multiple Responses:

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

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

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

- A parent and its subsidiary.
- A holding company and its constituent company.
- Constituent companies of a single common holding company.
- Subsidiaries of a common parent.

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

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

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

CONTINGENT RESPONSES WILL BE REJECTED.

3. Scope of Work

3.1. Introduction

- A. The Successful Respondent will be responsible for the development, operation, and management of one Retail concession in the T4 Lobby at PHX. The Successful Respondent will enter into a Lease with the City. A draft of the Lease can be found in **Exhibit 1** and a map of the Premises of the T4 Lobby can be found in **Exhibit 2**.
- B. The Successful Respondent will conduct operations in a professional, business-like manner so as to not disturb or be offensive to other tenants or patrons and will not provide or sell any additional services unless approved in writing by the Aviation Director. The Successful Respondent will comply with the Concession Operating and Service Standards (**Exhibit 9**). The Successful Respondent will not use or permit use of leased space(s) for any activity not expressly permitted in the Lease.

3.2. Concession Space

Space is:

- T4 Lobby L-R1: 1,715 square feet: News and Convenience

3.3. Retail Category, Concept, and Expectations

- A. The retail category description listed in Section 3.4 below contains requirements for the concept to be proposed for the concession space and a description of the type of concept and merchandise desired by the City. Respondents may not propose changes to the retail category description or total square footage listed for the concession space, except where indicated.
- B. The retail category includes a Sample Merchandise List, which contains a list of approved merchandise that could be sold in the concession space. The list is not intended to be all inclusive. Merchandise that is prohibited by federal or state law will not be allowed to be sold, and under no circumstances can marijuana be sold.
- C. Respondents should propose a concept that is unique and distinctive from other concepts and/or merchandise offered at PHX or other airports. Respondents should also choose a concept that fits the retail category described and is not duplicative of other concepts in the vicinity of the concept being proposed, if applicable. It is the City's objective to offer customers a broad range of retail options.
- D. It is the Respondent's responsibility to be aware of the current offerings in the surrounding areas in the terminal and propose a concept that will complement the existing Retail program. For more information on the current Retail offerings please see the following link: <https://www.skyharbor.com/ShopsFoodServices/Shops>. To see the locations of all Retail offerings at PHX, please see the following link: <https://maps.skyharbor.aero/>.

- E. Respondents should offer retail products that are nationally or locally/regionally recognized.
- F. It is not required for proposed concepts to have street locations; however, if the Respondent proposes a national name brand or local/regional concept with street location(s), the quality of the merchandise should be the same as the merchandise at the concept's street location. The City expects the national name brand or local/regional concept's merchandise, in terms of the number and variety of items, to be as close as reasonably possible to the concept's street location(s). The same promotions, discounts and loyalty programs, and the same sales and acceptance of gift cards and frequent buyer cards offered in the Successful Respondent's concept street location(s) must be offered and accepted at its concept Airport location, if applicable.
- G. The City desires the concession space be utilized for maximizing customer service and revenues. The amount of space allocated to each retail concept will be the amount leased to the Successful Respondent. If the Respondent believes it needs less space to maximize gross sales and rent revenues, then the Successful Respondent will be allowed to designate a portion of the space for storage, office, or other purposes not directly related to the display and sale of goods to customers. However, the space allocated to storage, office, and other purposes will not be more than ten percent (10.0%) of the total store space. The space allocated to storage, office, or other purposes will be required to be improved by the Successful Respondent. The cost of improvements will be at the discretion of the Respondent and must comply with all applicable codes, ordinances, rules, regulations, and life safety requirements. The remaining space will be improved at a minimum cost of \$350.00 USD per square foot.
- H. The Successful Respondent must comply with the physical and programmatic accessibility standards of the Americans with Disabilities Act (ADA), as specified in Section 3.7 (B).
- I. The Successful Respondent's facility maintenance plan will address routine cleaning and sanitation of concession spaces and high touch points areas based on applicable local, state and federal guidelines or requirements.
- J. In addition to retail merchandise offered in the space, the City is expecting the Successful Respondent to be at the forefront of implementing new technology to enhance the customer experience at PHX. One way is to expedite the customer's ordering and checkout experience. As technology continues to advance, it is transforming the ordering process.
- K. The Successful Respondent may contract with third-party delivery companies (approved by the City) that will allow passengers to order, via an app, retail merchandise from concession operators at the Airport no matter their location.

- L. The City also expects the Successful Respondent to expedite the in-store checkout process by using the latest technologies (especially touchless), accommodating various payment methods, and offering different checkout options. Contactless card readers, wireless terminals, self-checkout, and email receipts are such options. In addition, consumers today can pay with more than just cash or card. With virtual wallets and mobile payment options such as Google Pay, Apple Pay and Samsung Pay, it will be important for the Successful Respondent to accommodate as many of these payment methods as possible so customers can check out quickly and efficiently.
- M. Any concept selling bottled alcoholic beverages for consumption off-airport must offer shipping services at a reasonable cost. The sale and shipment of all liquor must comply with the appropriate liquor laws and ordinances of the City of Phoenix and the State of Arizona and the liquor laws of the state to which the shipments are made.
- N. The retail space in this solicitation cannot be developed for food and beverage services except for pre-packaged sandwiches, salads, snacks, and bottled/canned beverages which are allowed to be sold in the space.

3.4. Retail Category and Description

- A. Retail: News and Convenience

3.5. T4 Lobby: News and Convenience

- A. The space, occupying 1,715 square feet, is a News and Convenience store. The store is expected to offer essential merchandise a passenger in a hurry can purchase quickly and efficiently. The City encourages Respondents to propose a store that offers touchless and contactless check-out capabilities. Generally, these types of passengers would like to have expedited service allowing for a quick in-and-out experience. The goal is to elevate the customer service experience and increase throughput, especially during peak travel times of the day.
- B. The store is expected to carry the following merchandise categories: reading materials, sundries, pre-packaged food and snacks, bottled/canned beverages, souvenirs, gifts, and other miscellaneous merchandise.
- C. Other than pre-packaged food and snacks and bottled/canned beverages, the store will be prohibited from selling food and beverage items such as fountain drinks and freshly brewed coffee.
- D. Reading Materials:
 - 1. The reading materials section should consist of newspapers, magazines and books including a selection of local and national newspapers such as The Phoenix Business Journal, The Arizona Republic, Wall Street Journal, New York Times and USA Today; the top 20 paperback and hardcover books from the New York Times Best Seller list; and an assortment of magazine titles.

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

E. Sundries Section:

1. The sundries section is expected to carry items that passengers may need on their trip or normally carry with them but left at home. Items include aspirin, comb/brush, toothbrush and toothpaste, deodorant, cold tablets, lotion, shaving needs, personal hygiene items, etc. The Successful Respondent should be aware that passengers going through security screening are limited to carrying liquids that are no more than three ounces in size per bottle/container.
2. Sample merchandise includes but is not limited to:
 - a. Aspirin, cough and cold medication, and other pain remedies;
 - b. Combs and hairbrushes;
 - c. Toothpaste, toothbrushes, and mouthwash;
 - d. Razors and shaving cream;
 - e. Prepaid disposable cellular phones;
 - f. Batteries;
 - g. Sunglasses and reading glasses (under \$25.00);
 - h. Greeting cards and stationery;
 - i. Postcards;
 - j. Personal hygiene items;
 - k. Note pads, pens, pencils, and other office supplies;
 - l. Individually packaged disposable diapers for children and adults;
 - m. Pantyhose and garments;
 - n. Stamps

- F. Pre-Packaged Food Items and Snacks and Bottled / Canned Beverages: the News and Convenience store is expected to carry pre-packaged snacks such as gum, candy, mints, chips, and a variety of bottled/canned beverages.
- G. High-Tech Accessories: the high-tech section of the store will be limited to the sale of high-tech accessories, which include chargers, earbuds, headphones, cables and connectors, adaptors, etc.
- H. Souvenirs, Gifts, and Other Miscellaneous Merchandise:
 - 1. The store is expected to carry Arizona memorabilia, including merchandise made in Arizona unique to the PHX market. Examples of souvenir and gift merchandise include t-shirts and sweatshirts, coffee mugs and shot glasses, cactus gardens, wind chimes, children's toys and games, candles and candle holders, hand-painted tiles and coasters, picture frames, and caps and hats.
 - 2. Sample merchandise includes but is not limited to:
 - a. Souvenir t-shirts and sweatshirts;
 - b. Mugs and shot glasses;
 - c. Candles and candleholders;
 - d. Hand-painted tiles and coasters;
 - e. Cactus gardens and wind chimes;
 - f. Caps and hats;
 - g. Children's toys and clothing;
 - h. Picture frames;
 - i. Magnets and key chains;
 - j. Ornaments
 - k. Soaps;
 - l. Playing cards
 - m. License plate covers and bumper stickers;
 - n. Soft-sided and wheeled luggage;
 - o. Bottled wine (as long as all applicable State laws are followed);
 - p. Small household items;
 - q. Olive oil

3.6. Minimum Annual Guarantee (MAG) or Percentage Rent

The First Year MAG must be **\$250,000.00 (USD)** or greater. Throughout the term of the Lease, the Successful Respondent must pay MAG or Percentage Rent derived from gross sales, whichever is greater. The minimum Percentage Rental Rates set forth below are non-negotiable. Minimum MAG per square foot and Percentage Rental Rates are set based on Airport historical and market data and are provided in the following schedules:

R4: NEWS AND CONVENIENCE	Percentage of Gross Sales	MAG per SF	Total MAG per Unit
a. Reading Materials	12%	\$145.77	\$250,000.00
b. Sundries	12%		
c. Pre-Packaged Food Items and Snacks & Bottled / Canned Beverages	14%		
d. High Tech Accessories	15%		
e. Souvenirs, Gifts & All Other Merchandise	16%		

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

3.7. "As Is" Condition and Capital Investments

- A. The concession space will be available to the Successful Respondent in an “as is” condition. All capital investments must be provided by the Successful Respondent in compliance with the Proposed Capital Investment (**Exhibit 10**). Respondents are responsible for proposing designs and operations in compliance with all requirements in the draft Lease (**Exhibit 1**), the Tenant Design Criteria (**Exhibit 11**), and the Tenant Improvement Handbook (**Exhibit 12**). Respondents are encouraged to be creative and innovative in their design, emphasizing modern urban concepts and themes, and incorporating technology and digital innovations into these concepts with consideration given to the City’s desired outcomes identified in Section 2.1.
- B. The Successful Respondent shall, in the design and construction of the improvements to the space, comply with all applicable provisions of the ADA, 42 U.S.C. § 12101 et al., the ADA Accessibility Guidelines (ADAAG), and implement regulations as imposed upon the owner and operator of public facilities. Design and construction plans and tenant improvement shall be reviewed by Aviation’s Design and Construction Services Division (DCS) and Aviation’s ADA/Title VI Program Manager. Facilities may also be inspected for ongoing physical and programmatic accessibility.

- C. Architectural and engineering fees are excluded from the calculation of initial and midterm capital investments for the concession space. The concession space must be maintained in “opening day” condition throughout the term of the Lease.
- D. Initial Capital Investment: All capital investments will be evaluated according to the value and appropriateness of improvements considering the concept described in this RCS. The Successful Respondent will be required to spend a minimum amount of **\$350.00 USD per square foot** for leasehold improvements and trade fixtures. In the event the Successful Respondent does not spend the total capital investment proposed for the retail concept, the unspent balance must be remitted to the City no later than four (4) months after commencement of the Primary Term of the Lease.
- E. Midterm Capital Investment: The Successful Respondent will be required to spend a minimum average of **\$100.00 USD per square foot** as a midterm capital investment (midterm refurbishment must be complete by the beginning of the fifth year of the Primary Term of the Lease) to upgrade leasehold improvements. The midterm capital investment is not intended for general maintenance and should be used to refurbish areas of the Premises visible to customers. If the Successful Respondent does not spend the total midterm capital investment proposed for the concession space, the unspent balance must be remitted to the City within three (3) months after completion of the midterm capital investment. See **Exhibit 1 – Draft Lease**.

3.8. Reports

- A. The Successful Respondent will submit monthly reports to Aviation. Monthly reports will be due within twenty (20) days after the close of each month and must include a detailed statement of gross sales and any deductions from gross sales for the preceding month. The monthly report must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and certified by a responsible financial officer of the Successful Respondent and must be submitted in a format approved by Aviation. Gross sales will be reported by percentage rent category. Weekly reports will be due every Wednesday for the prior week’s sales.
- B. Concessions Data Reporting Requirements: The City will require the Successful Respondent to report concessions sales data via an automated process utilizing the City-provided Application Program Interface (API) standard. The Successful Respondent shall provide near real-time weekly and monthly reporting of concession sales data using this published API specification. Reporting of concessions sales data via this method is required regardless of other means that the Successful Respondent might choose to report similar data to the City on a monthly basis for reporting MAG or percent sales revenue information to meet its other reporting requirements. Any and all equipment and transmission changes necessary to accomplish this reporting process will be the responsibility of the Successful Respondent.
 - 1. The draft API specification can be accessed at the URL below. The API specification may change depending on the City’s operational needs.

- a. Draft API Specification: https://skyharbor.com/docs/default-source/technology/avn-phx-concession-data-openapi-json_v1.json?sfvrsn=31846389_2&download=true
- b. Click on the link, save the file to your computer, the file can be opened using any standard text editor program like “Notepad”, “WordPad”, etc.

3.9. Hours of Operation

The retail concept will be required to maintain hours of operation as approved by the Aviation Director. Business hours will be seven days a week, 365 days per year, from 5:00 a.m. to 11:00 p.m. Business hours are subject to change at the sole discretion of Aviation.

3.10. Additional Space

Limited Airport storage and office space (support space) may be made available to the Successful Respondent. Additional support space, if available, would be charged at the rate for the terminal in effect at the time of leasing. The current terminal rate is **\$187.08** per square foot and may be adjusted every year in July. Due to the limited amount of support space available in Terminal 4, the Successful Respondent may need to secure off-airport storage, office, and distribution space to support their Airport operations.

3.11. Customer Data and Security

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

3.12. Employee Retention

- A. Aviation is dedicated to exceptional customer service and will require the Successful Respondent to operate the concession space in an efficient, customer friendly, well-run manner to meet the needs of customers.
- B. Existing concession employees who have worked in T4 have developed invaluable knowledge and experience regarding Airport operations and the professional handling of conditions specific to an airport, such as sudden influxes of customers during peak periods of the day, changes in airline schedules, impact of weather conditions, etc.
- C. The Successful Respondent and their subtenants and/or joint venture partners must hire from the pool of current T4 Lobby Retail concession employees who are employed by the current T4 Lobby Retail concessionaire and retain those concession employees in similar job classifications for 90 days.

- D. The Successful Respondent and their subtenant and/or joint venture partners may only interview employee candidates outside of this group of T4 Lobby Retail concession employees when there are no longer any employees of the current T4 Lobby Retail concession available to hire in similar job classifications.

3.13. Sustainability

- A. Aviation is committed to integrating sustainability into its design, operation, management, and administrative processes and strengthening sustainability throughout the Airport. In keeping with this commitment, Aviation requires that each Respondent submit a Sustainability Program describing Respondent's vision, commitment, goals, and practices for proposed concessions related to sustainability that align with the Aviation Department's Sustainability Focus (ASF) goals. Information on the Aviation Department's commitment to sustainability, including its Sustainability Management Plan (SMP) and Sustainability Focus (ASF) goals, can be found at: <https://www.skyharbor.com/about/Sustainability>.
- B. Tenant Design Criteria: Aviation's sustainability-related requirements (e.g., water conservation, energy conservation, etc.) for leases are outlined in its Tenant Improvement Handbook (**Exhibit 12**), Design Manual (**Exhibit 13**) and Sustainable Horizontal Design and Construction Green Guide (**Exhibit 14**). Requirements include the use of EnergyStar and Water Sense appliances (with certain efficiency ratings), LED lighting, low impact development, and material management, among others. During the Tenant Improvement process, the following submittals will be submitted to Aviation for approval:
1. Energy needs and illumination calculations for the proposed improvements.
 2. Water needs and water conservation methods/efforts with proposed improvements.
 3. A narrative regarding how the tenant design will promote sustainability.
 4. Description of the use of sustainable material and design within the concession.
- C. Tenant Operations: Aviation's sustainability-related operational requirement for leases is for the tenant to meet the commitments described in their Sustainability Program, and to ensure that they align with ASF document available on Aviation's website at: <https://www.skyharbor.com/about/Sustainability>. In addition, the Successful Respondent will designate a local staff person to serve as the sustainability liaison and point of contact for Aviation's Sustainability team or designee. The sustainability liaison would oversee staff training on the tenant's sustainability commitments for the Airport as outlined in the Sustainability Program.

3.14. Project Requirements

- A. Sustainability: Aviation desires concessions that prioritize sustainability in its tenant design and operations and requires the Successful Respondent to commit to aligning with the Aviation Department's Sustainability Focus (ASF) document (available on Aviation's website at <https://www.skyharbor.com/about/Sustainability>) in their Sustainability Program.
- B. Respondents must provide a narrative regarding the approach to incorporating sustainability practices into the concession's operations in alignment with the ASF to include the following:
 - 1. Respondent's history, vision, and commitment to sustainability and how it will be applied to this development and operation.
 - 2. Respondent's approach to sustainability through operation of the concession.
 - 3. Respondent's approach to ensuring their sustainability program assists Aviation in meeting its sustainability goals.
- C. Additionally, Successful Respondents will be required to meet the Tenant Design Criteria described in **Exhibit 11**.

4. Evaluation Process

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

Evaluation Criteria

No.	Evaluation Criteria	Scoring Method	Percent Value (Points)
1.	<p>Proposed Concept and Merchandise Plan for the Concession Space</p> <p>Responses will be evaluated on the proposed concept, merchandise plan, price points, and methods to monitor and implement retail trends for the concession space. The merchandise plan should demonstrate quality, variety, and unique product mixes. Responses shall convey how the concept and merchandise best fit into the surrounding concepts in the area and the overall PHX retail concession program.</p>	Points Based	275 <i>(27.5% of Total)</i>
2.	<p>Design and Quality of Tenant Improvements for the Concession Space</p> <p>Responses will be evaluated on the amount of Capital Investment intended for tenant improvements. The proposed concept design will be evaluated for: creativity and innovation for interior and exterior design; efficiency of the layout of the interior layout plan (i.e., point of sale stations, customer circulation, queuing, use of technology, back of house storage, etc.); and overall quality of construction materials for flooring, wall coverings, fixtures, display units, signage, etc. Tenant improvements shall also demonstrate compliance with tenant design criteria and include a clear and feasible construction schedule.</p>	Points Based	250 <i>(25% of Total)</i>
3.	<p>Management, Marketing, Operations, and Technology Plans</p> <p>Responses will be evaluated on a management plan that contains the following: a staffing plan for the concession space including the qualifications and experience of on-site staff; training programs for customer service, policies and/or procedures for managing customer complaints and emergency situations; incentive programs for staff retention and recruitment; workplace quality to include employee wages, health insurance benefits and affordability, working conditions and workplace safety, personal protective equipment (PPE) availability, and additional benefits or compensation; communication methods to notify employees of employment-related regulations, including the Equal Pay Act, and monitoring practices to ensure compliance.</p> <p>Responses will also be evaluated on the quality of the marketing plan that identifies how the Respondent will use social media, advertise, and implement promotional opportunities and discounts to customers to encourage purchases and increase sales. The evaluation will also, consider how the use of technology improves the customer's buying experience.</p>	Points Based	200 <i>(20% of Total)</i>

	<p>In addition, Responses will be evaluated regarding the approach to the operations plan, including how technology and digital innovations will be utilized and the Respondent's approach to inventory and cash controls. The plan shall also demonstrate the ability to deliver products and merchandise to the concession space during normal business hours and emergency situations. A facility maintenance plan will also be evaluated in the operations plan to review normal repairs and maintenance, trash removal, cleaning and replacement of equipment and fixtures. The facility maintenance plan should also describe the frequency of cleaning the space and high touch point areas. In addition, if the Respondent is proposing a concept that is licensed, the involvement of the licensor shall be included in the operations plan.</p>		
4.	<p>Experience and Qualification of Respondent and Partners (if any)</p> <p>Responses will be evaluated on the Respondent's experience and qualifications for its organization, partners, and subtenants by providing the number of years and types of experience in the relevant concession category. This includes experience in airports, non-airport venues, similar concepts and operating multiple concession spaces simultaneously and experience with the proposed concept. Responses shall also discuss the number of years of experience operating and managing a variety of concepts and subtenants and the sales performance of concession spaces operated by the Respondent and all Partners.</p>	Points Based	175 <i>(17.5% of Total)</i>
5.	<p>Proposed Business Plan</p> <p>Responses will be evaluated as to the business plan that provides projected annual and aggregate gross sales and rent revenues for the concession space during the lease term. The plan shall also discuss the projected cash flow from operations to cover the proposed Capital Investment during the lease term. The plan shall also be evaluated on the assumptions in support of the gross sales and Pro Forma financial projections, in addition to demonstrating financial capability to fund the proposed Capital Investment.</p>	Points Based	100 <i>(10% of Total)</i>

5. Instructions

5.1. Submission of Offer

- A. The City of Phoenix Aviation Department is accepting electronic Responses for this solicitation, in addition to other methods of submitting sealed Response packages (hard copies). Respondents are responsible for submitting the Response (electronic or hard copies) before the due date and time of the submittal deadline.
- B. **FOR HARD COPY SUBMITTAL:**
1. For “In-Person” and “via Carrier (i.e. USPS, FedEx, UPS, etc.)” Delivery: Responses will be received at the Aviation Headquarters located at 2485 East Buckeye Road, Phoenix, AZ 85034 in the lobby during normal business hours (8:00 am – 5:00 pm local Phoenix time). Responses should be clearly marked on the outside of the package as designated in the solicitation. The Respondent is responsible for managing potential delays and the City does not make exceptions for delays caused by the Carrier.
 2. If the Respondent submits the Response in a hard copy format, then the Response must be submitted in a sealed package marked with the following information:
 - a. Respondent's Name
 - b. Respondent's Address (as shown on the Certification Page)
 - c. AVN RCS 24-0207
 - d. RCS Response To: T4 Lobby Retail Concession at PHX
- C. **FOR ELECTRONIC SUBMITTAL:**
1. Please submit your Response via email to avn.solicitations@phoenix.gov. The date and time on the email will provide proof of submission and verification if the Response was received on or prior to the Due Date and Time specified. Please identify the solicitation number, i.e. AVN RCS 24-0207, on the subject line of the email when submitting your Response.
 2. It is the responsibility of the Respondent to ensure that the Response is timely, including confirming that there are no technical reasons that any Response submitted electronically may be delayed.
 3. Respondents will be allowed to submit an electronic test submission. Please send electronic test submissions to avn.solicitations@phoenix.gov and specify in the title of the email that the submission is only a test. The City will acknowledge receipt of the test submission but will not be responsible for providing any additional information related to the Respondent's test submission. A test submission will not be counted as a final submittal. The actual Response must be

submitted before the solicitation deadline. Successful electronic test submission is not a guarantee that the electronic final submission of the Response will also be successful, and the City will not be responsible for any technical issues that may occur with the electronic final submission. **The Respondent is responsible for ensuring its Response is received prior to the solicitation deadline date and time.**

5.2. Delivery of Responses

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

- One (1) original Response with an authorized original signature on the Affidavit (**Exhibit 6**).
- Two (2) hard copies of the Response (if submitting hardcopy).
- One (1) electronic copy of the Response on a USB drive, using unlocked pdf format and in the same page order as the hard copy (if submitting hardcopy).
- In a separate sealed envelope marked "Response Guarantee", the ten-thousand-dollar (\$10,000.00) Response Guarantee check.
- Conflict of Interest and Solicitation Transparency Form.
- Letter of Declaration.
- In a separate sealed package or file marked "Small Business Outreach Requirements," the small business outreach requirements including the following:
 - Two (2) hard copies of the completed Statement of Outreach Commitment (**Form EO1-200 – Exhibit 4**) for hard copy submittal or one (1) copy for electronic submittal.
 - Two (2) hard copies of the completed Small Business Outreach Efforts (**Form EO2-200 – Exhibit 4**) for hard copy submittal or one (1) copy for electronic submittal.
 - One (1) hard copy of all supporting documentation required in **Form EO2-200** for hard copy submittal or one (1) copy for electronic submittal.
 - Two (2) hard copies of the completed Small Business Utilization Commitment Form (**Form EO3-200 – Exhibit 4**) for hard copy submittal or one (1) copy for electronic submittal.
 - All three forms, EO1-200, EO2-200, and EO3-200, along with supporting documentation are due with the Response.
- In a separate package or file marked "Sustainability Program", the Sustainability Program requirements include the information listed below. Please see Section 2.4 (C) for more detail on the Sustainability Program Minimum Qualification and Sections 3.13 and 3.14 for more detail on sustainability project requirements.
 - A Sustainability Program consistent with the goals of the Aviation Departments SMP.

- Description of how the Respondent will assist Aviation in meeting its sustainability goals.
- Utilization of Aviation’s goals highlighted in the Aviation Department’s Sustainability Focus (ASF) document at: <https://www.skyharbor.com/about/Sustainability>.
- The Respondent shall submit in a separate sealed package or file marked “Statement Regarding any Agreement with Labor Organizations”, the Statement Regarding Any Agreement with Labor Organizations as specified in Section 5.8 – Labor Organizations Documentation.

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

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

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

5.3. Organization of the Response

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

TAB 1 – GENERAL INFORMATION

- Cover Letter (1-page limitation) including the following information on the first page of the letter:
 - Name of Respondent. If Respondent is a joint venture, then indicate all partners and each partner’s percentage of ownership interest in joint venture.
 - Names of all sublessees, if any.
 - Concept and names of the firm(s) that will be operating the proposed concept.
- Table of Contents for entire Response with page numbers included.
- Notarized Affidavit (**Exhibit 6**).

- Conflict of Interest and Solicitation Transparency Form (**Exhibit 15**).
- Letter of Declaration (**Exhibit 5**).
- Respondent References (**Exhibit 16**).
- Bank's Letter of Commitment - Respondent must provide a letter from its bank communicating the bank's commitment to provide the Respondent, if successful, with a Letter of Credit or Cash Deposit, as defined in Section 2.10 (B), in an amount equal to six (6) months' MAG.
- Evidence of ability to obtain required insurance coverages, such as a commitment letter from an underwriter or a current certificate of insurance showing comparable insurance limits, confirming that the Respondent is insurable for the required coverages at the required limits as defined in **Exhibit 17**. The City reserves the sole right to determine if the Respondent will meet the required insurance limits as defined in this solicitation.
- Proof of Payment Card Industry Data Security Standard (PCI DSS) Certification.

TAB 2 – PROPOSED CONCEPT AND MERCHANDISE PLAN FOR THE CONCESSION SPACE

Respondents should provide a narrative regarding the proposed concept and merchandise plan for the concession space that demonstrates quality, variety, and uniqueness. Responses shall convey the best fit for the surrounding area. Include the following in Tab 2 of the Response:

- Retail Concept Description (**Exhibit 18**).
- National name brands or local and regional concept and local operator participation (if any).
- Copy of license/franchise sublease(s) and/or letter(s) of intent from concept owner(s) to issue a license to Respondents or subtenant, if applicable.
- If the concept is licensed, provide the specific involvement of the licensor in the operation of the concept at PHX.
- Sample merchandise list and the range of prices.
- Description of why the concept was chosen for PHX's T4 Lobby.
- Description of any unique attributes of the concept.
- Methods used to monitor and implement current trends.

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

Respondents should provide a narrative regarding the creativity and innovation for interior and exterior designs, efficiency of the interior layout plan, and overall quality of construction materials. The narrative should also include how tenant improvements will demonstrate compliance with the Tenant Design Criteria (**Exhibit 11**) and provide a clear and feasible construction schedule. Include the following in Tab 3 of the Response:

- Proposed Capital Investment for the Concession Space (**Exhibit 10**).
- Architectural Renderings (11" x 17") must be compatible with Tenant Design Criteria (**Exhibit 11**). The design should be appropriate to the concept. The following four renderings for the Concession Space will be required with the Response:
 - Exterior – overall design to include color scheme, signage and graphics, lighting, etc.
 - Interior – overall design to include color scheme, materials, lighting, displays, etc.
 - Layout of interior – merchandise displays, POS customer queuing, customer circulation, changing room(s), use of technology, storage areas, grab-and-go counters, fixtures, etc.
- Digital Material Board – the Respondent must provide a digital material board with pictures of proposed materials, including the floor and wall coverings, ceiling treatments, service counters and display and lighting fixtures, and all proposed interior and exterior signage. Respondent must also provide the manufacturer information and specifications of proposed materials. The City reserves the right to require a physical material board and/or 3D renderings of the proposed space be submitted by the Successful Respondent upon written request if it is determined necessary.
- Construction Phasing Plan with a detailed approach to phasing the construction of the concession space and meeting the opening date.

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

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

- Staffing plan for an average day for the Concession Space.
- Qualifications and experience of the on-site team.
 - Respondent's on-site manager(s) that will be responsible for the operations of the Concession Space and handling emergency situations and customer service issues (**Exhibit 19**).

- Subtenant's, if any, on-site managers.
- Management Plan
 - Recruiting and training programs for employees, leadership and career advancement opportunities, employee incentives, recognition, and motivation programs.
 - Quality Workplace description: employee wages (include narrative on how fair wages are derived), health insurance benefits/affordability (include a narrative describing coverage, total insurance cost, percentage of cost paid by employee, and percentage of cost paid by employer), working conditions/workplace safety (including employee breaks and access to safety supplies and PPE), and other benefits or compensation (including planned wage increases and paid leave).
 - Approach to maintaining high standards of professional conduct and appearance from staff, including any uniforms.
 - Proposed communication to employees about the **Equal Pay Act** and methods to monitor compliance with the Act.
 - Customer service program and methods to continuously monitor customer service, i.e., mystery shoppers, comment cards, and social media.
 - Description of ADA and customers with special needs program.
 - Policy for handling customer complaints and emergency situations.
 - Description of customer dispute resolution program.
- Marketing Plan
 - Use of social media to promote the concept.
 - Promotions and discounts attributed to customer loyalty programs, employees, military, etc. (include sample materials) to encourage purchases and increase sales. Advertising and implementation plan for promotions and discounts.
- Operations Plan
 - Proposed merchandise product delivery plan to T4 and to the Concession Space during normal operations and during emergency situations.
 - Facility maintenance plan which includes normal repairs and maintenance of the Concession Space, frequency of cleaning, trash removal, and equipment maintenance plan for fixtures due to normal wear and tear.
 - Physical security, inventory, and cash controls.
 - Discuss cleaning of the spaces and high touch points, including compliance with applicable local, state, and federal guidelines or requirements.

- Technology Plan
 - How technology will be utilized to improve customer service.
 - How the Respondent will efficiently and effectively expedite the in-store checkout process by using the latest technology (including touchless) and accommodating various payment methods and options.
- Proof of Payment Card Industry Data Security Standard (PCI DSS) Certification.

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

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

- Respondent's Qualifications and Experience (**Exhibit 20**).
- Contact information for locations provided in Exhibit 20 (**Exhibit 20.1**).
- Respondent's Experience Managing and Operating a Variety of Concepts (**Exhibit 21**).
- Experience of Respondent and Respondent's Partners (if any) with concept (including Subtenant and JV Partners) (**Exhibit 22**).

TAB 6 – PROPOSED BUSINESS PLAN

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

- Projected Ten-Year Gross Sales for each lease year (**Exhibit 23**).
- Projected Ten-Year Rent Revenues for each lease year (**Exhibit 24**).
- Pro Forma Financial Statements for each lease year (**Exhibit 25**).
- Assumptions that support annual Gross Sales and Proforma Financial Projections (**Exhibit 26**).
- Projected cash flow from operations to cover the proposed Capital Investment during the Lease term.
- Documentation of Respondent's and Respondent's subtenant and/or joint venture partners', if any, financial capability to fund internally and/or finance proposed Capital

Investment such as audited financial statements and/or letters of intent from financial institutions.

5.4. Form of Response

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

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

- Narrative portions of the Response shall be submitted on 8.5" x 11" paper with Arial font of at least 12 point.
- The Response and each hard copy shall each be submitted in a 3-ring 8.5" x 11" binder for hardcopy submittals.
- The pages of the Response must be numbered.

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

Responses are limited to forty-five (45) double-sided or ninety (90) single-sided, letter-size pages typed in 12-point Arial font. The pages of each Response must be numbered. Forms, exhibits, required submittal documents, financial information, including the Pro Forma, table of contents, tab cover sheets, design renderings, and electronic material boards will not be counted towards the forty-five (45) double-sided or ninety (90) single-sided page limit. Any additional pages that exceed the page limitation will be removed from the Response and not be considered during the evaluation process. **Respondents are responsible for reading and complying with all requirements of this RCS.**

5.5. 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.

5.6. Late Offers

Late Offers must be rejected, except for good cause. If a late Offer is submitted, the Aviation 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.

5.7. Offer Results

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

Meeting Link

<https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=me13d6775fdef7ff580b6f791fde64265>

Join by phone:

+1-415-655-0001 US Toll

Access code:

2632 614 3917

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

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

5.8. Labor Organization Documents

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

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

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

5.9. Equal Opportunity Department Response Instructions

- A. The City has implemented outreach requirements for this RCS and Lease. Specifically, each Respondent shall:
 1. Identify small business participation opportunities, including Commercially Useful Functions (CUF).
 2. Actively solicit proposals from small businesses.

3. Evaluate small business proposals; and
 4. Communicate selection decisions to small businesses, including each rejection of a small business proposal.
- B. If a Respondent fails to conduct these Outreach Efforts or fails to submit the required documentation of Respondent's Outreach Efforts as indicated below, the City will determine that the Respondent's response is non-responsive. A determination of non-responsiveness disqualifies the Respondent from further consideration for the Lease award.
- C. As instructed in Section 5.2 - Delivery of Response, Respondents shall submit Small Business Outreach Requirements in a separate file or sealed package marked "Small Business Outreach Requirements" within the response.
- D. The separate sealed package or file marked "Small Business Outreach Requirements" must include completed submissions of the following forms and supporting documents:
1. Form EO1-200 - Statement of Outreach Commitment.
 2. Form EO2-200 - Small Business Outreach Efforts and Participants List.
 3. All supporting documentation for EO2-200 - Small Business Outreach Efforts and Participants List.
 4. Form EO3-200 - Small Business Utilization Commitment.

All three forms, EO1-200, EO2-200, and EO3-200, with the supporting documentation, are due with the response.

E. Form EO2-200 - Small Business Outreach Efforts and Participants List:

1. Each Respondent shall complete and submit Form EO2-200 documenting their diligent, good faith Outreach Efforts. Respondents shall list on Form EO2-200, all small businesses contacted by Respondent in preparing its response. Respondents should make additional copies of EO2-200, as necessary, to document their outreach.
2. Each Respondent shall provide the following minimum information to document its outreach efforts. The Compliance Specialist will review the documentation to determine whether Respondent has demonstrated the required small business Outreach efforts.
3. Each Respondent shall fully complete Form EO2-200 in accordance with the following instructions:
 - a. Each Respondent shall actively contact the small businesses reported in **Column A**, Small Business Name and Contact Information. The Respondent shall complete all fields in Column A, providing the businesses full legal name and contact information including zip code.

- b. Respondent will provide the age of the business and the annual gross receipts of the firm. Respondents may obtain this information by asking each business to indicate what gross receipts bracket they fit (e.g., less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc.) rather than requesting the exact figure from the business.
 - c. Respondent will provide the race and gender information of the business' majority owner.
 - d. Respondent shall indicate the business' status in **Column B**, indicating if the business is an ACDBE, Small Business Enterprise (SBE), or small business concern.
 - e. Respondent will provide the solicited NAICS codes and scopes of work in **Column C**, for which the small business is certified and will deliver or perform.
 - f. Respondent will indicate the solicitation method used for each contact in **Column D**.
 - g. If Respondent does not select a particular small business to participate in the lease, the Respondent shall explain the reason why in **Column E**.
 - h. Respondent shall notify each small business contacted whether or not the firm was selected to participate. Respondent shall notify all firms not selected, and Respondent shall state when (date) and how (method) the selection outcome was communicated to each firm in **Column F**.
4. Respondent shall provide the supporting documentation showing that they have communicated their final selection decisions and outcomes to all small businesses not chosen to participate in this proposal.

F. Form EO2-200 Supporting Documentation:

1. Each Respondent shall complete and submit supporting documentation of its Outreach Efforts related to Form EO2-200.
 - a. This documentation must include:
 1. The NAICS codes and descriptions of scopes of work and business opportunities identified for small business participation, and
 2. A copy of the actual solicitation sent to the small businesses. The solicitation may be in the form of a letter, an email attachment, advertisements in newspapers or trade papers, or written communications with Chambers of Commerce and/or other organizations.

- b. Respondent must submit documentation that establishes how Respondent communicated its selection decisions and outcomes to each small business not selected for this lease. This documentation may be in the form of a letter, email, fax, or telephone log, and must show the name of the person contacted and the date the contact occurred on.
- c. For all of the above documentation, if Respondent uses a blast email or fax format, the documentation submitted must include a copy of the email or fax, and Respondent must disclose all email addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of the transmission. For telephone contacts, Respondent shall document the date and time of the call **and** the names of the respective persons representing Respondent and the small business.

G. Form EO3-200 Small Business Utilization Commitment:

1. Respondent shall sign and submit Form EO3-200, which commits the Respondent to the City as follows:
 - a. The firms indicated as “selected” on Form EO2-200 will participate in the Lease.
 - b. The Respondent will comply with the Race- and Gender-Neutral post award requirements as stated in Sections V and VI of the ACBE Race- and Gender-Neutral Lease Clause.
 - c. Any and all changes or substitutions of selected firms **must** be authorized by the Compliance Specialist before implementation; and
 - d. The proposed total ACDBE and small business participation percentage is true and correct.
2. Respondent shall ensure that the percentages proposed for ACDBE and small business participation on Form EO2-200 equal the total percentage proposed on Form EO3-200.

H. Failure to Meet Small Business Outreach Requirements: The Equal Opportunity Department (EOD) will determine, in writing, whether Respondent has satisfied all outreach requirements. If EOD determines that Respondent has failed to satisfy the outreach requirements, then EOD will determine that the Response is non-responsive. A non-responsive determination disqualifies Respondent from further consideration for the Lease award. The City shall send written notice to Respondent stating the basis for the EOD decision.

I. ACDBE Administrative Reconsideration:

1. If EOD determines that Respondent failed to submit required documentation to meet the stated outreach requirements, the city will permit Respondent to

request EOD to reconsider this determination, in accordance with the protest provisions in this RCS.

- a. In its request for reconsideration, Respondent may clarify its Response. Respondent may not submit or refer to new or revised documents or information. The City will only reconsider the original Response as clarified in the request for reconsideration.
2. If Respondent requests EOD to reconsider the determination of non-responsiveness based on insufficient demonstration of Outreach Efforts, the Respondent must provide written notice to the City. The ACDBE Reconsideration period is concurrent with the protest period outlined in this solicitation.

6. Determination of Responsiveness and Responsibility and Evaluation

6.1. Responsiveness and Responsibility

- A. Responses will be reviewed for responsiveness and responsibility, documentation of minimum qualifications, completeness, and adherence to RCS requirements.
- B. The qualifications will be reviewed by the Procurement Officer or an evaluation panel in accordance with the criteria set forth in this RCS. If a Respondent's Response is deemed not Responsive or not Responsible or does not meet the minimum qualifications, then no additional opportunity to supplement the qualifications will be afforded to the Respondent.
- C. **The City reserves the sole right to determine the sufficiency of qualifications and experience of all Respondents.**

6.2. Evaluation

- A. Aviation will appoint evaluation panel(s) to evaluate all Responsive and Responsible Responses and recommend the Respondent(s) to be awarded the Lease resulting from this RCS. The Aviation Director may accept the evaluation panel's recommendation and submit it to the Phoenix City Council for approval or may reject the recommendation. If only one Response is Responsive and Responsible to this RCS, then the Aviation Director shall have the discretion to determine whether the evaluation panel or staff will evaluate the Responsive and Responsible Response.
- B. The evaluation panel may interview all Respondents or create a short-list of Respondents to interview. The same evaluation panel will be used for the short-list and the interview process. A short-list of Responses, when used, is a list of Responses identified by the evaluation panel, based on the evaluation criteria in this RCS, as those that have a substantial chance of resulting in a Lease award in comparison to all Responsive and Responsible Responses submitted. The evaluation panel may consider information from the interviews or demonstrations that clarifies the written Responses.
- C. The evaluation panel will score the Responses by consensus based on the evaluation criteria. The City will retain the consensus scoring for each criterion for each Respondent. **The City does not retain individual panelists' scores.**

6.3. Discussions

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

7. General Terms and Conditions of the RCS

7.1. 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.

7.2. Award Recommendation

All award recommendations will be posted on the following phoenix.gov website:

<https://solicitations.phoenix.gov/Awards>.

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

7.3. Disclosure of Confidential and Proprietary Information

- A. All materials submitted by Respondents are the property of the City and become a matter of public record available for review pursuant to Arizona law. A Respondent may not request that the entire Response be treated as confidential. A Respondent may request specific information contained within its Response be treated by the Procurement Officer as confidential or proprietary (collectively confidential) provided the Respondent clearly labels the specific information "confidential". To the extent necessary for the evaluation process, information marked as "confidential" will not be treated as confidential.
- B. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Respondent as "confidential" available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify a Respondent in writing of any request to view any portion of its offer marked "confidential." The Respondent will have fourteen (14) calendar days thereafter to (i) notify the Procurement Officer if Respondent does not object to such disclosure, or (ii) obtain and furnish a court order enjoining such disclosure. The time to obtain a court order may be extended at the Procurement Officer's sole discretion. If the Respondent does not provide the Procurement Officer with a court order enjoining release of the information during the designated time period, the Procurement Officer will make the information requested available for inspection.

7.4. City's Reservation of Rights

The City may:

- A. Accept or reject any or all Responses in whole or in part;
- B. Cancel this RCS in whole or in part;
- C. Negotiate any Response elements in a manner that does not create an unfair advantage for any Respondent;
- D. Reissue this RCS with or without modification;

- E. Waive any non-material defects in any Response or the procurement process; and
- F. Take any other legal action deemed to be in the City's best interest.

7.5. 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.

7.6. Respondent Incurred Costs

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

7.7. City's Sole Determination of Responsiveness and Responsibility and Right to Investigate

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

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

7.8. Respondent Certification and Affidavit

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

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

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

7.9. Protest Policy

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.

7.10. Legal Worker Requirements

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

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

7.11. Non-Discrimination/Equal Opportunity

- A. The City will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Parts 23 and 26, on the basis of race, color, sex, or national origin.
- B. In administering its ACDBE program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE program with respect to individuals of a particular race, color, sex, or national origin.
- C. The City further agrees to meet the nondiscrimination requirements provided in 49 CFR Part 26, §26.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by this subpart.
- D. The City will take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements covered under the ACDBE program.

7.12. Compliance with Nondiscrimination Requirements

During the performance of this contract, the Successful Respondent, for itself, its subcontractors, its assignees, and successors in interest, agrees as follows:

- A. **Compliance with Regulations:** The Successful Respondent (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

- B. **Nondiscrimination:** The Successful Respondent, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Successful Respondent will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- C. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Successful Respondent for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Successful Respondent of the Successful Respondent's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- D. **Information and Reports:** The Successful Respondent will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Successful Respondent will so certify to the sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of a Successful Respondent's noncompliance with the nondiscrimination provisions of this contract, the City will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
1. Withholding payments to the Successful Respondent under the contract until the Successful Respondent complies; and/or
 2. Cancelling, terminating, or suspending a contract, in whole or in part.
- F. **Incorporation of Provisions:** The Successful Respondent will include provisions of paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Successful Respondent will act with respect to any subcontract or procurement as the City or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Successful Respondent becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the Successful Respondent may request the sponsor to enter

into any litigation to protect the interests of the sponsor. In addition, the Successful Respondent may request the United States to enter into the litigation to protect the interests of the United States.

7.13. Affirmative Action Compliance Certification

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

7.14. Non-Discrimination/Equal Opportunity for Successful Respondent

- A. The City extends to all Respondents an equal economic opportunity to compete for City business and strongly encourages the participation of ACDBE firms and small businesses. The Successful Respondent is required to adopt and incorporate the following nondiscrimination policy statement in all contractual arrangements (49 CFR Part 23.9):
1. "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.
 2. "The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements."
- B. In administering its ACDBE program, the Successful Respondent will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE program with respect to individuals of a particular race, color, sex, or national origin.
- C. The Successful Respondent further agrees to meet the non-discrimination requirements provided in 49 CFR Part 26, §26.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by this subpart.
- D. The Successful Respondent will take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements covered under the ACDBE program.

7.15. Title VI Solicitation Notice

The City of Phoenix, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

7.16. Compliance with Laws

As specified in the Lease, the successful Respondent will be required to comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances, and additionally must:

- A. Comply with Exhibit 27 – Supplemental Terms and Conditions to All Airport Agreements (Revised 5/22/24), including its provisions requiring the **mitigation of heat-related illnesses and injuries**.
- B. Comply with Exhibit 28 – Compliance with Environmental Laws (Revised May 2022).

**EXHIBIT 1
DRAFT LEASE**

Terminal 4 Lobby Retail Concession

Available at:

<https://solicitations.phoenix.gov/Solicitations/Details/1837>

EXHIBIT 2 PREMISES

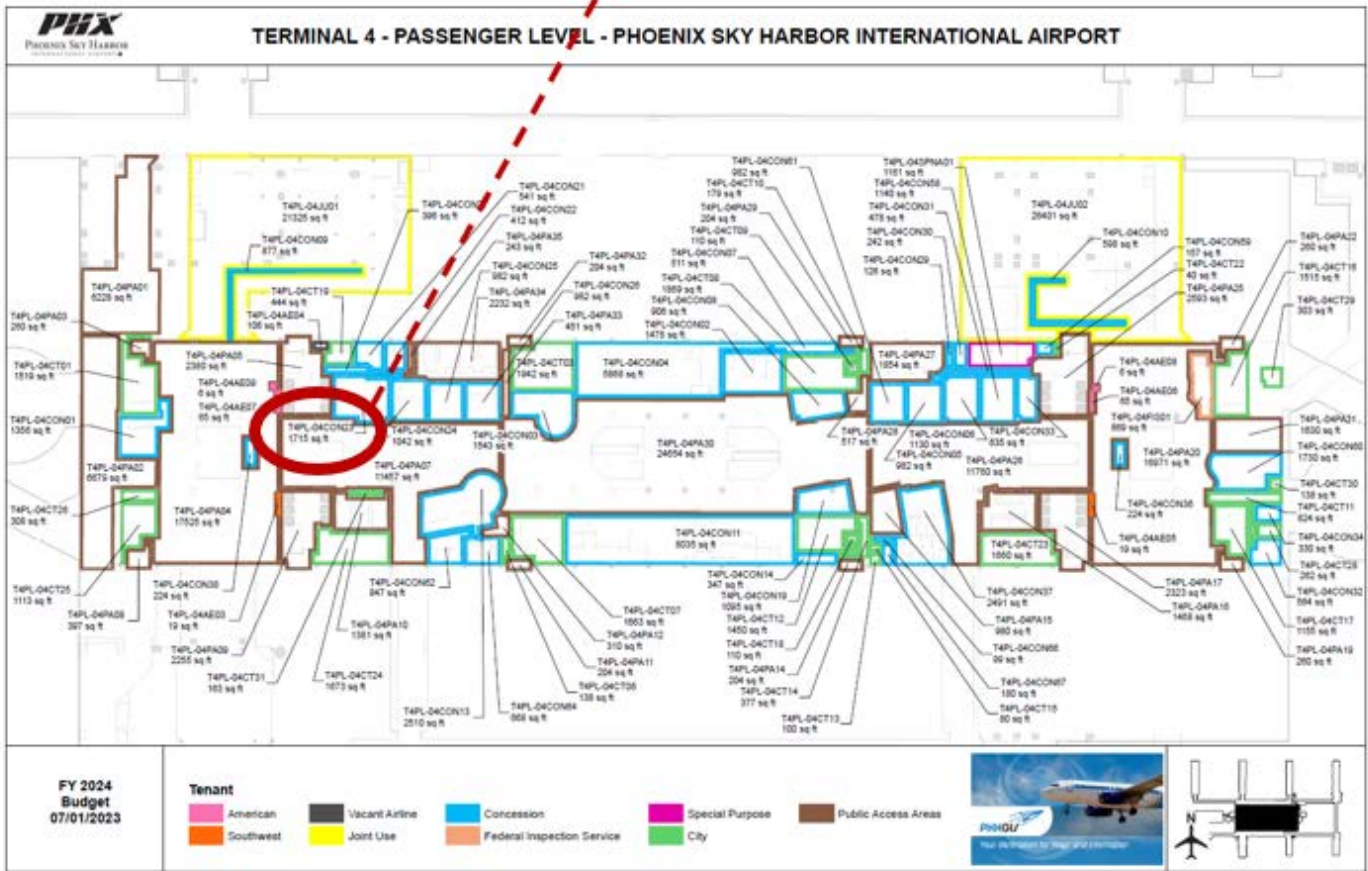
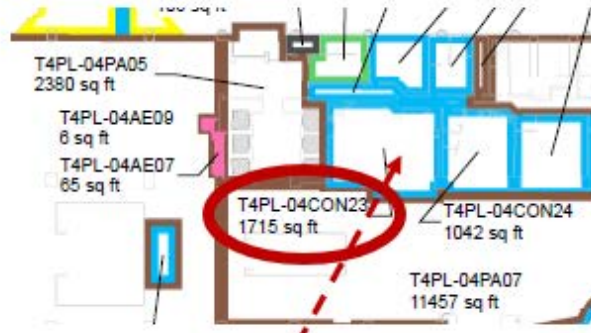


EXHIBIT 3
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
PROGRAM RACE- AND GENDER-NEUTRAL LEASE CLAUSE

SECTION I DEFINITIONS

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

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

Arizona Unified Certification Program (AZUCP) is a consortium of government agencies comprised of City of Phoenix, ADOT and City of Tucson. Only the City of Phoenix provides reciprocal ACDBE certification within Arizona pursuant to 49 CFR Part 23. The official database containing eligible ACDBE firms certified by AZUCP can be accessed at AZ UTRACS.

Arizona's Unified Transportation Registration and Certification System (AZ UTRACS) is a comprehensive internet-based business directory containing certified ACDBEs, DBEs and SBCs. The directory includes detailed firm profiles that includes capabilities and geographic locations that can be accessed at: <https://utracs.azdot.gov/Search>

City means the City of Phoenix; also known as the Lessor.

Commercially Useful Function (CUF) is defined in 49 CFR Parts 23 and 26, relates to independent performance of work by an ACDBE or goods and services provider contracting function.

Compliance Specialist means an Equal Opportunity Department (EOD) employee responsible for ACDBE Program compliance with this Lease Clause.

Concession. Per 49 CFR Part 23, a concession means one or more of the types of for-profit businesses that serve the traveling public listed in paragraph (a) or (b) of this definition:

- a. A business, located on an airport subject to this part, that is engaged in the sale of consumer goods or services to the traveling public under an agreement with the recipient, another concessionaire, or the owner or lessee of a terminal, if other than the recipient.
- b. A business conducting one or more of the following covered activities, even if it does not maintain an office, store, or other business location on an airport subject to this part, as long as the activities take place on the airport: management contracts and subcontracts, a web-based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business that provides advertising displays or messages to the public on the airport, or a business that provides goods and services to concessionaires.

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

EOD means the City of Phoenix Equal Opportunity Department.

Goods and Services Providers are firms that provide goods and services that represent a Commercially

Useful Function directly to airport Lessees as an ACDBE or small business.

Joint Venture (JV) means an association of an ACDBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. The resources, assets, and labor of the participants must be combined in an effort to accrue profit. Joint venture entities are not certified as ACDBEs.

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

Lessee means an individual, partnership, JV, corporation or firm that submits a Response to, and is awarded a contract by the City to perform services requested by a RCS.

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

Personal net worth (PNW) has the same meaning the term has in 49 CFR part 26.

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

Revenue Contract Solicitation (RCS) is a revenue generating procurement issued by the City.

Race- and Gender-Neutral (RGN) Measures means effort(s) or program(s) that are, or can be, used to encourage small business participation, in the absence of a goal.

Small Business means a for-profit business that does not exceed the size standards of 49 CFR Part 23 §23.33, with respect to firms seeking to participate on concession leases.

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

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

SECTION II GENERAL REQUIREMENTS

- A. Applicable Federal Regulations.** This Lease is subject to ACDBE requirements issued by USDOT in 49 CFR Parts 26 and 23. Despite the lack of a race- and gender-conscious ACDBE participation goal for this Lease, the Lessor must track and report ACDBE and small business participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving an ACDBE or small business. For this reason, the Lessee shall provide all relevant information to enable the required reporting.

- B. ACDBE Participation.** For this lease, the City has not established any race- or gender-conscious ACDBE participation goals. The City extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The City uses race- and gender-neutral measures to facilitate participation of small businesses. The City *strongly encourages* each Lessee to voluntarily subcontract or joint venture with small businesses to perform a commercially useful function (CUF) for the part of the work that Lessee might otherwise perform with its own forces. The City also *strongly encourages* each Lessee to voluntarily utilize small businesses as suppliers of goods and services.
- C. Counting ACDBE Participation.** The City will count ACDBE and small business participation as authorized by federal regulations. A summary of these regulations can be found at <https://www.ecfr.gov/current/title-49/subtitle-A/part-23/subpart-D/section-23.55>
- D. ACDBE Certification.** *Only* firms (1) certified by the City or another UCP, and (2) contracted to perform a commercially useful function (CUF) on scopes of work for which they are certified, may be considered to determine ACDBE participation resulting from RGN measures on this Lease.
- E. Civil Rights Assurances.** As a recipient of USDOT funding, the City has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Lease signed by the City and the Lessee, and each Subcontract signed by the Lessee and any subcontractors, must include the following assurance *verbatim*:
- a. "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.
 - b. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements."

The contractor, subrecipient, or subcontractor ***shall not*** discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Parts 21 and 23 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Phoenix deems appropriate.

Note: For purposes of the required Contract and Subcontract language above, the Lessee is the "Concessionaire or Contractor".

F. Nondiscrimination/Equal Opportunity

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

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

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

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

SECTION III REQUIRED OUTREACH EFFORTS

The City has implemented outreach requirements for this Lease Specifically, each Lessee shall:

- (1) identify small-business-participation opportunities, including Commercially Useful Functions (CUF);
- (2) actively solicit proposals from small businesses;
- (3) evaluate small-business proposals; and
- (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal.

If a Lessee fails to conduct these Outreach Efforts or fails to submit the required documentation of Lessee's Outreach Efforts as indicated in Section IV below, the City may determine that the Lessee is noncompliant.

SECTION IV POST AWARD REQUIREMENTS

I. Outreach Requirements

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

After being awarded a lease, each Lessee **must** conduct and document small business outreach efforts in compliance with the Airport Concession Disadvantaged Business Enterprise (ACDBE) Program, Race- and Gender-Neutral Lease Clause (Exhibit 3) and USDOT in 49 CFR Parts 23 and 26. Although there are no ACDBE or small business participation goals set for this lease, the City strongly encourages each Lessee to utilize small businesses in its response.

The Small Business Outreach Efforts Forms, **EO1-200** - Statement of Outreach Commitment Form, **EO2-200** - Small Business Outreach Efforts and Participants List Form, and **EO3-200** - Small Business Participation Commitment Form, marked in **Exhibit 4** were due with the response at the time of submittal. The Lessee will be held to the Small Business Participation Commitment percentages proposed in Form EO3-200.

Every year on the anniversary of the contract execution date of the Lease, the Lessee must provide the City with an updated Small Business Participation Plan (SBPP), detailing continued commitment to reaching out to ACDBEs and small businesses. The SBPP shall contain strategies to foster small business participation and information concerning the small businesses, including any changes to the initial Airport-approved SBPP (EO2-200 and EO3-200).

Lessees are required to comply with Airport ACDBE Program Plan and 49 CFR Parts 23 and 26. Lessees **shall track and report all** ACDBE and small business participation that occurs at the Airport as a result of a lease, procurements, purchase orders, subleases, joint ventures, goods and services or other arrangements involving sub-tier participation. Such documentation **must be entered monthly** into the internet-based reporting program, City of Phoenix Certification & Compliance System at <https://phoenix.diversitycompliance.com>.

II. Failure to Meet Small Business Outreach Requirements

The EOD Compliance Specialist will determine whether Lessee has satisfied all outreach requirements. If the Compliance Specialist determines that Lessee has failed to satisfy the outreach requirements, then the Compliance Specialist may determine that the Lessee is noncompliant. The City shall send written notice to Lessee stating the basis for the Compliance Specialist's decision.

III. ACDBE Administrative Reconsideration

If the EOD Compliance Specialist determines that Lessee failed to submit required documentation to meet the stated outreach requirements, the City will permit Lessee to request EOD to reconsider this determination, in accordance with the administrative reconsideration provisions detailed below.

If Lessee requests EOD to reconsider the Compliance Specialist's determination of non-compliant based on insufficient demonstration of Outreach Efforts, Lessee must provide written notice to the City within seven (7) business days of being informed by EOD of their non-compliant status. The Lessee must make this request in writing to the following reconsideration official:

City Auditor or designee
City Auditor Department
140 North Third Avenue
Phoenix, AZ 85003
Phone: (602) 262-6641
Fax: (602) 534-1533
TTY: 7-1-1 Friendly

The Administrative Reconsideration/Appeal Hearing Officer will not have played any role in the original determination. As part of this reconsideration, the Lessee will have the opportunity to provide written documentation or argument concerning the issue. The Lessee may have the opportunity to meet with the City's Administrative Reconsideration/Hearing Officer to discuss the matter. The City will send the Lessee a written decision on reconsideration, explaining the basis of the determination, which is final. The result of the reconsideration process is not subject to administrative appeal with the USDOT.

IV. Compliance with Nondiscrimination Requirements

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest, agrees as follows:

- 1) **Compliance with Regulations:** The Lessee (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2) **Nondiscrimination:** The Lessee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in

the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- 3) **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Lessee of the Lessee's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, national origin or sex.

- a. Each Lease signed by the City and the Lessee, and each Subcontract signed by the Lessee and a Subcontractor, **must include the following assurance verbatim:**

"This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements."

The Lessee, or its subcontractor *shall not* discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Lessee shall carry out applicable requirements of 49 CFR Parts 21 and 23 in the award and administration of USDOT-assisted contracts. Failure by the Lessee to carry out these requirements is a material breach of this contract, which may result in the termination of this Lease or such other remedy as the City of Phoenix deems appropriate.

Note: For purposes of the required Lessee and Subcontract language above, the Lessee is the Concessionaire or Contractor.

- 4) **Information and Reports:** The Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5) **Sanctions for Noncompliance:** In the event of a Lessee's noncompliance with the nondiscrimination provisions of this contract, the City will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
- 1) Withholding payments to the Lessee under the contract until the Lessee complies; and/or

2) Cancelling, terminating, or suspending a contract, in whole or in part.

- 6) **Incorporation of Provisions:** The Lessee will include provisions of paragraphs one (1) through six (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Lessee will act with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

V. Title VI Assurances:

The City of Phoenix, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, Airport Concession Disadvantaged Business Enterprises (ACDBEs) will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

SECTION IV POST-CONTRACT AWARD GENERAL REQUIREMENTS

- A. **Subcontracting Commitment.** Promptly after Lease award (effective date), the Lessee **shall** submit to City copies of **all** executed contracts, purchase orders, subleases, JV agreements, and other arrangements formalizing agreements between Lessee and any small businesses.

The Lessee shall not reduce the amount, alter the scope of work, or terminate the subcontractor without the Lessor's, to include the EOD Compliance Specialist's, prior written approval. Any request to alter a small business Subcontract **must** be submitted in writing to the City, including the Equal Opportunity Department, before any change is made. If the Lessee fails to do so, the City may declare the Lessee in breach of the Lease.

- B. **Post-Contract Award Relief from ACDBE Requirements.** After Lease award, the City will not grant relief from the proposed ACDBE or small business utilization except in extraordinary circumstances. The Lessee's request to modify ACDBE or small business participation **must** be in writing to the City, including the EOD Compliance Specialist, who has final discretion and authority to determine if the request for reduction and small business utilization should be granted.

The Lessee's waiver request must contain evidence demonstrating why the relief is being sought, and any additional relevant information the EOD Compliance Specialist should consider. The Lessee shall include with the request all documentation of its attempts to subcontract with small businesses and any other action taken to locate and solicit a replacement small business.

- C. **Substitutions.** If a small business was approved by the City, but the firm subsequently loses its small business status before execution of a contract, the EOD Compliance Specialist will consider whether or not the Lessee has exercised diligent and good-faith efforts to find another small business as a replacement. The Lessee shall notify the City, including the Equal Opportunity Department, in writing of the necessity to substitute a small business and provide specific reason(s) for the substitution or replacement. For the purpose of monitoring the Lessee's participation goal, the selection of the replacement partner or supplier of goods and services **must** be approved by EOD.

SECTION V. RECORDS & REPORTING REQUIREMENTS

- A. **Records.** During performance of the Lease, the Lessee shall keep all records necessary to document ACDBE and small business participation. The Lessee shall provide the records to the City within 72 hours of the City's request and at final completion of the Lease. The City will prescribe the form, manner, and content of reports. The required records include:
1. A complete listing of all sublessees and suppliers on the project.
 2. Each sublessee's and supplier's certified scope of work performed.
 3. Copies of all executed subcontracts, JV agreements, purchase orders, and invoices.
 4. Copies of all payment documentation.
- B. **Reports.** The Lessee shall be required to track and report all ACDBE and small business participation that occurs as a result of a contract, procurements, purchase orders, subleases, JV, goods/services, or other arrangements involving sub-tier participation. Such documentation **must be entered monthly** into the internet-based reporting program City of Phoenix Certification & Compliance System at <https://phoenix.diversitycompliance.com>.
- C. **Annual Submittals of Small Business Participation Plan (SBPP).** As a matter of compliance, the Lessee must submit a Small Business Participation Plan (SBPP) and the associated supporting documentation, on an annual basis by the anniversary date of contract execution (effective date). The Lessee is required to maintain a SBPP and document its ongoing efforts to foster small business participation throughout the life of this Lease. The Lessee is required to conduct a shortfall analysis and develop a corrective action plan in the event the Lessee is unable to achieve its small business participation commitment.
1. **Failure to Foster Small Business Participation**

The EOD Compliance Specialist will determine whether Lessee has satisfied all outreach activities in the development of the Small Business Participation Plan (SBPP). If the EOD Compliance Specialist determines that Lessee has failed to satisfy the SBPP requirements as specified in this Lease, then the EOD Compliance Specialist may determine that the Lessee is not compliant. The City shall send a written notice to the Lessee stating the basis for the EOD Compliance Specialist's decision. The Lessee has seven (7) business days to cure the deficiency. If Lessee fails to submit the required forms and supporting documentation by the due dates, the City may formally deem the Lessee noncompliant, in default of the Lease and not in good standing with the City of Phoenix.
- D. **Counting of Small Business Participation:**
- Per 49 CFR Part 23. §23.55
- a. You count only ACDBE participation that results from a commercially useful function (CUF). For purposes of this part, the term commercially useful function has the same meaning as in part 26, § 26.55(c), except that the requirements of § 26.55(c)(3) do not apply to concessions.
 - b. Count the total dollar value of gross receipts an ACDBE earns under a concession agreement and the total dollar value of a management contract or subcontract with an ACDBE toward the goal. However, if the ACDBE enters into a subconcession agreement or subcontract with a non-ACDBE, do not count any of the gross receipts earned by the non-ACDBE.

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- c. When an ACDBE performs as a subconcessionaire or subcontractor for a non-ACDBE, count only the portion of the gross receipts earned by the ACDBE under its subagreement.
 - d. When an ACDBE performs as a participant in a joint venture, count a portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces toward ACDBE goals.
 - e. Count 100 percent of fees or commissions charged by an ACDBE firm for a bona fide service, provided that, as the recipient, you determine this amount to be reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
 - f. Count 100 percent of the cost of goods obtained from an ACDBE manufacturer. For purposes of this part, the term manufacturer has the same meaning as in part 26, § 26.55(e)(1)(ii).
 - g. Count 100 percent of the cost of goods purchased or leased from an ACDBE regular dealer. For purposes of this part, the term “regular dealer” has the same meaning as in part 26, § 26.55(e)(2)(ii).
 - h. Count credit toward ACDBE goals for goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer as follows:
 - i. Count 100 percent of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.
 - ii. Count 100 percent of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of goods themselves.
 - i. If a firm has not been certified as an ACDBE in accordance with the standards in this part, do not count the firm's participation toward ACDBE goals.
 - j. When an ACDBE is decertified because one or more of its disadvantaged owners exceed the Personal Net Worth (PNW) cap or the firm exceeds the business size standards of this part during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement. However, the City must verify that the firm in all other respects remains an eligible ACDBE and the City must not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification (e.g., in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).
 - i. The firm must inform the City in writing of any change in circumstances affecting its ability to meet ownership or control requirements of subpart C of this part or any material change. Reporting must be made as provided in 49 CFR Part 26, § 26.83(i).

- ii. The firm must provide to the City, annually on December 1, a Declaration of Eligibility, affirming that there have been no changes in the firm's circumstances affecting its ability to meet ownership or control requirements of subpart C of this part (49 CFR Part 23, §23.55) or any other material changes, other than changes regarding the firm's business size or the owner's personal net worth.
- k. Do not count costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "build-out").
- l. Do not count the ACDBE participation of car rental companies toward your ACDBE achievements toward this goal.

E. Joint Ventures (JVs).

In instances where ACDBE or small business participation occurs as the result of a JV arrangement with a Lessee, the Lessee is required to provide the final JV Operating Agreements immediately after contract award and cooperate with the JV review process. Additionally, the Lessee shall complete JV documentation and participate in a review of the utilization of the JV participants at least once per year. The review will determine the percentage of the participation that will be counted for ACDBE and small businesses, and the participation of ACDBEs and small businesses to be reported to the FAA each year of the lease.

**EXHIBIT 4
SMALL BUSINESS OUTREACH EFFORTS FORMS**

Available at:

<https://solicitations.phoenix.gov/Solicitations/Details/1837>

**EXHIBIT 5
LETTER OF DECLARATION**

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

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

By: _____
Print Name

Signature

Date: _____

PHOENIX CITY CODE (PCC)

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

18-21 Requirements of suppliers and lessees

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

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

FEDERAL

Equal Pay/Compensation

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

STATE

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

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

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

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

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

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

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

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

EXHIBIT 6 AFFIDAVIT

Assurances

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

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

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

Legal Status

1. In the past 7 years, have you personally, or any business with which you have been involved, been declared bankrupt, filed a petition in any bankruptcy court, filed for protection from creditors in bankruptcy court, or had involuntary proceedings filed in bankruptcy court? If "Yes," provide date, court jurisdiction, case name, case number, amount of liabilities, amount of assets and the status of each occurrence. (Attach additional pages as necessary)
Yes No
2. Have you personally, or any business with which you have been involved, ever been a defaulter as surety upon any obligation to the City? If "Yes," provide details. (Attach additional pages as necessary)
Yes No
3. Are there any pending liens, claims or litigation in excess of \$1,000,000 involving Respondent? If "Yes," provide detailed information regarding complaints about how the quality of Respondent's services was unsatisfactory. (Attach additional pages as necessary)
Yes No
4. Has the Respondent been involved in any lawsuits in the past 5 years? If "Yes," provide list. (Attach additional pages as necessary)
Yes No
5. Have any of the Respondent's contracts been terminated prior to their expiration terms, voluntarily or involuntarily, within the last 5 years? If "Yes," provide name, location, and date of the contract(s). (Attach additional pages as necessary)
Yes No
6. Has the Respondent, or any corporation or other entity that has, directly or indirectly, a controlling interest in the Respondent, or any subsidiary of the Respondent or other entity in which the Respondent has a controlling interest or any of the Respondent's principals, officers, or directors ever been barred from bidding on federal, state, or local government contracts? If "Yes," provide the current status of such suspension or debarment proceedings. (Attach additional pages as necessary)
Yes No
7. Respondent intends to operate the business as a (check one):
Corporation General Partnership Member-Managed LLC
Joint Venture Limited Partnership Manager-Management LLC
Sole Proprietorship Limited Liability Partnership
8. Respondent intends to operate the following T4 Lobby Retail Concession for the term of the Lease:

_____, dba _____, a _____.
Legal Name Trade Name Legal Entity

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

Printed Name of Authorized Person: _____

Title: _____

Business Address of Respondent: _____

Telephone: _____ Email: _____

Signature of Authorized Person*: _____

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

NOTARIZED

State of _____ County of _____

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

Notary Public (signature)

Affix Notary Seal

**EXHIBIT 7
LETTER OF CREDIT FORM**

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

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

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

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

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

2. This original Standby letter of credit for endorsement.

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

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

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

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

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

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

[Bank]

By: _____
Authorized Signature

**EXHIBIT 8
CASH DEPOSIT FOR PERFORMANCE GUARANTEE FORM**

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

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

Date: [Insert Date]

Amount: [Insert Amount]

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

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

If [Insert Contractor Name] defaults with respect to any provision of the [Contract No. TBD – dated] or [Permit No. _____], including but not limited to the provisions relating to payment of all amounts owed by [Insert Contractor Name] to City, the City may use, apply or retain all or any part of the performance guarantee for the payment of any amounts owed to the City or any other sum in default, or for the payment of any other amount which the City may spend or become obligated to spend by reason of the [Insert Contractor Name]'s default or to compensate the City for any other loss which the City may suffer by reason of the [Insert Contractor Name]'s default. If any portion of the performance guarantee is so used or applied, [Insert Contractor Name] shall, within ten (10) business days after written demand from the City, deposit with the City cash in an amount sufficient to restore the performance guarantee to its original amount, and [Insert Contractor Name]'s failure to do so shall be a material breach of the [Contract No. TBD – dated] or [Permit No. _____].

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

AGREED AND ACCEPTED:

By: _____
[Insert Contractor Full Legal Name]

Title: _____
Print

Name: _____
Print

Date: _____

EXHIBIT 9
CONCESSION OPERATING AND SERVICE STANDARDS

Section 1 – Cleanliness Standards

Section 2 – Premises Standards

Section 3 – Storage Space / Delivery Standards

Section 4 – Information, Directions & Signs Standards

Section 5 – Operational Standards

Section 1 - Cleanliness Standards

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

- 1.15 Premises and high touch point areas shall be cleaned in accordance with local, City of Phoenix, State and Federal laws and personal protective equipment will be accessible to reduce the spread of COVID-19, its variants, or other communicable diseases.

Section 2 - Premises Standards

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

Section 3 - Storage Space / Delivery Standards

- 3.1 Products and merchandise stocked in Lessee's support space (if applicable) shall not block doors, electrical panels or hinder the fire suppression system.
- 3.2 Lessee shall not erect walls within the storage space (if applicable) to create office space, private storage, or additionally secured areas.

Section 4 - Information, Directions and Signs Standards

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

Section 5 - Operational and Product Standards

- 5.1 All odor-producing operations, products and equipment must be controlled by venting, wrapping, enclosing, containing or other treating to prohibit the entry of objectionable odors into public spaces. Objectionable odors include odors of machinery, electrical devices, food preparation, perfumes and perfume products, cleansers, oils, and garbage disposal systems.
- 5.2 All prepackaged food items shall be labeled with an “expiration date.” No items shall be offered for sale or remain on shelves after the expiration dates and times.
- 5.3 Food service preparation must comply with all applicable regulations, including those established by the Maricopa County Health Services Department (MCESD).
- 5.4 All food merchandisers and related equipment shall be in good working order maintaining the hot or cool temperature, as necessary, in accordance with MCESD.
- 5.5 Any activities that involve the final preparation of food from raw or partially prepared ingredients, shall be concealed from public view unless otherwise approved by the City of Phoenix and MCESD. Food preparation that is entertaining to watch or commonly accepted as part of a serving operation may be performed in public view with prior approval from the City of Phoenix.

- 5.6 All food used for display purposes shall be rotated daily.
- 5.7 All prepackaged food items shall be labeled with an “expiration date.” No items shall be offered for sale or remain on shelves after the expiration dates.
- 5.8 Lessee shall make every attempt to ensure all menu items are available.
- 5.9 Hot food shall be delivered hot and cold food shall be delivered cold.

(Revised 5.16.2024)

**EXHIBIT 10
PROPOSED CAPITAL INVESTMENT**

Available at:

<https://solicitations.phoenix.gov/Solicitations/Details/1837>

**EXHIBIT 11
TENANT DESIGN CRITERIA**

Available at:

<https://solicitations.phoenix.gov/Solicitations/Details/1837>

**EXHIBIT 12
TENANT IMPROVEMENT HANDBOOK**

Available at:

<https://www.skyharbor.com/media/clpbz0rr/tenant-improvement-handbook-rev-05112023.pdf>

**EXHIBIT 13
DESIGN MANUAL**

Available at:

<https://www.skyharbor.com/media/fhupg431/phx-dvt-gyr-design-manual-october-2018.pdf>

EXHIBIT 14
SUSTAINABLE HORIZONTAL DESIGN AND CONSTRUCTION GREEN GUIDE

Available at:

https://www.skyharbor.com/media/nndpalf0/dsgnconst_greenguide-1.pdf

EXHIBIT 15

CONFLICT OF INTEREST AND TRANSPARENCY FORM

(please complete, sign, and return with the submittal)

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

1. Name of person submitting this disclosure form.

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First	MI	Last	Suffix
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2. Contract Information

Solicitation # or Name:

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

--

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

--

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

- Subcontractors may be retained, but not known as of the time of this submission.
- List of subcontracts, including the name of the owner(s) and business name:

--

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

--

7. Disclosure of Conflict of Interest:**A. City Code Section 43-34**

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

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

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

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

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

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

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

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

8. Acknowledgements

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

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

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

B. Fraud Prevention and Reporting Policy

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

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

OATH

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

PRINT NAME

TITLE

SIGNATURE

DATE

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

**EXHIBIT 16
RESPONDENT REFERENCES**

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

1) Reference Contact Name: _____

Reference Contact Title: _____

Airport Name: _____

Address: _____

Phone #: _____ Email: _____

2) Reference Contact Name: _____

Reference Contact Title: _____

Airport Name: _____

Address: _____

Phone #: _____ Email: _____

3) Reference Contact Name: _____

Reference Contact Title: _____

Airport Name: _____

Address: _____

Phone #: _____ Email: _____

EXHIBIT 17 INSURANCE REQUIREMENTS

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

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

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

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

 - 1. Commercial General Liability – Occurrence Form**
Policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury and liability assumed under an insured contract.

- General Aggregate \$2,000,000

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

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

2. **Automobile Liability**

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

- Combined Single Limit (CSL) – airside driving (including contracted deliveries of goods and services) \$5,000,000
- a. The policy shall not contain any restrictions of coverage for operations on or near the Airport.
 - b. The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by or on behalf of the Contractor, relating to the Lease.
 - c. City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
 - d. The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

3. **Worker's Compensation and Employers' Liability**

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

- a. Policy must contain a waiver of subrogation against the City of Phoenix.

- b. This requirement shall not apply when a contractor or subcontractor is exempt under A.R.S. 23-902 (E), **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

4. Property Insurance

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

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

5. Fidelity Bond or Crime Insurance – Employee Theft

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

Bond or Policy Limit: \$10,000

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

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

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

- C. NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of this Lease, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to:

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

- D. ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. VERIFICATION OF COVERAGE:** Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by the Lease. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

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

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

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

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

All subsequent and renewal certificates of insurance and endorsements shall be sent directly to:

City of Phoenix
Aviation Department c/o Exigis Insurance Compliance Services
PO Box 4668 – ECM #35050
New York, NY 10163-4668
Email: certificates-cityofphoenix@riskworks.com

- F. SUBCONTRACTORS:** Contractor's certificate(s) shall include all contractors and subcontractors as additional insureds under its policies or Contractor shall be responsible for ensuring and verifying that all contractors and subcontractors have valid and collectable insurance. At any time throughout the life of the Lease, the City of Phoenix reserves the right to require proof from the Contractor that its subcontractors have insurance coverage. All subcontractors providing services included under this Lease are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Contractor may, on behalf of its subcontractors waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Contractor assumes liability for all subcontractors with respect to this Lease.
- G. SUBLESSEES AND PARTNERS:** If Contractor is approved by the City to sublease any part of the Leases Premises, sublease must adhere to the insurance specifications stated in the Lease.
- H. APPROVAL:** Any modification or variation from the insurance requirements in the Lease must have prior approval from the City's Law Department, the decision of which shall be final. Such action will not require a formal Lease amendment but may be made by administrative action.

**EXHIBIT 18
RETAIL CONCEPT DESCRIPTION**

Available at:

<https://solicitations.phoenix.gov/Solicitations/Details/1837>

EXHIBIT 19
QUALIFICATIONS AND EXPERIENCE OF RESPONDENT'S ON-SITE MANAGER

Available at:

<https://solicitations.phoenix.gov/Solicitations/Details/1837>

EXHIBIT 20
RESPONDENT'S QUALIFICATIONS AND EXPERIENCE

Available at:

<https://solicitations.phoenix.gov/Solicitations/Details/1837>

EXHIBIT 20.1
CONTACT INFORMATION FOR LOCATIONS PROVIDED IN EXHIBIT 20

Available at:

<https://solicitations.phoenix.gov/Solicitations/Details/1837>

**EXHIBIT 21
RESPONDENT'S EXPERIENCE MANAGING AND OPERATING
A VARIETY OF CONCEPTS**

Available at:

<https://solicitations.phoenix.gov/Solicitations/Details/1837>

**EXHIBIT 22
EXPERIENCE OF RESPONDENT AND RESPONDENT'S SUBTENANT
AND/OR JV PARTNER WITH PROPOSED CONCEPT**

Available at:

<https://solicitations.phoenix.gov/Solicitations/Details/1837>

**EXHIBIT 23
PROJECTED TEN-YEAR GROSS SALES**

Available at:

<https://solicitations.phoenix.gov/Solicitations/Details/1837>

**EXHIBIT 24
PROJECTED TEN-YEAR RENT REVENUES**

Available at:

<https://solicitations.phoenix.gov/Solicitations/Details/1837>

**EXHIBIT 25
PRO FORMA FINANCIAL STATEMENTS**

Available at:

<https://solicitations.phoenix.gov/Solicitations/Details/1837>

**EXHIBIT 26
ASSUMPTIONS**

Available at:

<https://solicitations.phoenix.gov/Solicitations/Details/1837>

**EXHIBIT 27
SUPPLEMENTAL TERMS AND CONDITIONS
TO ALL AIRPORT AGREEMENTS**

1. Definitions

1.1 "Airport" means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, and/or Phoenix Goodyear Airport, according to the context of the contract.

1.2 "Contract" means all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions, and other documents, however denominated, that grant or convey a right or privilege on an Airport and to which this Exhibit is attached.

1.3 "Contractor" means all lessees, sublessees, licensees, permittees, consultants, concessionaires and other persons, firms, or corporations exercising a right or privilege on an Airport pursuant to a Contract and includes Contractor's heirs, personal representatives, successors, and assigns.

1.4 "Premises" means the area of an Airport occupied or used by Contractor pursuant to a Contract.

2. Federal Aviation Administration (FAA) Grant Assurances

2.1 Title VI of the Civil Rights Act of 1964 – Compliance with Nondiscrimination Requirements – 49 U.S.C. § 47123 and FAA Order 1400.11

During the performance of this Contract, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. Compliance with Regulations. Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The Contractor, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate, directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

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

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

5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City of Phoenix will impose such Contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

(i) Withholding payments to the Contractor under the Contract until Contractor complies, and/or

(ii) Cancelling, terminating, or suspending this Contract, in whole or in part.

6. Incorporation of Provisions. The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the City of Phoenix or the Federal Aviation Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request the City of Phoenix to enter into any litigation to protect the interests of the City of Phoenix. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

2.2. Transfer of Real Property Acquired or Improved Under the Airport Improvement Program

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the City pursuant to the provisions of the Airport Improvement Program grant assurances:

A. Contractor for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Contract for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Contractor will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits or similar documents, in the event of a breach of any of the above Nondiscrimination covenants, the City of Phoenix will have the right to terminate this Contract and to enter, re-enter and repossess said lands and facilities thereon, and hold the same as if this Contract had never been made or issued.

C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the City of Phoenix will have the right to enter or re-enter the lands and facilities thereon, and the above-described lands and facilities will there upon revert to and vest in and become the absolute property of the City of Phoenix and its assigns.

2.3 Clauses for Construction/Use/Access Under the Activity, Facility or Program

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the City pursuant to the provisions of the Airport Improvement Program grant assurances.

A. The grantee, licensee, permittee or as appropriate, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the grantee, licensee, lessee, permittee, or similarly situated person will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

B. With respect to licenses, leases, permits, or other similar documents, in the event of breach of any of the above Non-discrimination covenants, the City will have the right to terminate the license, permit, or other similar documents, and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said license, permit, or other similar documents had never been made or issued.

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the City will there upon revert to and vest in and become the absolute property of the City and its assigns.

2.4. General Civil Rights Provisions (49 U.S.C. § 47123) Used for Contracts, Lease Agreements, and Transfer Agreements

A. General Civil Rights Provisions: In all its activities within the scope of its airport program, Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

1. Specific Clause that Is Used for General Contract Agreements:

The above provision binds Contractor and subcontractors from the bid solicitation period through the completion of this Contract.

2. Specific Clause that Is Used for Lease Agreements or Transfer Agreements:

If Contractor transfers its obligation to another, the transferee is obligated in the same manner as Contractor.

The above provision obligates Contractor for the period during which the property is owned, used or possessed by Contract and the City of Phoenix remains obligated to the Federal Aviation Administration.

2.5 Economic Nondiscrimination – 49 U.S.C. § 47107

In any Contract under which a right or privilege on the Airport is granted to a Contractor to conduct or to engage in any aeronautical activity for furnishing services to the public, Contractor shall:

A. Furnish its services on a reasonable, and not unjustly discriminatory basis to all users of the Airport, and

B. Charge reasonable, and not unjustly discriminatory prices for each unit or services, provided that Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City of Phoenix shall have the right to terminate this Contract and any estate created herewith without liability therefor or, at the election of the City of Phoenix or the United States shall have the right to judicially enforce said requirement.

2.6 Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 26

A. Contract Assurance (§ 26.13). To the extent that this Contract is covered by 49 C.F.R. Part 26, Contractor agrees that this Contract is subject to the requirements of the U.S. Department of Transportation (DOT) regulations at 49 C.F.R. Part 26.

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the Contractor from future bidding as non-responsible.

Contractor agrees to include the foregoing statement in any subsequent contract that it enters into and cause those businesses to similarly include the statement in further agreements.

B. Prompt Payment (§ 26.29). Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract not later than seven (7) days from the receipt of each payment Contractor receives from City of Phoenix. Contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the City of Phoenix. This clause applies to both DBE and non-DBE subcontractors.

2.7 Airport Concessions Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 23

Contract Assurance (§ 23.9). To the extent that this Contract is a concession agreement subject to the requirements of the U.S. Department of Transportation's regulations, 49 C.F.R. Part 23, the Concessionaire or Contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 C.F.R. Part 23. The concessionaire or Contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 C.F.R. Part 23 that it enters into and cause those businesses to similarly include the statements in further agreements.

2.8 Miscellaneous

A. Contractor agrees that it will undertake an affirmative action plan in conformance with 14 C.F.R. Part 152, Subpart E (Nondiscrimination in Airport Aid Program), to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment, contracting, or leasing activities covered in 14

C.F.R. Part 152, Subpart E. Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contractor further agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations as required by 14 C.F.R. Part 152, Subpart E.

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

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

D. Contractor acknowledges that this Contract is subordinate to any existing or future agreement between the City of Phoenix and the United States concerning the development, operation, or maintenance of the Airport. If the FAA or its successors require modifications or changes in the Contract as a condition to obtaining funds for improvements at the Airport or as a requirement of any prior grants, Contractor hereby consents to any and all such modifications and changes as may be reasonably required and agrees that it will adopt any such modifications and changes as part of this Contract.

E. This Contract is subordinate to the reserved right of the City of Phoenix and its successors and assigns to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft through the airspace or in landing at, taking off from, or operating at an Airport.

F. Contractor agrees to comply with the notification and review requirements, as required by 14 C.F.R. Part 77 (Safe, Efficient Use, and Preservation of the Navigable Airspace), if future construction of a structure is planned for the Premises or a planned modification of a structure on the Premises. Contractor shall submit the required FAA Form 7460-1 (Notice of Proposed Construction or Alteration) and provide documentation showing compliance with the federal requirements. After the FAA has completed the aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself and its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree on the Premises above the mean sea level elevation for (1) Phoenix Sky Harbor International Airport, 1,134 feet, (2) Phoenix Goodyear Airport, 968 feet, and (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and remove the offending structure or cut the offending tree at Contractor's expense.

G. Contractor, by accepting this Contract, covenants for itself and its successors and assigns, that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard to air navigation. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and abate the interference at Contractor's expense.

H. Contractor agrees that nothing in this Contract may be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) (No exclusive rights at certain facilities).

I. This Contract is subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation, regulation, and taking-over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

J. If this Contract involves construction, Contractor shall carry out the project in accordance with FAA airport design, construction, and equipment standards and specifications current on the date of project approval.

K. Contractor is encouraged to use fuel and energy conservation practices.

3. Immigration Reform and Control Act of 1986 (IRCA)

Contractor agrees that IRCA (Public Law 99-603) applies to it. Contractor shall comply with the provisions of IRCA as it applies to its activities under this Contract and to permit the City of Phoenix to inspect its personnel records to verify its compliance.

4. Conflict of Interest

Contractor agrees that the City of Phoenix may cancel this Contract pursuant to Arizona Revised Statutes (A.R.S.) § 38-511 (Cancellation of political subdivision and state contracts).

5. Legal Worker Requirements

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

A. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214(A).

B. A breach of warranty under paragraph A above shall be deemed a material breach of this Contract and is subject to penalties up to and including termination of the Agreement.

C. The City of Phoenix retains the legal right to inspect the papers of Contractor or its subcontractor employees who work on this Contract to ensure that Contractor or its subcontractors are complying with the warranty under paragraph A above.

6. City of Phoenix Equal Employment Opportunity Requirement

6.1 If Contractor is by this Contract a supplier to or lessee of the City, then the requirements of the Phoenix City Code, Chapter 18, Article V applies, including the agreement that:

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

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

If the supplier/lessee employs more than 35 employees, the following language shall be included as the last paragraph to the clause above:

“The supplier/lessee further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.”

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

6.3 Monitoring. The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this Section 3 as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

7. Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Contract, Contractor, for itself, its assignees, and successors interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- A.** Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- B.** 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- C.** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- D.** Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- E.** The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- F.** Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- G.** The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- H.** Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- I.** The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- J.** Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);

K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];

L. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

8. Contractor Requirements for the Mitigation of Heat-Related Illnesses and Injuries in the Workplace, Phoenix City Code Sec. 18-411

Any contractor whose employees and contract workers perform work in an outdoor environment under this contract must keep on file a written heat safety plan. The city may request a copy of this plan and documentation of all heat safety and mitigation efforts currently implemented to prevent heat-related illnesses and injuries in the workplace. The plan must also be posted where it is accessible to employees. At a minimum, the heat safety and mitigation plan and documentation required under this provision shall include each of the following as it relates to heat safety and mitigation:

A. Availability of sanitized cool drinking water free of charge at locations that are accessible to all employees and contract workers.

B. Ability to take regular and necessary breaks as needed and additional breaks for hydration.

C. Access to shaded areas and/or air conditioning.

D. Access to air conditioning in vehicles with enclosed cabs. All such vehicles must contain functioning air conditioning by no later than May 1, 2025.

E. Effective acclimatization practices to promote the physiological adaptations of employees or contract workers newly assigned or reassigned to work in an outside environment.

F. Conduct training and make it available and understandable to all employees and contract workers on heat illness and injury that focuses on the environmental and personal risk factors, prevention, how to recognize and report signs and symptoms of heat illness and injury, how to administer appropriate first aid measures and how to report heat illness and injury to emergency medical personnel.

G. The contractor further agrees that this clause will be incorporated in all subcontracts with subcontractors, sublicensees or sublessees who may perform labor or services in connection with this contract. Additionally, the contractor agrees to require all subcontractors, sublicensees or sublessees to include this clause in all contracts with any third party who is contracted to perform labor or services in connection with this contract. It is the obligation of the contractor to ensure compliance by its subcontractors.

EXHIBIT 28
COMPLIANCE WITH ENVIRONMENTAL LAWS

Contractor shall, at Contractor's expense, comply with all current and future Environmental Laws to the extent that they apply to Contractor's use or occupancy of the Premises or the Airport. If Contractor has any question about its obligations under this Exhibit, then Contractor may contact the City of Phoenix Aviation Department's Planning and Environmental Division for information, but not legal advice.

1. Definitions

1.1 *Airport* means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, or Phoenix Goodyear Airport according to the context of this Contract.

1.2 *Contract* means the lease, license, permit, or other agreement to which this Exhibit is attached.

1.3 *Contractor* means each person and entity that is a named party to this Contract.

1.4 *Contractor's Agents* means all persons under Contractor's direction or control, including Contractor's officers, managers, employees, heirs, personal representatives, invitees, volunteers, guests, successors, and assigns.

1.5 *Premises* means the area of the Airport or other City-owned property used or occupied by Contractor pursuant to this Contract or where Contractor causes or contributes to a Release of a Regulated Substance.

1.6 *Environmental Laws* means all current and future federal, state, and local laws, rules, regulations, and ordinances as clarified by advisory circulars or guidance documents, promulgated to protect the public health or the environment, including the following, as they may hereafter be amended or supplemented:

A. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9628, as amended by the Superfund Amendment and Reauthorization Act of 1986 (SARA), Pub. Law No. 99-499.

B. Solid Waste Disposal Act (SWDA), 42 U.S.C. §§ 6901-6992k, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), Pub. Law No. 94-580, including the Regulations of Underground Storage Tanks, 42 U.S.C. §§ 6991-6991m.

C. Toxic Substances Control Act of 1976 (TSCA), 15 U.S.C. §§ 2601-2629.

D. Public Health Service Act, 42 U.S.C., Chapter 6A, and Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f-300j-27, and the amendments thereto.

E. Federal Water Pollution Control Act of 1948 (FWPCA), as amended by the Clean Water Act, 33 U.S.C. §§ 1251-1388.

F. Clean Air Act, 42 U.S.C. §§ 7401-7515.

- G. Title 49 of the Arizona Revised Statutes, A.R.S. §§ 49-101 to 49-1408, including the Arizona Environmental Quality Act, A.R.S. §§ 49-101 to 49-192.01.
- H. Arizona Comprehensive Air Quality Act, A.R.S. §§ 49-401 to 49-593.
- I. Arizona Solid Waste Management Act, A.R.S. §§ 49-701 to 49-881.
- J. Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901 to 49-973.
- K. Arizona Underground Storage Tank Regulation Act, A.R.S. §§ 49-1001 to 49-1093.
- L. Occupational Safety and Health Act of 1970, Pub. Law No. 91-596, as amended by 29 U.S.C. §§ 651-678.
- M. Chapter 28 and Chapter 32C of the Phoenix City Code and City of Phoenix Aviation Department Rule and Regulations, including R&R 01-02 (Storm Water Enforcement).
- N. National Environmental Policy Act (NEPA), Pub. Law. No. 91-190, and all FAA-approved NEPA documents.
- O. Endangered Species Act, 16 U.S.C. §§ 1531-1544.
- P. Arizona Antiquities Act, A.R.S. §§ 41-841 to 41-847.
- Q. Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712.
- R. AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001) (AZPDES Construction General Permit); AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit); and AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit).
- S. Interstate Conveyance Sanitation, 21 C.F.R. Part 1250.
- T. Maricopa County Air Quality Department Rule 310 (Fugitive Dust from Dust-Generating Operations) and Rule 310.01 (Fugitive Dust from Non-Traditional Sources of Fugitive Dust).
- U. All current and future federal, state, and local laws, rules, regulations, and ordinances promulgated under the foregoing Environmental Laws that provide for the protection of the public health or the environment, including the ambient air, groundwater, surface water, land use, and substrata soils.

1.7 *Regulated Substances* means:

A. The substances identified or listed as a hazardous substance, pollutant, hazardous material, and petroleum in CERCLA; Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101-5128; RCRA; Arizona Regulation of Underground Storage Tanks; Clean Air Act; and all rules and regulations promulgated to implement these Environmental Laws.

B. The substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or hazardous, special, or solid waste in the Arizona Environmental Quality Act, including the Water Quality Assurance Revolving Fund Act (WQARF), A.R.S. §§ 49-281 to 49-298; Arizona Comprehensive Air Quality Act; Arizona Solid Waste Management Act; Arizona Underground Storage Tank Regulation Act; Arizona Management of Special Waste Act; Arizona Hazardous Waste Management Act; and all rules and regulations promulgated to implement these Environmental Laws.

C. All substances, materials, and wastes that are or hereafter become regulated or that are classified as hazardous or toxic under any Environmental Law, including building materials that may contain any hazardous substance and its disturbance is subject to any Environmental Law. If a building material, including pavements and paint, will be disturbed by Contractor and the building material is not unpainted wood, metal, or glass, then Contractor shall employ an Asbestos Hazard Emergency Response Act (AHERA)-certified inspector, who shall comply with advance survey and testing requirements and the following rules, as applicable:

(i) 40 C.F.R. Part 61 (National Emission Standards for Hazardous Air Pollutants (NESHAP), Subpart M (National Emission Standards for Asbestos)).

(ii) Maricopa County Air Pollution Control Regulations: National Emission Standard for Asbestos Regulation III Maricopa County Air Quality Department (MCAQD) Rule 370, § 301.9 - subpart M

(iii) To the extent required by Environmental Law, NESHAP Notification Form and Delivery Requirement. A NESHAP Notification Form shall be completed and postmarked or delivered to the MCAQD Asbestos NESHAP Coordinator at least ten (10) days before disturbing any building material even if no asbestos is present.

(iv) 29 C.F.R. Part 1926 (OSHA Safety and Health Regulations for Construction).

(v) RCRA waste determination and proper handling, transport, and disposal.

1.8 *Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing of a Regulated Substance.

2. Compliance

2.1 Contractor shall not cause or allow any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, Released on or under, or transported to or from the Premises by Contractor or Contractor's Agents in a manner that constitutes or would foreseeably result in a violation of any Environmental Law or that would give rise to liability under any Environmental Law.

2.2 Contractor may remediate any Release of a Regulated Substance under Chapter 28 of the Phoenix City Code (the City's pretreatment ordinances), under such other ordinances as may be promulgated by the City, and applicable Environmental Laws, including the Clean Water Act to the extent it applies.

2.3 Contractor (Indemnitor) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials, (elected and appointed), agents, and employees (Indemnitee) from and against any and all demands, claims, complaints, losses, damages, actions or causes of action, assessments, liabilities, costs or expenses, including interest, penalties, and reasonable attorney fees, expert witness fees, and reasonable expenses of investigation and remedial work, (including investigations and remediation by engineers, environmental consultants, and similar technical personnel) asserted against or imposed upon or incurred by Indemnitee arising in connection with, or resulting from, any violation of Environmental Law, including any use, generation, storage, spill, Release, discharge, or disposal of any Hazardous Substance that is now or comes to be located on, at, about, or under the Premises or because of, or in connection with, the violation of any Environmental Law (hereinafter collectively referred to as "Losses") to the extent that such Losses are caused by the fault of Indemnitor or its officers, officials, members, managers, agents, employees, contractors, volunteers, tenants, subtenants, invitees, or licensees (collectively, "Indemnitor's Parties"). Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever occurs first. Indemnitor's duty to defend exists whenever it is alleged that either the Indemnitor and/or one or more of the Indemnitor's Parties, or both, is/are liable, regardless of whether they are ultimately found liable. As used in the section, (a) Hazardous Substance are the Regulated Substances and other substances defined as toxic or hazardous substances, pollutants, or wastes by any Environmental Law and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" has the meaning prescribed above; (c) "Fault" means those nonculpable acts and omissions giving rise to strict liability under any Environmental Law pertaining to Hazardous Substances, as well as culpable conduct (negligence or willful misconduct). In consideration of the award of this Contract, Indemnitor agrees to waive all rights of subrogation against the City and its officers, officials, (elected and appointed), agents, and employees for losses arising out of or related to this Contract. The obligations of Indemnitor under this provision shall survive the expiration or earlier termination of this Contract.

2.4 To the extent Contractor or Contractor's Agents Release any Regulated Substance in violation of Environmental Law on or under the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises, then Contractor shall, at its expense, promptly take all actions that are necessary or appropriate to remediate the Release and mitigate any threat to the public health or the environment consistent with Environmental Law. Subject to the City's prior written consent, Contractor shall undertake all remedial actions that are necessary to return the contaminated area to the condition that existed immediately prior to the Release or, if such prior condition is unknown, to such condition as is acceptable to the governmental agency with jurisdiction. Contractor shall undertake its remedial actions under this Section 2.4 without regard to the potential liability of Contractor or any other person. However, remedial actions undertaken by Contractor shall not impair Contractor's rights, if any, to seek contribution or indemnity from any other responsible party.

2.5 Contractor shall, at its expense, prepare all tests, reports, and studies and provide all information to any appropriate governmental agency that is required pursuant to any Environmental Law as a result of Contractor's use or occupancy of the Premises. Contractor's obligation includes any requirement under Environmental Law for a site characterization, site assessment, and/or remediation plan that may be necessary due to any actual or potential Releases of a Regulated Substances by Contractor or Contractor's Agents on, under, or from the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises during the Term of this Contract and during the time Contractor has possession of the Premises. Contractor shall, at its expense, promptly (A) provide all information requested by the City related to the applicability of the Environmental Laws to the Premises, (B) respond to any governmental investigation pursuant to Environmental Laws regarding the Premises, and (3) respond to any claim of liability by third parties that relate to any Release of a Regulated Substance by the Contractor or Contractor's Agents on the Premises or the Airport.

2.6 After giving Contractor at least thirty (30) days prior notice, the City may inspect and copy all of Contractor's records, test results, studies, and other documents, not protected by attorney-client privilege, regarding environmental conditions related to the use, storage, or treatment of any Regulated Substance on, under, or from the Premises.

2.7 Contractor shall promptly notify the City in writing upon the occurrence of any of the following:

A. Contractor receives any correspondence or communication from any governmental agency regarding the application or enforcement of any Environmental Law to the Premises or to Contractor's use or occupancy of the Premises.

B. There is any change in Contractor's activities on the Premises that changes or may change Contractor's or the City's obligations or liabilities under any Environmental Law.

C. Any person or entity asserts any claim or any other event occurs for which Contractor may incur an obligation under this Exhibit.

2.8 Contractor shall, at its expense, obtain and comply with all permits and approvals that are, or may become, required as result of Contractor's use or occupancy of the Premises.

2.9 Contractor shall include the provisions of this Exhibit in all agreements and contracts by which it grants a right or privilege to any person or entity under this Contract.

2.10 Contractor shall obtain and maintain compliance with all applicable financial responsibility requirements of all Environmental Laws regarding the ownership or operation of any underground storage tank or other device used to treat or store a Regulated Substance and upon request present evidence thereof to the City.

2.11 Contractor shall take reasonable precautions to prevent persons not acting under Contractor's or Airport's authority, direction, or control from conducting any activity on the Premises that may result in the Release of a Regulated Substance on, under, or from the Premises or to the air, groundwater, or surface waters on or adjacent to the Premises. Contractor shall exercise due care with respect to any Regulated Substance that is located on the Premises as a result of any action of any person who is not under Contractor's authority, direction, or control.

2.12 Contractor shall use its best efforts to minimize its production of a waste stream that includes Regulated Substances, and Contractor shall minimize the storage of Regulated Substances on, in, and around the Premises.

3. Breach and Termination

Subject to the terms and conditions of this Section, Contractor's failure to comply with any requirement or obligation of this Exhibit or any applicable Environmental Law is a default under this Contract. Contractor's failure to cure its default after being provided with notice thereof and a reasonable opportunity to cure, as provided in this Contract, shall constitute a material breach of this Contract. Upon a breach that is not timely cured as provided in this Contract, the City may pursue any and all remedies available under this Contract and all applicable federal, state, and local laws, including the following:

3.1 Without termination of this Contract, the City may enforce all its rights and remedies under this Contract, including, without limitation, any or all the following:

A. The right to file an action or proceeding seeking to recover rent, fees, and other amounts due and that become due under this Contract.

B. The right to recover interest at the rate of 18% per annum on all accrued, but unpaid, rents, fees, and other amounts due calculated from the date the amount was due pursuant to § 4-7 of the Phoenix City Code.

C. The right to file an action or proceeding seeking to recover possession of the Premises.

D. The right to make payments and to perform obligations required of Contractor under this Contract and to be reimbursed by Contractor for the costs thereof, including all attorney fees, expert fees, and other cost incurred by the City.

E. The City may terminate this Contract.

F. The City may exercise the right of "self-help" or similar remedy in order to minimize any damage, expense, penalty, and related fees or costs arising out of or related to the violation of any Environmental Law related to the Premises.

G. By exercising its rights under this Section, the City does not, and may not be construed as, releasing Contractor from any obligation it would otherwise have under this Exhibit or any applicable Environmental Law.

H. The covenants of this Exhibit shall survive the termination of this Contract.

If this Contract does not require Contractor to perform any activity on the Airport or other City-owned property, then the following stormwater provisions do not apply to Contractor or this Contract.

4. AZPDES Stormwater General Permit and Phoenix City Code Chapter 32C Compliance

4.1 Contractor shall comply with the City's AZPDES Stormwater General Permit and Aviation Department R&R 01-02 (Storm Water Enforcement). Except for discharges on Indian land, stormwater discharges in Arizona are regulated by the Arizona Department of Environmental Quality (ADEQ) through the Arizona Pollutant Discharge Elimination System (AZPDES) program. An AZPDES permit is required for any point source discharge of pollutants to waters of the United States. Because stormwater runoff can transport pollutants to either a municipal separate storm sewer system (MS4) or to waters of the United States, AZPDES permits are required for stormwater discharges.

4.2 The City and Contractor are required to obtain AZPDES permit coverage as required by AZPDES regulations and to the extent that covered stormwater is discharged from the Premises. Coverage under the AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001) (AZPDES Construction General Permit) is required for stormwater discharges generated by construction activities. Coverage under the AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit) is required for certain applications of pesticides. Coverage under the AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit) is required for stormwater discharges generated by facilities and operations engaged in certain industrial activities. Among these industries are those engaged in certain activities within the air transportation and associated activities.

4.3 The City has obtained coverage under the AZPDES Multi-Sector General Permit for its air transportation facilities at the Airports. The City has adopted Stormwater Quality Protection ordinances (Phoenix City Code §§ 32C-1 to 32C-111) and has in place an Aviation Department Stormwater Enforcement Procedures and Civil Penalty Policy (Aviation Stormwater Policy), both of which were developed to comply with Environmental Laws governing stormwater pollution.

4.4 The City adopted the Aviation Stormwater Policy to achieve compliance with the AZPDES program requirements by the Aviation Department and its contractors and permittees. Contractor is subject to the Aviation Stormwater Policy as a condition to its use or occupancy of the Premises or any part of the Airports. The City has the right to monitor Contractor's activities on the Premises and the Airport and enforce Contractor's compliance with the Aviation Stormwater Policy. The City will provide reasonable advance notice to the Contractor ahead of monitoring and audit activities.

4.5 Contractor shall comply with the Aviation Stormwater Policy and shall implement, at its expense, all requirements of the Airports' Stormwater Pollution Prevention Plans (SWPPP) and City ordinances that pertain to Contractor's operations and activities on the Premises and the Airports to the extent the operations and activities have a potential to release pollutants to stormwater. Contractor shall use its best efforts to meet all deadlines that are established by applicable Environmental Laws and the Aviation Stormwater Policy. Contractor agrees that time is of the essence in the implementation of all City permit requirements.

4.6 Contractor's compliance with the AZPDES Permit Program set forth in 18 A.A.C. Chapter 9, Article 9 (R18-9-A901 to R18-9-A909); Chapter 32C of the Phoenix City Code; and the Aviation Stormwater Policy is a material requirement and condition of this Contract. If Contractor fails to comply with the foregoing and the City is exposed to any civil or criminal fine, penalty, sanction, or remediation cost, then the City may, in addition to all other remedies available under this Contract and applicable law, terminate this Contract.

4.7 AZPDES Construction General Permit. If Contractor decides to perform construction activities at the Premises or the Airports, Contractor shall, prior to commencing any such construction activity, obtain stormwater discharge authorization from ADEQ under an AZPDES Construction General Permit. Contractor must obtain that authorization by preparing a SWPPP and filing for AZPDES Construction General Permit coverage in coordination with the City's manager assigned to the project. The City may consult with and assist Contractor with filing for AZPDES Construction General Permit coverage. Contractor shall work with the City's project manager to develop pollution controls (e.g., best management practices, control measures, and schedules and procedures) for the SWPPP. Contractor is solely responsible for implementing the pollution controls and paying for all costs related to its compliance with its AZPDES Construction General Permit obligations.

4.8 AZPDES Multi-Sector General Permit.

A. If Contractor activities performed at the Premises are under AZDPES Multi-Sector General Permit, the Contractor shall, prior to using, occupying, or commencing any operation or activity on the Premises or the Airports, obtain stormwater discharge authorization from ADEQ under an AZPDES Multi-Sector General Permit. Contractor shall obtain that authorization as a "co-permittee" with the City. As a co-permittee, Contractor shall do all the following:

(i) Provide the City with a copy of Contractor's written Authorization to Discharge that Contractor receives from ADEQ.

(ii) Implement the Airports' SWPPP, including all best management practices, control measures, schedules, and procedures that apply to the Contractor's use or occupancy of the Premises or the Airports.

B. In connection with its coverage under the AZPDES Multi-Sector General Permit, the City has developed a SWPPP for the Airports to minimize the contact of stormwater and other precipitation event water with Significant Materials (as that term is defined in the Section 32C-101 of the Phoenix City Code) generated, stored, handled, used, or otherwise located on the Premises or the Airports. The City shall provide a copy of the SWPPP, including best management practices, control measures, schedules, and procedures, to Contractor, who shall implement that portion of the SWPPP applicable to its use or occupancy of the Premises or the Airports.

C. To the extent allowed by applicable Environmental Laws, Contractor may ask to be removed as a co-permittee from coverage under the AZPDES Multi-Sector General Permit when this Contract expires or is terminated, Contractor vacates the Premises, Contractor fails to comply with the all AZPDES Multi-Sector General Permit requirements, or Contractor

decides it does not want to be covered as a co-permittee. Contractor shall not be relieved of its obligation to comply with the requirements of the AZPDES Permit Program with regard to its use or occupancy of the Premises or the Airports, and Contractor shall not be excused from any obligation or indemnification incurred and owed to City prior to Contractor being removed as a co-permittee because Contractor failed to fulfill an obligation of a co-permittee.

4.9 Pollution Controls.

A. City reserves the right to impose upon Contractor any best management practices, control measures, schedules, procedures, and any other action reasonably necessary to ensure the City's ability to comply with its AZPDES Permit Program requirements or applicable City ordinances. However, except in Extreme Emergency Conditions (as that term is defined below), Contractor shall have thirty (30) days from the City's notice imposing such pollution control measures and any other requirement to notify the City in writing if Contractor objects to any action Contractor is being directed by the City to undertake. If Contractor does not provide a timely objection, then Contractor will be deemed to have consented to the implementation of the pollution control measures or other requirements. If Contractor provides the City with timely notice of its objections, then the City and Contractor shall negotiate a prompt resolution of their differences. If a resolution is not reached within thirty (30) days, then the City's decision resolving the matter shall control. Contractor warrants that it will not serve a written notice of objections for purposes of delay or to avoid compliance with AZPDES Permit Program requirements or applicable City ordinances.

B. *Extreme Emergency Conditions* means all the following:

(i) Conditions that immediately impact the waters of the United States (e.g., Salt River) that result from an emergency, such as a fire, Release of a Regulated Substance, or explosion, that requires the responsible party or parties to immediately begin appropriate response activities independent of City's direction or oversight.

(ii) A catastrophic event that requires Contractor to close its business in the Premises. Contractor must implement pollution control measures before it reopens.

(iii) A collapse of the stormwater system or any other event that prevents the City from performing its obligations under the City's permit due to lack of capacity.

4.10 Covenant of Good Faith. City and Contractor shall act in good faith to implement any requirement imposed on them pursuant to the AZPDES Permit Program. The City and Contractor agree that close cooperation is necessary to ensure compliance with all AZPDES Multi-Sector General Permit requirements and to promote safety and minimize costs. The City and Contractor agree to a candid exchange of information necessary to coordinate a stormwater management and monitoring plan.