

CITY OF PHOENIX
Aviation Department

EXHIBIT 1

CITY OF PHOENIX
WI-FI SERVICE PROVIDER CONCESSION

between

THE CITY OF PHOENIX,
an Arizona municipal corporation

and

dba _____

DRAFT

**CITY OF PHOENIX
Aviation Department
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This CONTRACT AGREEMENT (hereinafter referred to as **Contract**) is made and entered into this _____ day of _____, 2020 (**Commencement Date**), by and between the City of Phoenix, a municipal corporation of the State of Arizona (hereinafter referred to as **City**), and _____ (hereinafter referred to as **Provider**).

RECITALS

1. The City is the owner and operator of Phoenix Sky Harbor International Airport, including but not limited to PHX terminals, the Rental Car Center and the PHX Sky Train Stations (collectively referred to hereafter as PHX).
2. The City desires to offer to the public, free and pay for use wireless Internet access and maintain a stream of income from advertising and other means associated with the wireless internet access and PHX Sky Harbor Website at PHX.
3. The City has solicited proposals for a Provider to operate a first-class Wi-Fi Service Concession.
4. Provider was the successful proposer in response to a Request for Proposals (RFP) to provide and operate uninterrupted Wi-Fi Service at PHX.
5. Ordinance S-_____ of the Phoenix City Council dated _____, 2020, authorized the City Manager to enter into a contract with Provider based upon certain terms and conditions.

NOW THEREFORE, in consideration of the mutual covenants herein contained the City and Provider mutually undertake, promise and agree, each for itself and its successors and assigns, as follows:

**SECTION 1
TERM**

SECTION 1.1 – Initial Term

The Initial Term of this Contract will be up to, but no longer than a six (6) month period prior to the Primary Term set forth below or August 1, 2020, whichever occurs first. The Initial Term is intended for the Provider to transition and implement its system at st Sky Harbor International Airport.

SECTION 1.2 – Primary Term

The Primary Term of this Contract shall commence on _____ 1, 2020, and expire on _____ 31, 2023, unless this Contract is sooner terminated as hereinafter provided. There are two (2), one-year renewal options from _____, 2024, and from _____ 2024, until _____ 2025. These options to extend the contract may be exercised at the sole discretion of the Aviation Director.

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**SECTION 2
PREMISES**

The City will provide 188 units of space (4 per identified IDF/TR rooms) to the Provider (location map available upon request). Provider may occupy and use the Premises for the sole purpose of installing any technology hardware and software required to operate the Wi-Fi Service Concession. The Premises shall not be used for any other purpose without the prior written consent of the City. If available, Provider may lease additional support space at the Airport at the current rates authorized by Phoenix City Code, subject to annual adjustment. Any leased support space will be added to location map prior to lease execution.

The Premises are available in an “as is” condition. Provider is responsible for all fees, expenses related to the design, installation, operation, service, and maintenance to provide and maintain a Wi-Fi Service Concession at PHX during the term. COP makes no assurances or guarantee on the performance and state of this infrastructure. The Provider is responsible for any needed replacement or warranty costs related to new or existing infrastructure.

**SECTION 3
RIGHTS, PRIVILEGES, AND RESTRICTIONS**

3.1.1 The City hereby grants to Provider the right to engage in business as a Wi-Fi Service Concession, a commercial activity defined and regulated by this Contract and the Phoenix City Code, to provide a Wi-Fi Service Concession and sell the types of goods and services at the prices listed in **Exhibit A**.

3.1.2 Provider may move equipment onto the Premises and approved wireless access points as required, for the design, installation, operation, service, and maintenance of the Wi-Fi Service Concession, in accordance with the Service Plan (**Exhibit G**).

3.1.3 Provider and/or its agents shall also have access to ingress and egress to and from the Premises and approved wireless access points, on established roadways and sidewalks of PHX, approved by the City, for all reasonably necessary design, installation, operation, service, and maintenance, and/or replacement of any infrastructure installed for servicing of the Wi-Fi Service Concession, as defined in Section 4.1.1.

3.1.4 Provider shall not engage in or permit any activity on the Premises or in connection with its Wi-Fi Service Concession, or on the ingress and egress designated property, or any part thereof, which violates any law, statute, ordinance, rule, or regulation of any federal, state, county or city authority.

3.1.5 Provider is required to meet all regulatory requirements prior to entering the Premises at no cost to the City. Provider is responsible for any items installed by it or required of the Provider by a regulatory agency for its use of the Premises for purposes of the Contract that exists today and as may be amended.

3.1.6 The City retains the full right of entry in and to the Premises for any purpose incidental to or in connection with its obligations hereunder, or in the exercise of its governmental functions, or for the purpose of making any inspection it deems reasonably necessary. This right to inspect includes the right of the City to test, using industry acceptable methods, Provider’s hardware and software for Wi-Fi or other security

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vulnerabilities, at any time during the Contract. Provider shall be required to remedy in a timely manner any security vulnerabilities, as identified by the City or otherwise, in Provider's hardware and software.

3.1.7 The City reserves the right to relocate the Premises allocated to Provider under this Contract and will bear the full cost of any such relocation and endeavor to provide reasonable replacement space.

3.1.8 Provider may use restricted areas of PHX only as specifically authorized and directed by the Aviation Director and in accordance with the directives of the federal government issued by and through the Federal Aviation Administration (FAA) or Transportation Security Administration (TSA). If the FAA or TSA imposes a penalty or fine on the City for Provider's acts or omissions, then Provider shall reimburse and indemnify the City for the entire amount of the penalty or fine.

3.1.9 Provider has completed a full and complete examination of the Premises, its title, and has full knowledge of its present uses and non-uses. Provider accepts the foregoing in their current condition without any representation or warranty, express or implied in fact or by law, by the City and without recourse to the City as to the title, nature, condition or usability or use to which the Premises may be put. The City shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises other than those expressly provided in this Contract. Provider assumes the full and sole responsibility for the condition, operation, repair, and maintenance of the Premises and all associated infrastructure.

3.1.10 Provider shall not use the Premises in any manner that might interfere with the landing and taking off of aircraft from an airport or otherwise constitute a hazard. In the event this covenant is breached, City reserves the right to cause the abatement of such interference at the expense of Provider, to immediately terminate this Contract, or to place such restrictions on the operations of Provider as City deems necessary in the public interest.

3.1.11 Provider shall furnish all personnel, materials, services, and other requirements to operate the Wi-Fi Service Concession. Any security measures necessary to conduct this business are the sole responsibility of Provider.

3.1.12 Provider's vehicles and equipment, including the vehicles and equipment of Provider's employees and contractors, if permitted to be operated on City property, shall be parked only in those areas approved for such parking, unless specifically authorized in writing by the City to be parked temporarily elsewhere.

3.1.13 Provider shall not install any unapproved equipment for the Wi-Fi Service Concession in the Premises without prior written approval of the Aviation Director or his designee, which shall not be unreasonably withheld or delayed.

3.1.14 The City reserves unto itself all rights to the use, occupancy and ownership of the Premises except for Provider's exercise of the privileges granted herein.

3.1.15 The City reserves the right to direct Provider to change or repair the Premises or any portion thereof. Provider hereby waives any claim against the City, its officers, and employees for any damages that may result from any such change or repair and Provider further agrees it shall pay all costs that may result from or be required by such change or repair.

3.1.16 For issues pertaining to interference between competing wireless networks within the coverage area defined in this agreement, the Provider shall make all efforts necessary to work with the City and tenants who might also own and operate Wi-Fi systems.

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3.1.17 The City shall have the right on an annual basis, to require the Provider to adjust network transmission speeds to ensure that PHX Wi-Fi remains current with advancing Wi-Fi technology. The request to adjust the minimum speeds, network transmission speeds is to be made in the sole discretion of the Aviation Director.

SECTION 4
WI-FI SERVICE CONCESSION TECHNICAL REQUIREMENTS

Provider warrants and represents it is qualified to perform the undertaking that is the subject of this Contract and agrees to obtain, at its sole expense, all necessary permits, licenses, approvals, certificates, waivers or other authorizations from all governmental authorities, if any, having jurisdiction over Provider's operations on the Premises which may be necessary to design, install, operate, and maintain the Wi-Fi Service Concession. Provider shall keep all of the foregoing current and in full force and effect during the term of the Contract as may be required. Provider shall not obligate or burden the City or any City facilities in discharging or fulfilling Provider's legal or regulatory obligations.

Provider shall work with the City's Aviation Technology team to resolve any potential Wi-Fi signal channel conflicts prior to implementation and during the term of the contract.

Provider shall comply with the Business Plan, Customer Service Plan, Implementation Plan, Operations and Maintenance Plan, Processing Environment Description, Timeline, and Wi-Fi Design and Layout proposed in its response to the RFP, as may be amended by mutual agreement of the parties, and attached hereto as provider's Service Plan (**Exhibit F**).

Section 4.1 – Wi-Fi System Equipment and Installation

4.1.1 Successful provider shall provide all necessary equipment and service to install, operate, and maintain a Wi-Fi System (**System**) (**Section 4.2**) that can accommodate Internet access and viewing, as well as advertising, sponsorships, and media content. Provider may also charge for delivering audio/video downloads (defined as the delivery of copyrighted audio/video content, including movies, games, music, etc., to Wi-Fi customers for later viewing). In the event Provider processes credit card transactions, the systems for processing said transactions shall be compliant with Payment Card Industry Data Security Standards (PCI DSS). Provider's installation shall strictly conform to its approved Service Plan (**Exhibit F**), unless otherwise authorized in writing in advance by the Aviation Director or his/her designee, whose approval shall not be unreasonably withheld or delayed. At the time of installation, Provider shall install at its own expense all required Wireless Equipment (**Equipment**), consisting of access points, antennae, transmitters, transmission lines and connectors, receivers, wiring, cabling, fiber, conduit, routers, switches access zone controllers, remote access monitoring components, wireless network PCs/servers, all wiring from PHX fiber locations to all transceivers, other associated infrastructure and improvements, approved changes, upgrades and renovations thereto that are attached to or installed within the walls, soffits and roof areas of PHX. It is the responsibility of the Provider to negotiate terms and conditions with current Provider for access to existing cabling infrastructure

4.1.2 The Provider shall provide a cost estimate for a dedicated SSID for use by the City's Aviation Department.

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4.1.3 Provider shall provide routine maintenance and upgrade and enhance the System to maintain a 99.99% level of service availability throughout the Term, 24 hours a day, seven days a week, 365 days a year, excluding planned outages, system maintenance and hardware upgrades. Percent of service availability shall be calculated using a 30-day month as follows: "Available Hours" divided by "Total Hours" minus "Scheduled Service Outages;" where Available Hours is defined as the hours during a given month that the system is available, Total Hours is defined as the total hours in a 30-day month and Scheduled Service Outages is defined as the hours of scheduled service downtime that occurred during a given month. Service availability statistics shall be collected by Provider and reports shall be provided to City summarizing all scheduled and unscheduled outages where the service is unavailable for use. Provider agrees to make necessary reliability and performance improvements to the System, at its own cost, within a reasonable amount of time that further improves reliability and availability, in accordance with **Exhibit F**. Provider shall maintain enough Equipment on site such that the System is completely redundant in either a manual failover or automated failover mode. Provider shall provide written instruction to the City regarding failover methods and procedures in the event that Provider's Equipment has failed. Instructions shall include detailed procedures for failing over the System to redundant hardware on site and activities to be performed to bring System back on line. Provider is responsible for restoring service in the event of any failure. Provider will share monthly Availability reports detailing the uptime of the overall Wi-Fi service at the airport with the City.

4.1.4 Provider may make reasonable changes to the Wi-Fi landing page from time to time. Changes may include but not be limited to user interface design (layout, color, size, etc.), advertising unit modifications and/or entertainment/utility content offering. Prior to commencing any intended substantive and/or service affecting system changes must be approved by the Aviation Director in writing in advance of implementation.

4.1.5 During the term of this Contract, upon mutual agreement between the City and Provider, Provider shall, with the Aviation Director's approval, coordination, and technical oversight provided by the Aviation Technology Division, timely expand and enhance the Wi-Fi Service Concession. All proposed changes to Provider's Wi-Fi Service Concession shall be presented in writing to the City for review and prior written approval in advance of implementation, which approval shall not be unreasonably withheld or delayed. Approved, documented, direct costs of said Wi-Fi, expansion in public areas are to be borne by the Provider.

4.1.6 During the term of this Contract, the Provider shall expand its ISP bandwidth service each year of the contract to meet the proposed annual Wi-Fi speed increase (Section II B), at the Provider's expense.

4.1.7 Prior to commencement of approved operations, Provider shall provide for and demonstrate successful fail-over feature and functionality and disaster recovery capability; and shall be responsible for all testing.

4.1.8 If any improvements or alterations constructed or installed by Provider in or at the Premises are damaged or destroyed by fire, explosion, Act of God, the public enemy or other casualty, Provider shall repair or replace the same, with due diligence, at its own cost and expense.

4.1.9 Provider will utilize filtering software on the System to limit access to sites that promote a minor's ability to gain access to material deemed harmful to minors as stated by Arizona Revised Statute (A.R.S.) §13-3501.

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Section 4.2 – Wi-Fi System Requirements

Provider shall implement a Wi-Fi system supporting IEEE 802.11 standards to include radio frequencies 2.4 GHz ISM band and 5.0 GHz U-NII band using 802.11n/ac/ax (Wi-Fi 6) protocols. Future protocols to be implemented in an agreed upon timeframe between City and provider.

Wireless access points (AP) will be deployed in a manner that provides overlapping coverage without dead zones, channel conflicts or interference and at optimal power settings within FCC Part 15 rules. A Received Signal Strength Indicator (RSSI) value of -65 dBm or greater is required throughout the entire coverage area to accommodate voice over IP (VoIP) traffic. APs must be mounted horizontally and/or vertically and follow manufacturer's specifications, with the City inspecting and approving the installs.

APs must have built-in Bluetooth (BLE) radios. The APs shall support City BLE installed beacons to provide the ability to monitor the City's BLE beacons within range of any given AP. This monitoring will include notifications regarding battery levels, deployed inventory reports, amongst others.

The Wi-Fi system will be configured in an isolated manner that does not allow connectivity between wireless peers or the use of Wi-Fi Tunneled Direct Link Setup (TDLS).

The Provider's system needs the ability to dynamically scan for channel conflicts and interference to minimize RF field disruption. If interference from Provider's system occurs with any non-Provider's system, the provider and the City will collaborate to determine a solution. The City will be the full and final arbiter in all RF interference instances.

Section 4.3 – Wi-Fi System Customer Service

Provider shall provide live customer service support to PHX passengers 24 hours a day, seven days a week, 365 days a year via a toll-free telephone number and a customer service portal promptly displayed on the landing page of the Wi-Fi service.

Section 4.4 – Wi-Fi System Service, Maintenance and Repair

4.4.1 Provider shall promptly repair or replace at its own cost any broken or nonfunctioning piece of Equipment and replace any Equipment that cannot be promptly and satisfactorily repaired on location. Equipment at PHX must be classified as 'new', utilizing used equipment is not permitted. Provider shall retain service personnel who are completely qualified to service and repair and support the Equipment. If the Equipment fails, Provider must respond to and resolve within established service level agreements, as specified in **Exhibit F**.

4.4.2 Provider's System shall be available for use twenty-four (24) hours per day, seven (7) days a week, and Provider shall employ sufficient personnel to maintain and keep in good operating condition said Wi-Fi Service Concession, to promptly meet all reasonable requests for service during all hours with respect to any inoperative condition of such hardware, software or other infrastructure components of the System, either with such

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personnel or by a representative designated Provider, and to handle the office and administrative duties incidental to the operation of the business herein authorized.

4.4.3 Except as otherwise expressly agreed by the City, Provider shall provide all services required under this contract seven (7) days a week, twenty-four (24) hours a day.

4.4.4 Within thirty (30) days following the date of execution of this Contract, Provider shall submit to the City for approval System operating and security procedures.

4.4.5 Provider shall maintain contact data of both business and technical personnel involved with service delivery with the City and provide the City with current and updated information. Provider shall be required to have 24 X 7, 365 days a year technical escalation contacts and the capability to do remote system monitoring and troubleshooting.

Section 4.5 – Data Center, Main Distribution Frame (MDF)/Intermediate Distribution Frame (IDF) and Telecommunications Room Access Privileges

4.5.1 Access to the City's data centers, MDF/IDFs and/or telecommunications rooms are only granted to Provider and its subcontractors if there is a contractual reason for such access.

4.5.2 All requests for access are subject to review and approval by the Aviation's Assistant Chief Information Officer.

4.5.3 Provider and its subcontractors shall comply with all applicable City standards, policies, and procedures for access privileges, copies of which may be made available to Provider and its subcontractors upon request.

4.5.4 Provider's and its subcontractors' access shall be immediately and automatically revoked by the City upon termination, cancellation or expiration of this Contract.

Section 4.6 – Wi-Fi Network Operations Center

Provider shall operate a 24x7 Network Operations Center (NOC) to properly monitor and manage the Wi-Fi service at PHX airport. Provider shall provide City access to the available trouble ticketing system and other reports that pertain to the Wi-Fi service at the airport. Provider's NOC shall have appropriate access to manage and maintain the Wi-Fi service at PHX. Provider shall also provide the direct contact number for its NOC to the City. Provider shall provide appropriate reporting on:

- Cyber security events that pertain to the Wi-Fi system at PHX through its Security Operations Center (SOC) to monitor and manage cyber security of the Wi-Fi service at PHX
- Overall availability reports
- Availability by AP report

Section 4.7 – Usage Reports

Provider shall provide access to ongoing Wi-Fi usage reports providing the following information at a minimum:

- Historical number of connected users
- Number of unique users
- Real time or near real time number of connected users
- Connected users by AP

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- Usage per terminal or geographical area
- Average data usage per user
- Data usage by service
- Average and peak session times
- Information on customer engagement (i.e. repeat connects, customer profile and visits, etc)

**SECTION 5
RENT AND REPORTING**

Section 5.1 – Gross Sales

The term “Gross Sales” shall be construed to mean, for the purposes of this Contract, the aggregate amount of all sales made and for services rendered by Provider, and any other revenues of any type arising out of or in connection with Provider’s operation or obligations under this Contract on the Premises, regardless of when or where the sales or orders therefore are received, where performed by Provider, its subsidiaries, associated companies and any other entity, corporate or otherwise, for cash or credit or otherwise, of every kind, name, and nature, regardless of when or whether collected or not, as if the same had been sold for cash, or the fair and reasonable value thereof, whichever is the greater.

Section 5.2 – Annual Rent

5.2.1 For purposes of this Contract, “Contract Year” means the twelve-month period beginning on January 1st and ending December 31st.

5.2.2 Provider, for and in consideration of the use of the Premises, rights and privileges granted hereunder, hereby covenants and agrees to pay the City without notice and free from any and all claims, deductions or set-offs against the City, as rental:

- a. During the Initial Term, Provider shall pay percentage rent of _____percent (___%) of Gross Sales.
- b. During each Contract Year of the Primary Term hereof, Provider shall pay the greater of: (1) a Minimum Annual Guarantee rental (**MAG**) in the amount of _____(\$_____); or (2) _____percent (___%) of Gross Sales.
- c. During Initial Term and Primary Term, Provider shall have designated space of 4 units per occupied closet. Additional space will be leased at the current rates authorized by Phoenix City Code, subject to annual adjustment in July of each year.

5.2.3 The MAG shall be prorated for the first Contract Year of the Primary Term. After the first Contract Year and for all subsequent Contract Years thereafter, MAG shall be established at eighty-five (85%) of the prior year’s annual rent payment or one hundred percent (100%) of the MAG for the first Contract Year, whichever is greater. The MAG will never be less than the first Contract Year’s MAG.

5.2.4 MAG shall be paid in installments in advance on the first day of each month. On each such date Lessee shall pay one-twelfth (1/12) of MAG, plus all applicable taxes.

5.2.5 Although each new MAG will be effective on January 1, the calculation of the MAG may not be finalized until sometime after January 1, at which time the City will send

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Provider written notice of the new MAG amount. Provider shall then pay the City the difference.

Section 5.3 – Rent Remittance

Rent payments shall be made to the lockbox address at: P.O. Box 78975, Phoenix, AZ 85062-8975, Attn: Aviation Department, in check form or by wire transfer. Provider is to follow and comply with the directions of the Aviation Director or his designee with respect to forms and methods of said accountings.

Section 5.4 – Delinquent Rent

Without waiving any other right or action available to the City in the event of default in payment of rents or charges hereunder, late rent or charges are subject to delinquent fees as defined in Section 4-7 of the Phoenix City Code, currently eighteen percent (18%) per annum and as may be amended, beginning on the date the rent or charges were due.

Section 5.5 – Late Statements or Reports

If Provider is delinquent for ten (10) days or more in furnishing the City any monthly statements or reports required under this Contract, Provider shall pay \$100.00 to the City as liquidated damages for the additional administrative costs incurred by the City processing and reviewing delinquent statements. The parties agree that this a fair and reasonable estimate of the City's costs incurred in processing a delinquent monthly statement.

Section 5.6 – Reports and Percentage Rent Payments

5.6.1 In computing the percentage rent to be paid by Provider, the first reporting period shall begin on the Commencement Date and shall end at the close of business on the last day of the same calendar month. Thereafter, the reporting period shall be on a calendar month basis.

5.6.2 Provider shall, within twenty (20) days after the close of each month, furnish the City:

a. A detailed statement of Gross Sales and any deductions from Gross Sales for the preceding period prepared in accordance with generally accepted accounting principles and certified by a responsible financial officer of the Provider. These reports shall show such reasonable data and breakdown of

b. collection activity during that monthly reporting period, including an itemized list identifying any and all advertisers, the amounts paid or due Provider, all Gross Sales by category, calculation of percentage owed to the City and any other type of reporting as may be required by the City, and shall be accompanied by Provider's payment of additional compensation that may be due hereunder based on the application of the percentage of Gross Sales as set forth in Section 5.1, plus all applicable taxes. Any net underpayment to the City shall be due and paid immediately. Any deficiencies shall be corrected in the billing statements within ten (10) working days of notification by the City. The Aviation Director or his designee may require changes to the format of these reports at any time.

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c. A monthly report detailing all sold and unsold advertising during that monthly reporting period including the name of the advertiser, the amount of advertising purchased, the amount paid, the size of the advertising and duration. The report shall include a copy of all fully executed space advertising sales contracts. The executed contracts shall detail the name of the advertiser, the amount of advertising purchased, the amount paid, including the size and duration. All reports shall be provided to the City electronically in a Microsoft Excel spreadsheet or in any other electronic format requested by the City.

5.6.3 By the 10th day of each month following the Commencement Date, Provider shall furnish monthly statistical reports to the Aviation Director or his designee in a form acceptable to the City. Such reporting format shall be developed and finalized jointly by the Provider and the City within thirty (30) days of the Commencement Date. Provider shall supply City monthly statistical reports that include, at minimum, the following information:

- a. number of connections on a per day basis for the previous month;
- b. average hourly and peak number of simultaneous connections on a per day basis;
- c. average connection time;
- d. peak level of traffic throughput to/from Internet on a per day basis;
- e. detailed usage analysis describing end user usage by different types of services
- f. detailed metrics of additional services added during the Term;
- g. detailed listing of any outages with start/resolution time, root cause of failure, improvements made; and
- h. overall service level availability for the previous month and accumulative totals since the Commencement Date.

For the purpose of this report, "Connection" shall mean the time and date a user initially logs onto the System. Each log on by the user shall be counted as a single connection.

5.6.4 At the end of each Contract Year of this Contract, an annual accounting based on percentage rentals that may be due shall be made by Provider to the City within ninety (90) days after the end of each Contract Year. For said annual accounting, Provider shall furnish to the City an audited annual accounting statement of Gross Sales and percentage rent due prepared and audited by an independent Certified Public Accountant (CPA) in accordance with generally accepted auditing standards. The purpose of the audit will be to express an opinion on the statement of Gross Sales and percentage rent due.

5.6.5 After the close of each Contract Year, the City shall calculate the rental payments paid to the City for the year. These shall be totaled and compared with the rental amount due the City, which shall be recalculated as being either the said MAG rental or the said percentage of the annual Gross Sales, whichever is greater. In the event an overpayment or underpayment to the City has been made, an amount equal to such overpayment or underpayment shall immediately be credited to or paid by Provider as appropriate.

5.6.6 The City may execute periodic, unscheduled and unannounced physical and financial audits. Audits will be reconciled with the Provider's sales for the same period of time.

5.6.7 Audits may include visible audits of all, or samples, of the advertising posted. Audits will constitute a detailed review of sales and collection records for the purpose of

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determining that sales were executed at the established rate card, discounts offered (if applicable), and that the number of advertising spaces allocated to the advertiser were the amount sold and that the amounts collected were in accordance with the rates approved by the City.

Section 5.7 – Credits and Discounts

Provider shall not be credited with nor allowed to have any reduction in the amount of Gross Sales that results from any arrangements for a rebate, discount or hidden credit given or allowed to any customer, City, or other Airport employees.

Section 5.8 – Books and Records

5.8.1 At all times during the term hereof, and until all claims by the City for payments hereunder shall have been fully ascertained, fixed and paid, or until three (3) years after expiration or earlier termination of this Contract, whichever is later, Provider shall keep, in accordance with generally accepted accounting principles, separate and accurate records of Gross Sales showing in detail all business done or transactions arising out of or in connection with Provider's operation or obligations under this Contract pertaining to the Premises. It is the intent and purpose of the foregoing provisions that Provider shall keep all such records available for inspection by the City as will enable the City to ascertain and determine, accurately and clearly, the amount of money payable to the City hereunder, and determine the exact share of Gross Sales billed and/or received by the Provider under this Contract.

5.8.2 These records must be maintained for a period of three (3) years after expiration or earlier termination of this Contract, whichever is later. These records shall include, but are not limited to: chart of accounts, general ledger, daily business reports, and original or copies of advertising agreements for all Wi-Fi Service Concession related transactions under this Contract. If the Provider elects not to maintain its records in the City, then upon the City's request or in the event of an audit, it shall either: 1) pay for all expenses associated with delivering said records to the address of the auditors or 2) pay for reasonable travel expenses for the auditors to have the audit conducted at Provider's specified location, including an administrative fee of fifteen (15%) percent of the actual costs of the audit.

5.8.3 The City may audit Provider's books, records, and accounts at any time for verifying compliance with this Contract. Within ten (10) days of the Aviation Director's request, during normal business hours, Provider will make available for inspection and review (to the City's employees, agents, and contractors) all its records, which shall be maintained in accordance with generally accepted accounting principles, showing in detail all business conducted in furtherance of this Contract on the Premises.

5.8.4 The records requirements of this Section shall extend to any of the Provider's subsidiaries, partners, joint ventures and subcontractors.

5.8.5 The City may use its own staff to perform audits under this Section or may engage an independent CPA to perform the audits. If an audit reveals that Provider has understated its Gross Sales by three percent (3%) or more, the entire expense of the audit shall be borne by Provider and paid to the City within thirty (30) days from completion of the audit. Provider shall immediately pay any additional amounts due to the City in compliance with Section 5.4.

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5.8.6 The termination of this Contract, by the lapse of time or as otherwise provided herein, shall not relieve Provider of its obligation to pay any rental fees or charges that have accrued during the period in which this Contract is in effect or the Provider has had the benefit of the Premises.

SECTION 6
ADVERTISING REQUIREMENTS

Section 6.1 – Manner of Advertising

6.1.1 Provider shall comply fully with the advertising standards in attached **Exhibit E**. The City reserves the right to approve all advertising and to direct the removal, at Provider's expense, of advertising found to be in violation of **Exhibit E**.

6.1.2 Provider shall furnish advertising services on a fair, reasonable, and nondiscriminatory basis.

6.1.3 Advertisement must be location-based; awareness of consumer's location provides location-specific advertisements

6.1.4 The City will not allow the use of advertising on the free Wi-Fi Service Concession

6.1.5 Provider shall remove dated material from the free Wi-Fi Service Concession within ten (10) days at the end of an advertising contract.

6.1.6 Provider will give ten (10) days' notice to the City prior to changing advertising.

6.1.7 All video advertisements will be limited to 30 seconds or less.

6.1.8 Provider shall coordinate with the City all changes pertaining to the Wi-Fi landing page including the layout, design and sponsorship content.

Section 6.2 – Business Plan

6.2.1 Provider shall comply with the Business Plan included in **Exhibit F**.

6.2.2 Commencing by the end of the first full month after execution of the Contract and at six (6) month intervals throughout the Contract, Provider shall prepare and present to the City a business plan concerning its operations under this Contract for the next twelve months, describing its projected activities for its existing Contract, including, if applicable, plans to add, replace or refurbish Equipment, and to enhance its level of service provided, addressing areas where improvements in performance are required and exploration of potential advancements in providing services under this Contract.

6.2.3 Provider shall, during the last month of each six (6) month interval throughout the Contract excluding the final six (6) months of the Contract, conduct a minimum of one-hundred fifty (150) customer intercept interviews in-person or on-line, to assess its performance. The interviews shall consist of questions developed by Provider and approved in advance by the City. Provider shall analyze and report to the City on the responses to such interviews within thirty (30) days of completion of the interviews and shall take responses into account in reviewing its priorities in performing under this Contract. Provider will provide documentation, if requested by the City, that on-line interviews will be reported from customers responding to their experiences at PHX.

Section 6.3 – Final Review

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Provider agrees that City retains the right of prior review and final approval for all aspects regarding the look and feel of the viewable content and overall user experience. Provider will work with City regarding design and implementation of Wi-Fi landing page to include the addition of City content such as legal disclaimers and links to the PHX website (<http://skyharbor.com>). Design of content delivery system shall be such that it is accessible by PC, MAC, Apple iOS, Google Android and other major operating systems with no pop-ups or mandatory screen sessions other than those that are viewed and approved by the City in advance.

SECTION 7
OPERATING STANDARDS

7.1.1 Provider shall at all times retain an experienced project manager or account manager fully authorized to represent and act for it in the technical and business operations of Provider and to accept service of all notices provided herein. The project manager, or a pre-approved designee, must be available by telephone 24 hours a day.

7.1.2 Provider shall maintain and conduct its operations in a proper business-like manner so as not to disturb or be offensive to other tenants or customers at PHX.

7.1.3 All employees or subcontractors of Provider shall, at all times while working at PHX, conduct themselves with exemplary demeanor, be courteous and polite to the public and not engage in any raucous or offensive conduct. The Aviation Director shall be the sole judge as to whether the conduct of the employees or subcontractors of Provider meets with the requirements hereof. Upon notice from the Aviation Director of any nonconformity herewith, Provider shall immediately take all steps to eliminate the nonconformity.

7.1.4 Authorized vendor delivery zones are located at PHX. Delivery zones may be changed from time to time because of City construction or operational requirements. Use of the delivery zone by Provider is limited to thirty (30) minutes at any one time; deliveries that will take longer than thirty (30) minutes must be approved by the City.

7.1.5 The City may issue schedules of acceptable delivery times, which the City may adjust from time to time, and from which Provider shall not deviate without the City's prior consent.

7.1.6 Provider shall ensure goods being transported within PHX are handled in a manner that ensures items are packaged within containers and containers are properly covered and not leaking. In transporting merchandise, products, trash, and refuse associated with operating Provider's business to and from the Premises, Provider shall use only those delivery and receiving routes established by the City and shall use only carts, vehicles, or conveyances that are sealed and leak-proof. All supplies moved throughout the terminals may only be transported on carts or other wheeled devices that are equipped with polyurethane non-marking wheels. Black wheels or other marking wheels are strictly prohibited.

7.1.7 Provider shall keep the Premises free of debris, trash, and hazardous conditions, shall keep public areas around the Premises free of hazardous conditions originating from Provider's operations, and shall notify the City promptly of other hazardous conditions in the public areas outside the Premises.

7.1.8 Provider shall provide a complete and proper arrangement for the adequate sanitary handling of all trash and other refuse caused as a result of the operation of the Premises and shall provide for its timely removal to the central collection point to be provided by the City. Provider shall take appropriate action to exterminate and prevent the

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presence of rodents and other vermin. Provider shall keep all garbage and recyclable materials in durable, fly- and rodent-proof, fireproof containers that are easily cleaned. The containers shall have tight-fitting lids, doors, or covers, and shall be kept covered when material is not being deposited in them. Provider shall clean the containers (and surrounding areas) as necessary to prevent odors. Provider shall not allow boxes, cartons, barrels, or other similar items to remain within view of public areas. The City shall be responsible for handling and removal of trash and other refuse deposited by customers in public areas.

7.1.9 Provider shall ensure that its employees make regular inspections of its assigned area for the purpose of maintaining the required degree of cleanliness, conditions of repair and operational ability of its machines and the surrounding areas. In addition, at the Aviation Director's discretion, responsible representatives of the City and Provider shall meet for the purpose of making a complete inspection of said assigned areas, including Provider's machines, and reviewing the quality of service, rates, condition of repair, cleanliness and safety of the said machines and assigned area and such other matters as the City may wish to review.

SECTION 8
IMPROVEMENTS TO BE MADE BY PROVIDER

SECTION 8.1 – Furnish and Equip Premises

Provider shall provide at its own expense all improvements and Equipment necessary to operate Provider's Wi-Fi Service Concession. The City shall not be requested to, nor will the City execute a Landlord's Waiver, Landlord's Consent, or similar document which would subordinate the City's interest in the Contract to any security interest or consent to Provider's pledge of Leasehold Improvements or Trade Fixtures in order to obtain financing. Any improvements and Equipment must comply with the Tenant Improvement Handbook (TI Handbook) (<http://phoenix.gov/skyharborairport/about-sky-harbor/tenants-contractors.html>) and may be installed only with the City's prior written approval.

SECTION 8.2 – Plans and Specifications

8.2.1 Provider shall submit schematic design drawings for review, compliance, and approval by the Aviation Director. These drawings shall be in accordance with **Exhibit F**.

8.2.2 Upon approval of schematic design drawings, Provider shall prepare and submit construction documents for leasehold improvements and Equipment for approval in accordance with the TI Handbook.

8.2.3 Construction documents shall comply with all applicable City Ordinances and Building Codes. Provider shall have the construction documents prepared and sealed by an architect or engineer registered and licensed to practice in the State of Arizona (State). All construction shall be performed by contractors who are licensed and bonded by the State.

8.2.4 All TI's shall be at Provider's sole cost and expense and shall not damage the Premises or the building of which the Premises are a part.

8.2.5 Ninety (90) days after completion of any improvement, additions or alternation, Provider shall provide to the Aviation Director two (2) sets of detailed plans and

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specifications of the work as completed. One (1) copy shall be produced as a computer automated drafting (CAD) format and the second copy shall be as-built plans sealed by an Arizona registrant. Provider agrees that, upon the request of City, Provider will inspect the Premises jointly with City to verify the as-built drawings.

SECTION 8.3 – Approval of Plans and Specifications for Subsequent Changes, Alterations, or Additions

8.3.1 Any subsequent changes, alterations, or additions to constructed Leasehold Improvements or the Premises shall be subject to the prior written approval of the Aviation Director. Before commencing any such improvements, additions or alterations, Provider shall submit plans and specifications; construction costs and engineering and architectural fees; and a construction schedule for all work, facilities and improvements to the Aviation Director. All construction shall conform to the architectural requirements of the TI Handbook, which may be amended from time to time.

8.3.2 Prior to commencing any improvements, additions or alterations, Provider shall notify the City thereof in writing ten (10) days in advance thereof, and the City shall have the right to enter and post and maintain notices of non-responsibility upon the Premises.

8.3.3 The approval given by the City shall not constitute a representation or warranty as to such conformity with the requirements of local, state, and federal laws and codes; responsibility for conformity shall at all times remain in Provider. Approval of the City shall extend to and include architectural and aesthetic matters and the City reserves the right to reject any design submitted and to require Provider to resubmit designs and layout proposals until they meet the City's approval.

8.3.4 In the event of disapproval by the City of any portion of the plans and specifications, Provider shall promptly submit necessary modifications and revisions of these plans and specifications. No substantial changes or alterations shall be made in any executed plans or specifications after initial approval by the City, and no alterations, additions or improvements shall be made to or upon the Premises without the prior written approval of the City. Request for approval of changes or alterations to submitted plan will be done in accordance with the TI Handbook.

8.3.5 Ninety (90) days after completion of any improvements, additions or alterations, Provider shall provide to the Aviation Director two (2) sets of detailed plans and specifications of the work as completed. One copy shall be produced as a computer automated drafting (CAD) format and the second copy shall be as-built plans sealed by an Arizona registrant in an electronic format to be determined at time of submittal by the Aviation Director. Provider agrees that, upon the request of the City, Provider will inspect the Premises jointly with the City to verify the as-built drawings.

8.3.6 Provider shall, in the design and construction of Leasehold Improvements and operation of the Premises, comply with all applicable provisions of the Americans with Disabilities Act (ADA), ADA Accessibility Guidelines (ADAAG), and implementing regulations as imposed upon the owner and/or operator of public facilities.

SECTION 8.4 – Title to Tenant Improvements

8.4.1 All contracts for the construction of the Leasehold Improvements shall include provisions of insurance and suretyship reasonably satisfactory to the City for protection of the City, laborers, suppliers, subcontractors, and the general public.

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8.4.2 All TI's and Equipment approved by the City and any City approved additions and alterations to these TI's shall become and remain the property of the Provider until the expiration or termination of this Contract. Upon expiration or termination of this Contract for any reason, all TI's and Equipment shall become the property of the City.

8.4.4 Provider shall maintain all TI's and Equipment at its own expense.

SECTION 8.5 - Removal and Demolition

Provider shall not remove or demolish, in whole or in part, any Leasehold Improvement on the Premises without the prior written approval of the City. The City may, at its sole discretion, condition such approval upon the obligation of Provider to replace the Leasehold Improvement by an improvement specified by the City.

SECTION 9
CLOSURE, RELOCATION, REDUCTION, EXPANSION, OR CONDEMNATION

SECTION 9.1 – City's Authority

If at any time during the term of this Contract the City determines that it is necessary for the efficient operation of the Airport, the City may require Provider to close or reduce its operation. If the City requires Provider to close its operation, Provider shall vacate the Premises within ninety (90) days of receipt of closure notice unless exigent circumstances require an earlier closure or reduction in operation size. If the City requires a reduction of Provider's Premises, Provider may elect to close its operation, and the closure shall be treated in the same manner as if the City had required closure. If Provider makes a request to relocate its operations promptly after receiving notice of a closure or reduction, the City will attempt to negotiate a mutually acceptable relocation within PHX; but Provider acknowledges that relocation is unlikely.

Upon receipt of closure notice from the City, the Contract shall terminate, and Provider shall have no further responsibility for payment of rent or additional rent from date of notification.

SECTION 9.2 – Closure

If a closure occurs under this Section, the City shall have no further liability to the Provider and the Provider shall remove all Tenant Improvements they have installed, from the closed facility.

SECTION 9.3 – Condemnation

This Contract shall terminate upon the filing of an action to condemn the premises and the City shall be entitled to all compensation awarded in any condemnation action, except for the amount indicated in Section 9.2.

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SECTION 9.4 – Notice

Unless exigent circumstances exist, the City shall give Provider at least ninety (90) calendar days written notice of the closure date before requiring Provider to close or reduce its operation.

**SECTION 10
MAINTENANCE OF PREMISES**

SECTION 10.1 – Maintenance

10.1.1 Obligations of the City: The City shall, at its expense, maintain PHX in good condition, including the ventilating and air conditioning equipment.

10.1.2 Obligations of Provider: Provider shall, at all times and at its sole expense, maintain in good repair and keep in a clear and orderly condition and appearance the Premises and all Leasehold Improvements therein, including Equipment, light fixtures, and all signs, whether installed by Provider or the City. All maintenance shall be equal to or greater than the materials, workmanship, and appearance representative of similar areas of PHX directly controlled by the City. To maintain high standards of maintenance, the City, at Provider's expense, may accomplish any required work following Provider's refusal or failure to perform it in a satisfactory manner. The procedure to be followed by the City in performing maintenance work on behalf of Provider shall be the same as that used to remedy default in providing janitorial services. The City shall be the sole judge of the quality of maintenance.

SECTION 10.2 – Repairs

All repairs to the Premises done by or on behalf of Provider shall be of first-class quality in both materials and workmanship, shall be equal to or better than the original materials and workmanship, and, except in emergencies requiring immediate response, must have the prior written approval of the City. Provider shall be responsible for the cost to repair any damage to PHX or Premises caused by the negligence or misconduct of Provider's employees or invitees. All repairs shall be approved in advance by the City and shall conform to the rules and regulations prescribed from time to time by federal, state, or local authorities having jurisdiction over the work in Provider's Premises. The City shall be the sole judge of the quality of the repairs.

SECTION 10.3 – Failure to Maintain or Repair

If Provider refuses or neglects to undertake the maintenance, repair, or replacements requested by the City; or if the City is required to make any repairs necessitated by the acts or omissions of Provider, its employees, agents, or licensees, the City shall have the right to make such repairs on behalf of and for Provider. Such work shall be paid for by Provider within ten (10) days following receipt from the City for said payment at the City's standard rates, plus the City's overhead, or, if the work is performed by the City's contractor, the City's actual cost, including but not limited to City administrative costs.

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SECTION 10.4 – Operation Costs

Provider shall bear at its own expense all costs of operating Provider's business under this Contract, and shall pay, in addition to rental and other payments specified in this Contract, all other costs connected with the use of the Premises, facilities, rights and privileges granted.

SECTION 10.5 – Utilities

10.5.1 The City has provided and will maintain all utility service (electric, HVAC, fire alarms, fire sprinklers) to the Premises. Provider shall be required to provide all utility hook-ups and any costs associated with relocation or modification of, and/or improvements to, the existing utilities in the Premises. The City shall not be responsible for charges relating to utility usage, telephone service and special wiring and hookups for computer(s) for the demised premises, including wireless internet access. The City shall have no liability for blackouts, brownouts, cessation, interruption, or failure of utilities.

10.5.2 As a condition of its right to occupy Premises, Provider shall ensure that the operation of any wireless access point does not cause interference with existing communications users, including, without limitation, aviation-related operations and equipment at PHX, the operations of any existing wireless users operating at PHX, and the City's own radio systems. If the operation of the wireless access point causes any interference to any existing users, Provider shall take all steps necessary to remove the cause of the interference. Provider shall cooperate with the City and any necessary third parties to identify and eliminate the cause of the interference. If the Aviation Department determines, in its sole discretion, that the wireless access point or signals being transported by means of the wireless access point, are the cause of any interference, the City may direct Provider to immediately cease operation of all or any portion of the wireless access point, or otherwise take action to eliminate the interference.

10.5.3 Provider agrees that nothing shall be done or kept on the Premises and no improvements, changes, alterations, additions, maintenance, repairs shall be made to the Premises by Provider, its employees, agents, or subcontractors, which might impair the structural soundness of the building, result in an overload of utility lines serving PHX or interfere with electric, electric, electronic or other equipment at PHX. In the event of violations hereof, Provider agrees to immediately remedy the violation at Provider's expense.

SECTION 10.6 – Hazard, Potential Hazard, Nuisance, or Annoyance

Any nuisance, annoyance, or hazardous or potentially hazardous condition on or emanating from the Premises shall be corrected immediately upon Provider's actual knowledge of the condition, nuisance, or annoyance or receipt of oral or written notice from the City. If, in the City's sole discretion, a hazard or potentially hazardous condition presents an unreasonable and imminent risk of bodily injury, the City may require Provider to close its business and bar the public from the Premises until the hazard or potentially hazardous condition has been abated. Nothing in this section shall be deemed to preclude the City from pursuing any available remedy for breach of this Contract. Provider's failure to promptly correct a nuisance, annoyance, or hazardous or potentially hazardous condition

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under this paragraph shall be a material breach of this Contract.

SECTION 10.7 – City Improvement to PHX

The City and Provider agree and acknowledge that, from time to time, the City may undertake improvements to PHX during the term of this Contract. The City will attempt to make those improvements in a manner that does not interfere unreasonably with the operations of Provider authorized under this Contract. Provider expressly waives any and all claims for damages of any kind, including but not limited to, loss of profits as a result of the interruption of business of Provider that may arise as a result of such improvements undertaken by the City.

**SECTION 11
INDEMNITY**

Provider shall indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees (hereinafter referred to as “City”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Provider or any of its owners, officers, directors, agents, employees or contractors, arising out of or related to Provider’s occupancy and use of the Premises. It is the specific intention of the parties that the City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by Provider from and against any and all claims. It is agreed that Provider will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration for the use and occupancy of the Premises, the Provider agrees to waive all rights of subrogation against the City, its officers, officials, agents, and employees for losses arising from or related to the use, occupancy or condition of the Premises.

Provider also agrees to defend, at its own expense, and to indemnify and hold harmless the City and its officers, agents, and employees from and against all judgments, claims, damages, suits, liabilities, settlements, costs and demands, including reasonable attorneys’ fees, suffered or incurred by the City as a result of any claim that the Provider’s Wi-Fi Service Concession activity infringes the patents, copyrights, trade secrets or other intellectual property rights of third parties, provided that Provider is notified in writing of such claim. Provider will have the sole right to control the defense of all such infringement claims, lawsuits and other proceedings, including the right to settle the same. In no event will the City settle any such claim, lawsuit, or proceeding without Provider’s prior written consent. The City will cooperate with Provider, at Provider’s expense, in a reasonable way, to facilitate the settlement or defense of such claim.

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**SECTION 12
INSURANCE REQUIREMENTS**

SECTION 12.1 – Introduction

Provider shall procure and maintain for the duration of the Contract, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Contract. The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Provider from liabilities that might arise out of this Contract. Provider is free to purchase such additional insurance as Provider determines necessary.

SECTION 12.2 - Indemnification Clause

Contractor (“Indemnitor”) must indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (“Claims”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors in connection with this Contract. This indemnity includes any Claims 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 this Contract, 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 this Contract.

SECTION 12.3 - 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 of their obligations have been discharged, including any warranty periods under this Contract.

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

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SECTION 12.4 - Minimum 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 minimum liability requirements provided that the coverage is written on a “following form” basis.

1. Commercial General Liability – Occurrence Form

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

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

The policy must be endorsed to include the following additional insured language:
“The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor.”

2. Automobile Liability

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

Combined Single Limit (CSL)	\$5,000,000
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The policy must be endorsed to include the following additional insured language:
“The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor.”

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

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

4. Technology Errors and Omissions Liability (if the Contractor provides technology services or products)

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

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

- In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

5. Network Security and Privacy Liability (if the Contractor has access to any personal or confidential data, the Contractor should be required to evidence Network Security and Privacy Liability coverage in addition to Technology Errors and Omissions)

- The policy must cover but not be limited to (1) coverage for third party claims and losses with respect to network risks and invasion of privacy, (2) crisis management and third-party identity theft response costs, and (3) cyber extortion.

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

- In the event that the network security and privacy liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

6. Media Liability (if the Contractor is involved in the production or publication of content)

- The policy must cover any and all errors and omissions or negligent acts in the production or publication of content, including but not limited to plagiarism, defamation, libel, slander, false advertising, invasion of privacy and infringement of copyright, title, slogan, trademark, service mark and trade dress.

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

- In the event that the media liability insurance required by this Contract is

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

SECTION 12.5 - Additional Insurance Requirements

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

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

SECTION 12.6 - Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, hand delivered or sent by facsimile transmission to **(City of Phoenix Department Representative's Name & Address & Fax Number)**.

SECTION 12.7 - Acceptability of Insurers

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

SECTION 12.8 - Verification of Coverage

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

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

All certificates required by this Contract must be sent directly to City of Phoenix, Aviation Department, c/o EXIGIS Insurance Compliance Services, P.O. Box 4668 – ECM #35050,

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New York, NY 10163-4668. The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

SECTION 12.9 - Subcontractors

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

SECTION 12.10 - Approval

Any modification or variation from the insurance requirements in this Contract must be made by the Law Department, whose decision is final. Such action will not require a formal Contract amendment, but may be made by administrative action.

SECTION 13
LIENS AND PERFORMANCE GUARANTEE

Section 13.1 – Liens

Provider shall not create or allow any lien to be imposed upon the Premises or upon any improvements without promptly discharging the same. Provider shall at all times indemnify and save the City harmless from all liens, claims, losses, demands, costs, expenses or liability cost for labor or materials in conjunction with construction, repair, alteration or installation of structures, improvements, or Equipment on the Premises, and against all reasonable attorneys' fees and other costs arising by reason of any such lien or claim.

SECTION 13.2 - Payment Bond

Prior to the commencement of any construction, alteration, or repair hereunder of Provider's Leasehold Improvements and/or Trade Fixtures which exceeds \$10,000 in cost, Provider shall furnish to the City, without expense to the City, a payment bond issued by a surety company licensed to transact business in the State of Arizona and satisfactory to and approved by the City with Provider's contractor or contractors as principals. The penal amount of the bond shall be not less than 100 percent of the total cost of the contract or contracts for the construction, alteration, or repair of such Leasehold Improvements and/or Trade Fixtures. In the event that such contracts involve alteration or work on or to the City's facilities, the payment bond shall be posted regardless of the dollar value of the work. The payment bond required by this Section shall guarantee the prompt payment to all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by any contractor, subcontractor(s), and suppliers doing work

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provided for in the above-mentioned construction contract and shall protect the City from any liability, losses, or damages arising from it.

SECTION 13.3 - Performance Guarantee

Provider shall provide and maintain during the term of this Lease a performance guarantee in the form of an irrevocable standby letter of credit ("LOC") guaranteeing the full and faithful performance by Provider of all the terms and conditions of this Lease, including security for payment by Provider of all claims by City. The amount of the performance guarantee for this Lease shall be either six (6) months' rent or \$_____, whichever is greater. Provider shall increase the performance guarantee upon written demand of City, provided such increases are found reasonable and necessary by City. City may draw or make a claim against the posted performance guarantee for failure of Provider to perform according to the covenants, terms and conditions of the Lease. If City draws or makes a claim on the posted performance guarantee, Provider shall replenish the performance guarantee to its original amount within thirty (30) days' notice of City's draw or claim unless otherwise agreed by City in writing. The performance guarantee is required to be in place for the entire term of this Lease. Provider's failure to provide and maintain a performance guarantee under this paragraph shall be a material breach of this Lease.

If the performance guarantee is in the form of a LOC, Provider will use City approved LOC form attached as **Exhibit D**. The LOC shall be issued by a local financial institution preferably in the Phoenix Metropolitan area in a form that is satisfactory to the City and City must be able to draw upon the letter of credit at any of the financial institution's counters in the Phoenix Metropolitan area. Any modification to the City approved LOC form must be approved by City. If an LOC is obtained, then unless City receives a written extension of that LOC, in a form acceptable to City, at least sixty (60) days before the end of the term of such LOC, City, without notice to Provider, may draw upon the full amount of that LOC and retain all proceeds as a cash security pursuant to this Section. City will not pay interest to Provider on any performance guarantee.

SECTION 14
ASSIGNMENT

Section 14.1 – Assignment

Provider shall not assign this Contract in whole or in part without the prior written consent of the City. Provider shall give written notice to the Aviation Director at least sixty (60) days prior to any proposed transfer of control of Provider's business. The City as a condition of approval may require that transferee submit biographical and financial information and the Aviation Director shall have thirty (30) days from the date he receives a completed request to approve or deny same. Failure by the Aviation Director to approve or deny within thirty (30) days shall constitute a denial. Any purported assignment without the prior written consent of the City shall be void. This Contract or any interest therein shall not be subject to assignment by operation of law.

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Section 14.2 – Assigned Individuals

An essential consideration provided to the City by Provider to induce the City to enter into the Contract is Provider's representation that the individual(s) performing Services shall include _____ and _____. Therefore, should any of the above named individuals sever their relationship with the Provider, or otherwise be unavailable to carry out Provider's duties under this Contract for an extended period of time, which period shall be determined at the sole discretion of the Aviation Director, then the Aviation Director, without notice, may immediately terminate this Contract for cause.

**SECTION 15
CANCELLATION BY THE CITY**

Section 15.1 – General Default

The City may immediately terminate this Contract by giving Provider written notice of the immediate termination upon the happening of any of the following events:

(1) The taking of possession for a period of twenty (20) days or more of all or substantially all of the property used on the Premises belonging to the City by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator;

(2) The filing of any lien against the Premises because of any act or omission of Provider which is not discharged or contested in good faith as determined by the City by proper legal proceedings within twenty (20) days of receipt of notice by Provider;

(3) Unless otherwise provided in this Contract, the breach by or, the failure or refusal of Provider to observe or perform, any of the covenants, terms and conditions herein contained and on its part to be observed and performed, including compliance with all approved plans, and such failure shall continue for a period of more than twenty (20) days after delivery by the City of a written notice of such breach; or

(4) The voluntary abandonment by Provider of its obligations and operations on the Premises for a period of ten (10) days or more.

(5) Provider connects to or otherwise acquires the use of existing City-owned fiber optic cabling or Equipment without prior written authorization from the Aviation Director or his designee.

(6) If Provider fails to meet the established service levels set forth in Section 4 for two (2) consecutive months.

Section 15.2 – Rental Default

The City may place Provider in default of this Contract by giving Provider ten (10) days written notice for Provider's failure or refusal to timely pay rent as provided in Section 5. During said 10-day notice period, Provider shall cure its rental default in full, including delinquent account fees; otherwise, this Contract may be deemed terminated at the City's sole option without further notice.

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SECTION 15.3 – Cancellation Without Cause

The City may cancel this Contract without cause and without penalty at any time by giving Provider sixty (60) days written notice.

SECTION 15.4 – Failure to Commence Construction

If Provider fails to commence the Implementation Plan in **Exhibit F** and/or construction of the TI's in accordance with the City approved construction schedule or, if Provider fails to furnish the required payment bond and insurance policies on or before the time the Provider has given its contractor a Notice to Proceed, this Contract shall be considered breached and may be terminated by the Aviation Director, and the Provider's performance guarantee shall be forfeited as liquidated damages, not as a penalty, but to cover expenses incurred by the City as a result of the Provider's breach. Further, all rights and/or claims upon said Premises shall be immediately forfeited.

SECTION 16
CANCELLATION BY PROVIDER

SECTION 16.1 – General Defaults

Provider may cancel this Contract at any time that it is not in default in its obligations by giving the City thirty (30) days' written notice after the happening of any of the following events materially impairing the conduct of its normal business from the demised premises:

1. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining normal use of PHX or any substantial part of one and the remaining in force of such injunction for a period of ninety (90) consecutive days.
2. The inability of Provider or its customers to use, for a period of ninety (90) consecutive days, PHX or any substantial part of one due to enactment or enforcement of any law or regulation, or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
3. The lawful assumption by the United States (U.S.) government of the operation, control, or use of PHX or any substantial part of one for military purposes in time of war or national emergency.
4. The reduction by the City of Provider's operations so that it is no longer viable to operate at PHX.

SECTION 17
REDELIVERY AND HOLDING OVER

SECTION 17.1 – Redelivery

Upon expiration or other termination of this Contract, Provider's right to occupy the Premises and exercise of the privileges herein granted shall cease, and it shall surrender the same and leave the Premises in good condition except for normal wear and tear.

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SECTION 17.2 – Holding Over

The City may, at its option, allow Provider to hold over under this Contract on a month-to-month basis. It is agreed and understood that any holding over of Provider after the termination of this Contract with the City's consent shall not renew and extend the Term but shall operate and be construed as a month-to-month permit and Provider agrees to pay to the City fees or other payment that are in effect at the end of the regular Term of the Contract unless the City has given prior notice of any increased fees. Such increase in fees may be given at any time with notice of not less than thirty (30) days. Provider shall be liable to the City for all loss or damage on account of any such holding over against the City's will after the termination of this Contract, whether such loss or damage may be contemplated at this time or not. It is expressly agreed that acceptance of the foregoing payment to the City in the event that Provider fails or refuses to surrender possession shall not constitute a waiver by the City of its right to immediate possession.

SECTION 18
DAMAGE OR DESTRUCTION

SECTION 18.1 – Damage or Destruction to PHX

If any portion of PHX is damaged and such damage is capable of being repaired within six (6) months, the same may be repaired, at the City's sole discretion, with due diligence by the City at its own cost and expense. If such damage shall be so extensive as to substantially impair Provider's operations within the Premises, the rent payable hereunder shall be paid up to the time of such damage, and thereafter shall be equitably reduced in proportion to such impairment until such time as Provider's operations shall be fully restored.

SECTION 18.2 – Total Destruction

If PHX was to be completely destroyed by fire, explosion, Act of God, the public enemy, or other casualty, or so damaged as to be untenable and incapable of being repaired within six months, the City shall be under no obligation to repair or reconstruct PHX. The rental obligations of Provider hereunder shall be paid up to the time of such damage or destruction, and thereafter shall be proportionately reduced for impaired operation, or if no operation is possible, shall cease until such time as the Premises are fully restored, and rental obligations shall thereafter resume in the same proportion as Provider's operation on the Premises shall resume. If such damage or destruction shall not be repaired or restored within twelve (12) months after such damage or destruction, Provider shall have the right to cancel this Contract upon written notice to the City of such election.

SECTION 18.3 – Protection of Contents of Premises

Protection against loss by fire or other casualty to the contents of the Premises shall not at any time be an obligation of the City.

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SECTION 19
FORCE MAJEURE

In the event the City or Provider shall be prevented or unable to perform any act required by this Contract by reason of acts or determination of Federal, State or Local governments or fire, earthquake or similar acts of God, strikes, labor disputes or any other reason of a like nature beyond their control, then performance of such act shall be extended for a period equivalent to the period of delay; provided, however, that no such delay shall exceed ninety (90) days unless approved in writing by the City; otherwise, this Contract shall terminate.

SECTION 20
ATTORNEYS' FEES

In the event of litigation between the City and Provider to enforce the rights or obligations provided by this Contract, the non-prevailing party shall pay for the prevailing party's reasonable attorneys' fees and costs of litigation as may be determined by the court.

SECTION 21
AMENDMENT

Any amendment, modification, or alteration of this Contract shall be effective only if mutually agreed upon, reduced to writing, and signed by both parties.

SECTION 22
RELATIONSHIP OF PARTIES. NO THIRD-PARTY BENEFICIARIES

Nothing contained in this Contract shall be deemed or construed by the City or Provider, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the City and Provider. It is understood and agreed that neither the method of computation of rental and other payments, nor any other provision contained in this Contract, nor any acts of the City or Provider creates a relationship other than the relationship of the City and Provider as described in this Contract.

Provider agrees that no persons supplied by it in the performance of the Contract are employees of the City and further agrees that no rights to the City's civil service, retirement or personnel rules, and benefits accrue to such persons.

Provider shall be responsible for all salaries, wages, bonuses, retirement, withholdings, workers' compensation, unemployment compensation, other benefits, taxes and premiums appurtenant thereto concerning such persons provided by Provider in the performance of the Contract, and Provider shall save and hold the City harmless with respect thereto.

This Contract is intended solely for the benefit of the parties hereto. Nothing in this Contract may be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any person not a signing party to this Contract.

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SECTION 23
PROHIBITED INTERESTS

No member, officer, or employee of the City during his or her tenure, and for one (1) year thereafter, shall have any interest, direct or indirect, in this Contract or its proceeds.

SECTION 24
QUIET ENJOYMENT

The City agrees that, on payment of rent and the performance of the covenants and agreements on the part of the Provider to be performed hereunder, Provider shall peaceably have and enjoy the Premises free from interference from the City except as may otherwise be provided herein and the privileges granted herein for the commercial use of PHX facilities.

SECTION 25
COMPLIANCE WITH LAWS

SECTION 25.1 - Rules and Regulations

25.1.1 Provider, its officers, Partners, agents, employees, contractors, and any other person whom Provider controls or has the right to control shall comply with all present and future laws, ordinances, orders, directives, rules, and regulations of the U.S. government, the State of Arizona, the County of Maricopa, and the City and all agencies thereof that may be applicable to its operations or to the operation, management, maintenance or administration of the Airport now in effect or hereafter promulgated, without limits to other conditions in this Lease.

25.1.2 Without limiting the above, in performing this Lease, Provider its officers, Partners, agents, employees, contractors, and any other person whom Provider controls or has the right to control, shall comply with Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act of 1990 (ADA), and all pertinent Executive Orders, regulations and rules promulgated thereunder, and must train all employees and agents performing under this Lease on Section 504 and ADA requirements.

25.1.3 Compliance with Environmental Laws - Provider shall, at its own expense, comply with all present and subsequently enacted environmental law, and any amendments thereto, affecting Provider's use of the Premises including the requirements set forth in **Exhibit C ("Compliance with Environmental Laws")** and **Exhibit C-1 ("AZPDES Storm Water General Permit Compliance")** attached hereto and incorporated herein by reference.

SECTION 25.2 - Supplemental Terms and Conditions to All Airport Agreements

Without limiting any other conditions set forth in this Lease, Provider shall comply with the specific requirements more particularly set forth in **Exhibit B ("Supplemental Terms and Conditions to All Airport Agreements")**, attached hereto and incorporated herein by reference.

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SECTION 25.3 - Taxes and Licenses

Provider shall pay, on or before their respective due dates, to the appropriate collecting authority, any and all leasehold tax, sales tax, transaction privilege tax, federal, state, and local taxes, including real or personal property taxes and business taxes that are now or may be levied upon the Premises, or upon Provider, upon Provider's interest in this Lease, or upon the business conducted on the Premises, or upon any of Provider's property used in connection with the Premises whether or not such tax, fee or assessment is levied, charged or assessed on City or Provider; provided, however, that Provider may at its sole expense dispute and contest these taxes and in such case such disputed items need not be paid until finally adjudged to be valid. In the event laws or judicial decisions result in imposition of a real property tax on the interest of City, the prorata share of such tax attributable to the Premises should also be paid by Provider for the period this Lease is in effect.

Provider shall maintain in current status all federal, state, and local licenses and permits necessary or required by law for the construction of Leasehold Improvements and/or the installation of Trade Fixtures, and any other licenses necessary for the operation of Provider's concession.

SECTION 26
GENERAL PROVISIONS

SECTION 26.1 – ACDBE, DBE, and Small Business Utilization

26.1.1 City has established race-and gender-neutral measures for this airport concessions Contract that require Provider to conduct outreach to achieve participation from small businesses, including suppliers of goods and services at levels comparable to their availability. The City encourages Provider to voluntarily utilize small businesses wherever possible in accordance with the service standards of this Contract.

26.1.2 Provider acknowledges it proposed the following utilization throughout the term of this Lease, as reflected in the Small Business Utilization Commitment attached hereto as **Exhibit I** and incorporated herein.

- a. Participation as Partners as a percentage of this Contract's value: ACDBE _____ percent (____%), DBE _____percent (____%), and Small Business __ percent (____%).

- b. Participation as suppliers of goods and services as a percentage of the operating expenses or cost of goods sold associated with this Contract: ACDBE percent (____%), DBE _____percent (____%), and Small Business ____percent (____%).

Provider agrees to maintain the above-listed ACDBE, DBE and small business utilization throughout the term of the Contract. Provider agrees to notify the City of Phoenix Equal Opportunity Department of any changes in ACDBE, DBE or small business status, including level of utilization, identity of ACDBE, DBE or small business partners and

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suppliers of goods and services, if applicable, and eligibility of those businesses for ACDBE or DBE designation. Provider agrees to use continued good faith efforts to maintain the utilization of its ACDBE, DBE and small business partners in its Wi-Fi Service Concession included in this Contract.

26.1.3 By execution of this Contract, Provider agrees to not discriminate against any small business because of the owner's gender, race, color, or national origin in connection with its participation under this Contract or providing of goods and services to support the Wi-Fi Service Concession included in this Contract as required by 49 Code of Federal Regulations (CFR) Part 23 and Part 26. See **Exhibit H** for the Airport Concession Disadvantaged Business Enterprise Program Race- and Gender-Neutral Contract Clause requirements attached hereto and incorporated herein.

26.1.4 If during the term of this Contract an ACDBE, DBE or small business Partner or supplier of goods and services is no longer available to conduct business with Provider, then Provider will be required to conduct outreach efforts to continue to achieve small business utilization in accordance with this Contract. The outreach efforts by Provider must meet requirements of City and the selection of the replacement Partner or supplier of goods and services is subject to the approval of the City.

26.1.5 This Contract be subject to review for ACDBE or DBE utilization and goals may be established before any Contract extension.

26.1.6 Failure of Provider to maintain its ACDBE, DBE or small business utilization throughout the term of the Contract, or to demonstrate it has met the outreach requirements for a reduction in the amount of utilization, may be a material breach of the Contract.

SECTION 26.2 – Affirmative Action Compliance

In order to do business with the City, Provider must comply with Phoenix City Code, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements, and as specifically prescribed in **Exhibit B.**

SECTION 26.3 – Federal Aviation Act

Nothing contained in this Contract shall be deemed to grant Provider any exclusive right or privilege within the meaning ascribed by the Federal Aviation Act of 1958 or the conduct of any activity at the Airports, except that, subject to the terms and provisions of this Contract, Provider shall have the right to use and occupy the Premises under the provisions of this Contract.

SECTION 26.4 – City Improvements to Airports

The City and Provider agree and acknowledge that, from time to time, the City may undertake improvements to the Airports during the term of this Contract. The City will attempt to make those improvements in a manner that does not interfere unreasonably with the operations of Provider authorized under this Contract. Provider expressly waives any and all claims for damages of any kind, including but not limited to, loss of profits as a result of the interruption of business of Provider that may arise as a result of such improvements undertaken by the City.

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SECTION 26.5 – Subordination to Agreements with the U.S.

This Contract is subject and subordinate to the provisions of any agreement currently in force or subsequently made between the City and the U.S. government, relative to the operation or maintenance of PHX, the execution of which has been required as a condition precedent to the transfer of federal rights or property to the City for City purposes, or the expenditure of federal funds for the improvement or development of PHX in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. The City warrants that it has no existing agreements with the U.S. government in conflict with the express provisions of this Contract.

SECTION 26.6 – Notices

Any notice, consent or other communication (**Notice**) required or permitted under this Contract shall be in writing and either: (1) delivered in person; (2) sent via e-mail, return receipt requested; (3) sent via facsimile transmission; (4) deposited with any commercial air courier or express delivery service; or (5) deposited in the United States mail, postage prepaid.

1) If to Provider:

Telephone: _____ Facsimile: _____ E-Mail: _____

2) If to the City:

Business & Properties Division
Attn: Deputy Aviation Director
City of Phoenix Aviation Department
2485 E. Buckeye Rd.
Phoenix, AZ 85034-4405
Telephone: (602) 273-4391
Facsimile: (602) 273-4083
E-Mail: aviation.business@phoenix.gov

Notice shall be deemed received: (1) at the time it is personally served; (2) on the day it is sent via e-mail; (3) on the day it is sent via facsimile transmission; (4) on the second day after its deposit with any commercial air courier or express delivery service; or (5) five (5) business days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice will be computed from the time the Notice is deemed received.

Notices sent by e-mail and facsimile transmission will also be sent by regular mail to the recipient at the above address. This requirement for duplicate Notice is not intended to change the effective date of the Notice sent by e-mail or facsimile transmission.

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SECTION 26.7 – Approvals, Consents, and Notices

All approvals, consents, and notices called for in this Contract must be in writing and may not be established by oral testimony.

SECTION 26.8 – Offset Provisions

Provider recognizes and is required to abide by the provisions of the City Charter of the City, which require and demand that no payment be made to Provider as long as there is any outstanding liquidated undisputed obligation due to the City and direct that any such obligations be offset against any payment due the Provider.

SECTION 26.9 – Paragraph Headings

All section and subsection headings of this Contract are inserted for reference only and shall not be considered to define or limit the scope of any provision.

SECTION 26.10 – Savings Clause

Should any provision of this Contract be declared invalid by a court of competent jurisdiction, the remaining terms shall nonetheless remain effective, provided that elimination of the invalid provision does not materially prejudice either the City or Provider with regard to their respective rights and obligations.

SECTION 26.11 – Waiver of Claims

Provider hereby waives any claim against the City and its officers or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Contract or any part of this Contract, or by any judgment or award in any suit proceeding declaring this Contract null, void, or voidable, or delaying the Contract or any part of it from being carried out.

SECTION 26.12 – Corporation Authorization

In the event Provider is a corporation, certified copies of resolutions of the Directors and Stockholders authorizing this Contract shall be furnished to the Aviation Director prior to final execution of this Contract.

SECTION 26.13 – Right to Develop PHX

Provider agrees the City reserves the right to further develop or improve PHX and all landing areas and taxiways as the City may see fit, regardless of the desires or views of Provider and without any interference or hindrance from Provider.

SECTION 26.14 – Incorporation of Exhibits

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All exhibits and documents referred to in this Contract are intended to be and hereby are specifically made a part of this Contract.

SECTION 26.15 – Incorporation of Required Provisions

The City and Provider hereby incorporate by this reference all provisions lawfully required to be contained in this Contract by any governmental body or agency.

SECTION 26.16 – Successors and Assigns Bound

All the provisions of this Contract shall bind the legal representatives' successors and assigns of the respective parties.

SECTION 26.17 – Right to Amend

In the event the FAA or its successors requires modifications or changes in this Contract as a condition precedent to the granting of funds for the improvement of PHX, or otherwise, Provider agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Contract as may be reasonably required to satisfy the FAA requirements.

SECTION 26.18 – Time of Essence

It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Contract.

SECTION 26.19 – Good Faith

The terms and conditions set forth in this Contract are for the mutual benefit of both parties. Because of the nature of this Contract, the City and Provider agree that there is an obligation and implied duty of reasonable diligence and good faith imposed on both parties to make reasonable efforts to fulfill the terms, conditions, and covenants imposed by this Contract.

SECTION 26.20 – Interpretation

City and Provider agree that any rule of construction of contracts resolving disputes of interpretation against the drafting party is waived and shall be inapplicable to this document.

SECTION 26.21 – Entire Contract

It is understood and agreed that this Contract (including all exhibits and documents incorporated by reference) contains the entire agreement between the City and Provider as to this Contract. It is further understood and agreed by Provider that the City and the City's agents have made no representations or promises with respect to this Contract or the making or entry into this Contract, except as in this Contract expressly set forth, and that no claim or liability or cause for termination shall be asserted by Provider against the City for, and the City shall not be liable by reason of the breach of any representations or promises

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not expressly stated in this Contract. Any other written or parole agreement with the City is expressly waived by Provider. It is understood that the City requires agreements to be in writing and adopted by the City Council.

SECTION 26.22 – Conflicts

Conflicts among the documents composing this Contract shall be resolved in favor of the document that appears earliest in the following list:

- a. Contract amendments, with later amendments superseding inconsistent provisions of earlier amendments;
- b. This Contract including all Exhibits.

SECTION 26.23 – Provider and Subcontract Worker Background Screening

26.23.1 Provider agrees all Provider workers and subcontractors [collectively “Contract Worker(s)”] that Provider furnishes to the City pursuant to this Contract shall be subject to background and security checks and screening (collectively “Background Screening”) at Provider’s sole cost and expense as set forth in this Section. The Background Screening provided by Provider shall comply with all applicable laws, rules and regulations. Provider further agrees the Background Screening required in this Section is necessary to preserve and protect public health, safety and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Contract. The City in no way warrants that these minimum requirements are sufficient to protect Provider from any liabilities that may arise out of Provider’s services under this Contract or Provider’s failure to comply with this Section. Therefore, in addition to the specific measures set forth below, Provider and its Contract Workers shall take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this Contract.

26.23.2 Provider agrees it will verify legal Arizona worker status as required by A.R.S. § 41-4401. Provider further agrees it will conduct a background check for real identity/legal name on all Contract Workers prior to proposing the Contract Worker to the City.

26.23.3 In addition to the foregoing, the City reserves the right but not the obligations to: (1) have a Contract Worker be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) or Phoenix City Code § 4-22; (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of Contract Workers; and (4) object, at any time and for any reason, to a Contract Worker performing work (including supervision and oversight) under this Contract.

26.23.4 By executing this Contract, Provider certifies and warrants it has read the Background Screening requirements and criteria in this Section, understands them and that all Background Screening information furnished to the City is accurate and current. Also, by executing this Contract, Provider further certifies and warrants it has satisfied all such Background Screening requirements as required. A Contract Worker rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City’s prior written approval.

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26.23.5 Provider shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under this Provider including, but not limited to, supervision and oversight services.

26.23.6 The Background Screening requirements of this Section are material to the City's entry into this Contract and any breach of this Section by Provider shall be deemed a material breach of this Contract. In addition to the indemnity provisions set forth in Section 12 of this Contract, Provider shall defend, indemnify and hold harmless the City for any and all Claims (as defined in Section 12) arising out of this Background Screening Section including, but not limited to, the disqualification of a Contract Worker by Provider or the City for failure to satisfy this Section.

26.23.7 Provider's obligations and requirements that Contract Workers satisfy this Background Screening Section shall continue throughout the entire term of this Contract. Provider shall notify the City immediately of any change to a Background Screening of a Contract Worker previously approved by the City. Provider shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Provider's compliance with this Section pursuant to Section 3.8.

SECTION 26.24 – Contract Worker Access Controls, Badge and Key Access Requirements

26.24.1 A CONTRACT WORKER SHALL NOT BE ALLOWED TO BEGIN WORK IN ANY CITY FACILITY WITHOUT: (1) THE PRIOR COMPLETION AND THE CITY'S ACCEPTANCE OF THE REQUIRED BACKGROUND SCREENING; AND (2) WHEN REQUIRED, THE CONTRACT WORKER'S RECEIPT OF A CITY ISSUED BADGE. A BADGE WILL BE ISSUED TO A CONTRACT WORKER SOLELY FOR ACCESS TO THE CITY FACILITY(S) TO WHICH THE CONTRACT WORKER IS ASSIGNED. EACH CONTRACT WORKER WHO ENTERS A CITY FACILITY MUST USE THE BADGE ISSUED TO THE CONTRACT WORKER.

26.24.2 After receipt of the badge application, the Contract Worker will proceed to the badging office for processing of the badge application and issuance of the badge. The City will not process the badge application until the Contract Worker satisfies the required Background Screening (as defined herein). The Contract Worker shall comply with all requirements and furnish all requested information as requested by the badging office. Any and all fees associated with security badging will be assessed in compliance with Phoenix City Code § 4-22.

26.24.3 If the Contract Worker's services require keyed access to enter a City facility(s), a separate key issue/return form must be completed and submitted by Provider for each key issued.

26.24.4 Provider shall report lost or stolen badges or keys to the City immediately. A new badge application or key issue form shall be completed and submitted along with payment of the applicable fees prior to issuance of a new badge or key.

26.24.5 All badges and keys are the property of the City and must be returned to the City at the badging office within one (1) business day of when the Contract Worker's access to a City facility is no longer required to furnish the services under this Contract. Provider shall collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contract Worker's services are no longer required at the particular City facility(s); or upon termination, cancellation, or expiration of this Contract.

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26.24.6 Provider's default under this Section shall include, but is not limited to, the following: (1) Contract Worker gains access to a City facility(s) without the proper badge or key; (2) Contract Worker uses a badge or key of another to gain access to a City facility; (3) Contract Worker commences services under this Contract without the proper badge, key or Background Screening; (4) Contract Worker or Provider submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable Background Screening; or (5) Provider fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Contract. Provider acknowledges and agrees the access control, badge and key requirements in this Section are necessary to preserve and protect public health, safety, and welfare. Accordingly, Provider agrees to properly cure any default under this Section within three (3) business days from the date notice of default is sent by the City. The parties agree Provider's failure to properly cure any default under this Section shall constitute a breach of this Section. In addition to any other remedy available to the City at law or in equity, Provider shall be liable for and shall pay to the City the sum of one thousand dollars (\$1,000.00) for each breach by Provider of this Section. The parties further agree the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Contract in the event Provider breaches this Section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages in the event Provider breaches this Section. The parties further agree three (3) breaches by Provider of this Section arising out of any default within a consecutive period of three (3) months, or three (3) breaches by Provider of this Section arising out of the same default within a period of twelve (12) consecutive months, shall constitute a material breach of this Contract by City and the City expressly reserves all of its rights, remedies and interests under this Contract, at law and in equity including, but not limited to, termination of this Contract.

SECTION 26.25 – Hazard, Potential Hazard, Nuisance, or Annoyance

Any nuisance, annoyance, or hazardous or potentially hazardous condition on or emanating from the Premises shall be corrected immediately upon Provider's actual knowledge of the condition, nuisance, or annoyance or receipt of oral or written notice from the City. If, in the City's sole discretion, a hazard or potentially hazardous condition presents an unreasonable and imminent risk of bodily injury, the City may require Provider to close its business and bar the public from the Premises until the hazard or potentially hazardous condition has been abated. Nothing in this Section shall be deemed to preclude the City from pursuing any available remedy for breach of this Contract. Provider's failure to promptly correct a nuisance, annoyance, or hazardous or potentially hazardous condition under this paragraph shall be a material breach of this Contract.

SECTION 26.26 – Statutory Remedies

The provisions of A.R.S. Title 33, Chapter 3, Article 4, entitled "Remedies of Landlord," and any subsequent amendments, shall apply to this Contract and shall be in addition to any other remedy available to the City under law or equity at the election of the City.

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SECTION 26.27 – Non-Waiver

No waiver or failure or delay in exercising any rights, power, or privilege by City of default by Provider in performance of any requirements of this Contract shall be construed to be or act as a waiver of any subsequent default in performance of the same or any other requirement. The acceptance of rent by City for any period or periods after a default by Provider shall not be deemed a waiver of City's right to exercise its remedies under this Contract for nonperformance.

SECTION 26.28 – Provider Liability Continues

No such cancellation or termination of this Contract shall relieve Provider of its liability and obligations under this Contract and such liability and obligations shall survive any such expiration or termination.

SECTION 26.29 – Provider Bankruptcy

In the event that a petition in bankruptcy is filed:

- a. the City shall have the right to cure and be reimbursed for any non-monetary defaults that it cures;
- b. under 11 USC § 365(b)(1), the meaning of a “prompt” cure shall be defined as a cure which occurs within thirty (30) days; and
- c. Provider shall seek no more than an additional thirty (30) days in addition to the time provided by law whenever the Provider may petition the court for “additional time.”

SECTION 26.30 – Laws of Arizona

This Contract is governed by the laws of the State of Arizona. Any disputes relating to this Contract must be resolved in accordance with said laws without regard to conflict of laws provisions.

**CITY OF PHOENIX
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IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

CITY OF PHOENIX, a municipal corporation
Ed Zuercher, City Manager

By: _____
James E. Bennett, A.A.E.
Director of Aviation Services

ATTEST:

City Clerk

APPROVED AS TO FORM:

Acting City Attorney

Company Name
State and Type of Business Entity

By: _____
PRINT NAME

Title: _____

Signature: _____

EXHIBIT A

Price List

To be added from successful proposal

DRAFT

EXHIBIT B

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 agrees as follows:

A. Compliance with Regulations. Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as provided in Section 7 below), as it may be amended from time to time, which is incorporated herein by reference and made a part of this Contract.

B. Nondiscrimination. With regard to the work performed by it under this Contract, Contractor will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate, directly or indirectly, in the discrimination prohibited by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, including employment practices when this Contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation, made by Contractor for work to be performed under a subcontract, including

procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this Contract and the Title VI List of Pertinent Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

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

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

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

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

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

G. Incorporation of Provisions. Contractor will include the provisions of paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, the Regulations, and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the City of Phoenix or the FAA may direct as a means of enforcing such provisions, including sanctions for

noncompliance, provided, however, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, Contractor may request the City of Phoenix to enter into any litigation to protect the interests of the City of Phoenix. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

2.2 General Civil Rights Provisions – 49 U.S.C. § 47123

A. Sponsor Contracts. Contractor agrees to comply with pertinent statutes, executive orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision binds Contractor and sub tier contractors from the bid solicitation period through the completion of this Contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. Sponsor Lease Agreements and Transfer Agreements. Contractor agrees to comply with pertinent statutes, executive orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any activity conducted with or benefiting from federal assistance, including Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. If Contractor transfers its obligations to another, then the transferee is obligated in the same manner as Contractor. This provision obligates Contractor or its transferee for the period during which the property is owned, used, or possessed by Contractor and the City of Phoenix remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

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

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

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

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

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

A. Contract Assurance (§ 26.13). To the extent that this Contract is covered by 49 C.F.R. Part 26, Contractor agrees that this Contract is subject to the

requirements of the U.S. Department of Transportation regulations at 49 C.F.R. Part 26. Contractor or its subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City of Phoenix deems appropriate, which may include (i) withholding monthly progress payments, (ii) assessing sanctions, (iii) liquidated damages, and/or (iv) disqualifying Contractor from future bidding as non-responsible. Contractor agrees to include the foregoing statement in any subsequent contract that it enters into and cause those businesses to similarly include the statement in further 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.

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

Contract Assurance (§ 23.9). To the extent that this Contract is a concession agreement covered by 49 C.F.R. Part 23, Contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 C.F.R. Part 23. 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.

2.6 Miscellaneous

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

B. City of Phoenix reserves the right to further develop, improve, repair, and alter the Airport and all roadways, parking areas, terminal facilities, landing areas, and

taxiways, as it may reasonably see fit, free from any and all liability to Contractor for loss of business or damages of any nature whatsoever to Contractor occasioned during the making of such improvements, repairs, alterations, and additions.

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

D. Contractor acknowledges that this Contract is subordinate to any existing or future 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 agrees to comply with all federal, state, and local nondiscrimination laws, rules, and regulation, including the following:

- A.** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) (prohibits discrimination on the basis of race, color, or national origin).
- B.** 49 C.F.R. Part 21 (Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964).
- C.** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §§ 4601, *et seq.*) (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal aid programs and projects).
- D.** Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 701, *et seq.*), as amended (prohibits discrimination on the basis of disability), and 49 C.F.R. Part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance).
- E.** The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101, *et seq.*) (prohibits discrimination on the basis of age). Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex).
- F.** The Civil Rights Restoration Act of 1987 (Public Law 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973 by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, sub-recipients, and contractors, whether the programs or activities are federally funded or not).
- G.** Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, *et seq.*), which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities as implemented by U.S. Department of Transportation regulations at 49 C.F.R. Part 37 (Transportation Services for Individual with Disabilities) and Part 38 (Americans with Disabilities Act Accessibility Specification for Transportation Vehicles).
- H.** Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- I.** Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency) and resulting agency guidance and national origin

discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100).

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

Compliance with Environmental Laws

Contractor shall, at Contractor's own expense, comply with all present and subsequently enacted Environmental Laws, and any amendments thereto, affecting Contractor's occupation and use of the Premises.

A. DEFINITIONS

1. "Environmental Laws" means those laws promulgated for the protection of human health or the environment, including but not limited to, the following as the same are amended from time to time: the **Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA]**, 42 U.S.C. Sections 9601 et seq., as amended by the **Superfund Amendment and Reauthorization Act [SARA]**; the **Solid Waste Disposal Act [SWDA]**, 42 U.S.C. Sections 6901 et seq., as amended by the **Resource Conservation and Recovery Act [RCRA]** including Subtitle I, Underground Storage Tanks; the **Toxic Substances Control Act [TSCA]**, 15 U.S.C. Sections 2601 et seq.; the **Public Health Service Act (Title XIV) [PHSA]** a.k.a. the **Safe Drinking Water Act [SDWA]** and SDWA Amendments of 1996, 42 U.S.C. Sections 300f et seq.; the **Federal Water Pollution Control Act [FWPCA]**, as amended by the **Clean Water Act**, 33 U.S.C. Sections 1251 et seq.; the **Clean Air Act**, 42 U.S.C. Sections 7401 et seq.; **Title 49 of the Arizona Revised Statutes**, including the **Arizona Environmental Quality Act**, A.R.S. Sections 49-101 et seq.; the **Arizona Comprehensive Air Quality Act**, A.R.S. Sections 49-401 et seq.; the **Arizona Solid Waste Management Act**, A.R.S. Section 49-701 et seq.; the **Arizona Hazardous Waste Management Act**, A.R.S. Sections 49-901 et seq.; the **Arizona Underground Storage Tank Regulation Act**, A.R.S. Sections 49-1001 et seq.; the **Occupational Safety and Health Act of 1970** as amended, 29 U.S.C. Sections 651-678 and the regulations promulgated thereunder, and, any other laws, regulations and ordinances (whether enacted by local, state or federal government) now in effect or hereafter enacted, that provide for the regulation or protection of human health or the environment, including the ambient air, ground water, surface water, and land use, including substrata soils.

2. In this Contract, the term "**regulated substances**" means:

a. Those substances identified or listed as a hazardous substance, pollutant,

hazardous material, and, petroleum, in **CERCLA/SARA**; the **Hazardous Materials Transportation Act**, 49 U.S.C. Sections 5101 et seq.; **RCRA, Subtitle I, Regulation of Underground Storage Tanks**, 42 U.S.C. Sections 6991 through 6991i; **Clean Air Act**, 42 U.S.C. Section 7412 et seq.; and in any rule or regulation adopted to implement said statutes.

- b. Those substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a hazardous, special, or solid waste in the **Arizona Environmental Quality Act**, A.R.S. Sections 49-101 et seq., including but not limited to, the **Water Quality Assurance Revolving Fund Act [WQARF]**, A.R.S. Sections 49-281 et seq.; the **Arizona Comprehensive Air Quality Act**, A.R.S. Sections 49-401 et seq.; the **Arizona Solid Waste Management Act**, A.R.S. Sections 49-701 et seq.; the **Arizona Underground Storage Tank Regulation Act**, A.R.S. Sections 49-1001 et seq.; A.R.S. Sections 49-851 through 49-868 pertaining to **Management of Special Waste**; the **Arizona Hazardous Waste Management Act**, A.R.S. Sections 49-921 et seq.; and in any rule or regulation adopted to implement said statutes.
 - c. All substances, materials and wastes that are, or that become, regulated, or that otherwise are classified as hazardous or toxic, under any Environmental Law during the term of this Contract.
3. The term “release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.
4. As used herein, the term “Premises” means Contractor’s leasehold and/or any part or portion of Phoenix Sky Harbor International Airport (PSHIA), Phoenix Deer Valley Airport (DVT), Phoenix Goodyear Airport (GYR) or City owned property where Contractor or its employees or agents causes to occur a release of a regulated substance.
5. As used herein, the term “Contractor” means every consultant, lessee, sublessee, licensee, permittee, concessionaire, tenant or other person, firm or corporation occupying or using the Premises pursuant to an agreement and includes Contractor’s heirs, personal representatives, successors-in-interest and assigns.

B. COMPLIANCE

1. Contractor shall not cause or permit any regulated substance to be used, generated, manufactured, produced, stored, brought upon, or released on, or under the Premises, or transported to or from the Premises, by Contractor, its agents, employees, Contractor’s invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

Contractor may provide for the treatment of certain discharges regulated under the City of Phoenix pretreatment ordinances pursuant to Chapter 28 of the Phoenix City Code or such other ordinances as may be promulgated and the Federal Clean Water Act, 33 U.S.C. Section 1251 et seq.

Contractor shall indemnify, defend and hold harmless, on demand, City of Phoenix ("City"), its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, the environment or Premises and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of Contractor's occupancy or use of the Premises during the term of this Contract or any previous contract or uses of the Premises by Contractor or its owners or affiliated entities, agents, employees, invitees, visitors or licensees. Regardless of the date of termination of this Contract, Contractor's obligations and liabilities under this Section shall continue so long as City bears any liability or responsibility under the Environmental Laws arising from Contractor's occupancy or use of the Premises during the term of this Contract. This indemnification of City by Contractor includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of regulated substances caused by Contractor to be present on or under the Premises or present in the soil or ground water on or under the Premises or present in surface waters on or adjacent to the Premises.

2. Without limiting the foregoing, if the release by Contractor of any regulated substance on or under the Premises, or to the air, groundwater or surface waters on or adjacent to the Premises results in any contamination of the Premises, air, groundwater or surface waters, Contractor shall promptly take all actions at its sole cost and expense that are necessary to mitigate any immediate threat to human health or the environment. Contractor shall then undertake any further action necessary to return the contaminated site to the condition existing prior to the introduction by Contractor of any regulated substance; provided that City's approval of such actions shall first be obtained. Contractor shall undertake such actions without regard to the potential legal liability of any other person; however, any remedial activities by Contractor shall not be construed to impair Contractor's rights, if any, to seek contribution or indemnity from another person.

3. Contractor shall, at Contractor's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Contractor's occupancy or use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or remediation plan that may be necessary due to any actual or potential spills or discharges of regulated substances 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. At no cost or expense to City, Contractor shall promptly provide all information requested by City pertaining to the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, City shall have the right to inspect, within ten (10) days of Contractor's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets and legally privileged documents, regarding environmental conditions relating to the use, storage, or treatment of regulated substances by Contractor on, under or from the Premises or to the air, groundwater or surface waters on or adjacent to the Premises.

4. Contractor shall notify the Aviation Director within twenty-four (24) hours upon learning of the following:

- a. Any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or Contractor's occupancy or use of the Premises;
- b. Any change in Contractor's activities on the Premises that will change or have the potential to change Contractor's or City's obligations or liabilities under Environmental Laws;
- c. Any assertion of a claim or other occurrence for which Contractor may incur an obligation under this Section.

5. Contractor shall at its own expense obtain and comply with any permits or approvals that are required or may become required as result of any occupancy or use of the Premises by Contractor, its agents, employees, invitees and assigns.

6. Contractor shall insert the provisions of this Exhibit in any agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Contract.

7. Contractor shall obtain and maintain compliance with any applicable financial responsibility requirements of federal, state and/or local law regarding the ownership or

operation of any underground storage tank(s) or any device used for the treatment or storage of a regulated substance and present evidence thereof to the City, as may be applicable.

8. Contractor shall take reasonable precautions to prevent other persons not acting under Contractor's authority from conducting any activity that would 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 also exercise due care with respect to any regulated substance that may come to be located on the Premises as a result of the actions of third parties who are not under Contractor's authority.

9. Contractor shall make its best efforts to minimize its production of a waste stream that includes regulated substances, and shall minimize the storage of regulated substances on, in and around the Premises.

C. TERMINATION OF AGREEMENT

Contractor's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Exhibit or applicable Environmental Law shall constitute a material breach of this Contract and shall permit the City to pursue the following remedies, in addition to all other rights and remedies provided by law or otherwise provided for in this Contract, to which the City may resort cumulatively, or in the alternative:

1. The City of Phoenix may, at the City's election, keep this Contract in effect and enforce all of its rights and remedies under the Contract, including (1) the right to recover rent and other sums as they become due by appropriate legal action and/or (2) the right, upon ten (10) day's written notice to Contractor, to make payments required of Contractor or perform Contractor's obligations and be reimbursed by Contractor for the cost thereof, unless such payment is made or obligation performed by Contractor within such ten (10) day period.

2. The City of Phoenix may, at the City's election, terminate this Contract upon written notice to Contractor. Upon the City's termination, Contractor shall immediately pay to the City an amount equal to all accrued but unpaid rents plus interest thereon calculated from the date the rent is past due at a rate equal to: (1) eighteen percent (18%) per annum or (2) the maximum interest rate permitted by state law, whichever is greater.

3. Notwithstanding any other provision in this Contract to the contrary, the City shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Laws on, under or from the Premises or in surface waters on or adjacent to the Premises,

without waiving any of its rights under this Contract.

4. The exercise by the City of any of its rights under Section C of this Exhibit shall not release Contractor from any obligation it would otherwise have under this Exhibit.

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

D. AZPDES STORMWATER GENERAL PERMIT COMPLIANCE SUPPLEMENT

Contractor shall also comply with the attached AZPDES Stormwater General Permit Compliance Supplement to this Exhibit as if the Supplement is fully set forth herein.

Revised April 4, 2012
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**EXHIBIT C-1
SUPPLEMENT TO EXHIBIT C**

AZPDES STORMWATER GENERAL PERMIT COMPLIANCE

With the exception of discharges on Indian Country, stormwater discharges in Arizona are regulated by the Arizona Department of Environmental Quality 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.

The City of Phoenix (the "City") and its Contractors are required to obtain AZPDES permit coverage to the extent that stormwater is discharged from the Premises. Coverage under the AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2008-001) ("AZPDES Construction General Permit") is required for stormwater discharges generated by construction activities. Coverage under the AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity from Non-Mining Facilities to Waters of the United States (AZMSG2010-002) ("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 "air transportation" and associated activities.

The City has obtained coverage under the AZPDES Multi-Sector General Permit for its "air transportation" facilities at Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport and Phoenix Goodyear Airport (collectively hereinafter referred to as the "Airports"). The City has adopted a Stormwater Quality Protection ordinance, Phoenix City Code Ch. 32C, 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 federal and local laws governing stormwater pollution.

Compliance Generally

The City adopted the Aviation Stormwater Policy to achieve compliance with the AZPDES program requirements by the Aviation Department, its contractors and permittees. Contractor is subject to the policy as a condition of its activities, operations, and location at the Airports. The City shall have the right to monitor and require compliance with the Aviation Stormwater Policy.

Contractor agrees to comply with the Aviation Stormwater Policy and to implement at its sole expense, unless otherwise agreed to in writing between City and Contractor, those requirements of the Airports' Stormwater Pollution Prevention Plans (SWPPP) and City ordinances that pertain to its operations and activities on the Premises at the Airports. Contractor warrants that it will use its best efforts to meet all deadlines that are established by statute, regulation, ordinance, and the Aviation Stormwater Policy, or that are agreed to by the parties. Contractor acknowledges that time is of the essence in the implementation of all City Permit requirements.

Full compliance with the AZPDES Permit Program as contained in 18 A.A.C. 9, Art. 9; Chapter 32(C) of the Phoenix City Code; and the Aviation Stormwater Policy is a material condition of this Contract, and for any breach thereof which exposes City to civil or criminal fine, penalty, sanction or remediation cost by any governmental entity, City may terminate this Contract. This remedy is in addition to any other remedies available to the City.

AZPDES Construction General Permit

If Contractor elects to perform construction activities at the Airports, Contractor is required, prior to commencing those construction activities, to obtain stormwater discharge authorization from ADEQ under an AZPDES Construction General Permit. Contractor will obtain that authorization by preparing a SWPPP and filing for AZPDES Construction General Permit coverage in coordination with the City's project manager. The City will consult with and assist Contractor with regard to the filing for AZPDES Construction General Permit coverage as time and personnel allow. Contractor will also work with the City's project manager to develop pollution controls (e.g., Best Management Practices, Control Measures, schedules and procedures) for the SWPPP. Contractor is solely responsible for implementation of the pollution controls, all related costs and compliance with its AZPDES Construction General Permit obligations.

AZPDES Multi-Sector General Permit

Contractor is required, prior to commencing its operations and activities at the Airports, to obtain stormwater discharge authorization from the ADEQ under an AZPDES Multi-Sector General Permit. Contractor will obtain that authorization as a "Co-Permittee" with the City. As a Co-Permittee, the Contractor agrees to:

- a. Provide the City with a copy of Contractor's written Authorization to Discharge to the extent Contractor has received such from the Arizona Department of Environmental Quality; and
- b. Implement the Airports' SWPPP, including Best Management Practices, Control Measures, schedules, and procedures, as applicable to the Contractor's operations.

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 storm and other precipitation event water with "significant materials" (as defined in the Regulations and City Ordinances) generated, stored, handled or otherwise used on Airport facilities. The City shall provide a copy of the SWPPP, including Best Management Practices, Control Measures, schedules, and procedures to Contractor, and Contractor shall implement that portion of the SWPPP applicable to its activities.

The City agrees that, to the extent allowed by law, Contractor shall have the right to be removed as a Co-Permittee from coverage under the AZPDES Multi-Sector General Permit should its Contract be canceled or terminated for other reasons, or due to Contractor's relocation, noncompliance with the AZPDES Multi-Sector General Permit requirements or

Contractor's exercise of choice. In no event shall Contractor be relieved of its obligation to comply with the requirements of the AZPDES permit program with regard to its occupation and use of the Premises at the Airports, nor shall Contractor be excused from any obligations or indemnifications incurred and owed to City prior to Contractor's removal as a Co-Permittee that result from a failure of Contractor to fulfill an obligation of a Co-Permittee.

Pollution Controls

City reserves the right to impose upon Contractor any Best Management Practices, Control Measures, schedules, and procedures, other action necessary to ensure City's ability to comply with its AZPDES program requirements or applicable City ordinances; however, except in "extreme emergency" conditions, Contractor shall have ten (10) days from date of receipt of written notice imposing such pollution control measures or other requirements to notify City in writing if it objects to any action it is being directed to undertake. If Contractor does not provide the specified timely notice, it will be deemed to have assented to implementation of the pollution control measures or other requirements. If Contractor provides City with timely written notice of its objections, the parties agree to negotiate a prompt resolution of their differences. Contractor warrants that it will not serve a written notice of objections for purposes of delay or avoiding compliance.

As used herein, "extreme emergency conditions" means:

- a. Conditions that impose an immediate impact on waters of the United States (e.g., Salt River) resulting from an emergency situation such as fire, spill, release or explosion, such that the facility responsible for the release must immediately begin appropriate response activities independently of City's direction or oversight;
- b. An emergency such that a facility has to close because of a catastrophic event, where the facility can extend the ten (10) day notice period, but must implement pollution control measures before it reopens;
- c. A collapse of the storm sewer system or other event which forecloses the Airports and/or City from performing its obligations under the City Permit due to lack of capacity.

Covenant of Good Faith

City and Contractor covenant to act in good faith to implement any AZPDES program requirements imposed on them pursuant to 18 A.A.C. 9, Art. 9. City and Contractor acknowledge that close cooperation will be necessary to ensure compliance with any AZPDES Multi-Sector General Permit requirements to promote safety and minimize costs, and each party agrees to a candid exchange of information necessary to coordinate a stormwater management and monitoring plan.

Indemnification

The covenants of insurance and indemnification in favor of City imposed by other provisions of the Contract shall extend to, and are incorporated into, the provisions of this Supplement to Exhibit 3.

Revised April 4, 2012

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EXHIBIT D

Letter of Credit Form

[BANK]
IRREVOCABLE STANDBY LETTER OF
CREDIT NO. _____

To: City of Phoenix – Beneficiary
Aviation Department

Business & Properties Division
2485 E. Buckeye Rd.
Phoenix, Arizona 85034
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. _____ in your favor available against sight drafts drawn on (name of bank) at the office of the undersigned located at (address of bank in Phoenix Metro Area, Arizona), accompanied by the following documents:

1. A certificate purportedly signed by the 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. _____ 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 of Phoenix requires payment under this Standby Letter of Credit of \$ _____.
 - B. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. _____ 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 \$ _____.
 - C. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. _____ as the City of Phoenix has received notice from (name of bank) that the Standby Letter of Credit No. _____ will not be extended, and the City of Phoenix requires payment under this Standby Letter of Credit of \$ _____.

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)]. In the event of a Fax Drawing, Beneficiary is not required to send us the original documents.

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 E

City of Phoenix Aviation Department Advertising Standards

Provider understands the City's concern to keep PHX attractive, valued, and respected within the community and Provider agrees to maintain high standards relative to advertising placed on the Wi-Fi System. All advertising shall comply with the City of Phoenix Aviation Department Advertising Standards as they now exist or as may be amended.

Advertising shall be limited to speech that proposes a commercial transaction. These advertising standards have been adopted and advertising copy must not be displayed that:

- (1) Is false, misleading, or deceptive;
- (2) Relates to an illegal activity;
- (3) Is explicit sexual material, obscene material, or material harmful to minors as these terms are defined in A.R.S. §13-3501;
- (4) Advertises alcohol or tobacco products;
- (5) Depicts violence and/or anti-social behavior;
- (6) Includes language that is obscene, vulgar, profane or scatological; or
- (7) Relates to instruments, devices, items, products or paraphernalia designed for use in connection with "specified sexual activities" as defined in the City of Phoenix Zoning Ordinance.

The Aviation Director has the final determination if an advertisement is in violation of these standards and may require removal of the advertisement. Such removal shall be at Provider's expense and must be done immediately upon receipt of written notice from the Aviation Director or his/her designee, and in any event, no later than forty-eight (48) hours after receipt of such notice.

EXHIBIT F

Service Plans

To be included from successful proposer.

Provider shall include the following submittals as part of their proposal:

1. Customer Service Plan
2. Implementation and Transition Plan
3. Operations and Maintenance Plan
4. Processing Environment
5. Business Plan

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EXHIBIT G

Proposed Rent

To be added from successful proposer's proposal

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EXHIBIT H

Airport Concession Disadvantaged Business Enterprise Program Race- and Gender-Neutral Contract 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 organized to provide reciprocal ACDBE and DBE certification within Arizona pursuant to 49 CFR Part 26. The official ACDBE and DBE database containing eligible ACDBE and DBE firms certified by AZUCP can be accessed at: www.adot.dbesystem.com. The certification system is called the Arizona Unified Transportation Registration and Certification System (AZ UTRACS).

City means the City of Phoenix.

Commercially Useful Function means that an ACDBE or DBE is responsible for executing the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. If an ACDBE or DBE does not perform or exercise responsibility for at least 30% of the total cost of the contract with its own work force, or if the ACDBE or DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the ACDBE or DBE is presumed not to be performing a Commercially Useful Function.

Compliance Specialist means an EOD employee responsible for ACDBE Program compliance with this Lease Clause.

Concession means a business that primarily serves the public on an airport. This includes direct sales or services, management contracts, advertising contracts and goods and services providers.

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

DBE stands for disadvantaged business enterprise. In this context, DBE means a Small Business Concern that has successfully completed the DBE certification process and has been granted DBE status by an AZUCP member pursuant to the criteria contained in 49 CFR Part 26.

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 concessionaires as an ACDBE, DBE or small business.

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. For purposes of this Lease Clause, one participant in the JV arrangement must be a certified ACDBE or DBE by an AZUCP member. The JV is limited in scope and duration to this Lease. The resources, asset and labor of the participants must be combined in an effort to accrue profit.

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

Outreach Efforts means the diligent and good-faith efforts demonstrated by a Respondent to solicit participation from Small Businesses. Respondent 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 Respondent's selection decisions and notifications relating to Small Business participants.

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

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

Revenue Contract Solicitation (RCS) is a solicitation or procurement issued by the City.

Race- and Gender-Neutral (RGN) Measures means effort(s) or program(s) that is, or can be, used to assist all Small Businesses, in the absence of a goal.

Small Business means, with respect to firms seeking to participate as ACDBEs or DBEs in contracts funded by the U.S. Department of Transportation (US DOT), a Small Business Concern as defined in section 3 of the Small Business Act and Small Business Administration regulations implementing the Act (13 CFR part 121), which Small Business Concern does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b) and self-identified small businesses. "Small Business" and "Small Business Concern" are used interchangeably in this Lease Clause.

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.

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

Successful Respondent means an individual, corporation, firm or JV that has been

selected by the City to perform services requested by a RCS.

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 Agency must track and report ACDBE and DBE participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving an ACDBE or DBE. For this reason, the Successful Respondent shall provide all relevant information to enable the required reporting.
- B. **ACDBE Participation.** For this solicitation, the City has *not* established a race- or gender-conscious ACDBE participation goal. 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 *encourages* each Respondent to voluntarily subcontract or joint venture with Small Businesses to perform part of the work—a Commercially Useful Function—that Respondent might otherwise perform with its own forces. The City also encourages each Respondent to voluntarily utilize Small Businesses as suppliers of Goods and Services.
- C. **Counting ACDBE and DBE Participation.** The City will count ACDBE and DBE participation as authorized by federal regulations. A summary of these regulations can be found at www.phoenix.gov/eod .
- D. **ACDBE and DBE Certification.** *Only* firms (1) certified by the City or another AZUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine ACDBE and DBE participation resulting from RGN measures on this Lease. This ACDBE and DBE determination affects the City's tracking and reporting obligations to USDOT.
- 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 Successful Respondent, and each Subcontract signed by the Successful Respondent and a Subcontractor, must include the following assurance *verbatim*:

“The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or creed 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

Successful Respondent is the “contractor.”

SECTION III REQUIRED OUTREACH EFFORTS

The City has implemented outreach requirements for this Lease. Specifically, each Respondent shall: (1) identify small-business-participation opportunities, including Commercially Useful Functions; (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 Respondent fails to conduct these Outreach Efforts or fails to submit the required documentation of Respondent’s Outreach Efforts as indicated in Section IV, Parts A, B and C below, the City may determine that the Respondent’s proposal is *nonresponsive*. A determination of non-responsiveness *disqualifies* Respondent from further consideration for the Lease award.

SECTION IV SUBMITTAL REQUIREMENTS

Documentation due with initial Response.

A. Form EO1 – Statement of Outreach Commitment

Each Respondent shall sign, date and submit a completed **Form EO1 - Statement of Outreach Commitment**, with its initial Response submittal.

B. Failure to Submit Form EO1

Responses that do not have this form completed and signed will be deemed nonresponsive. A nonresponsive response will be disqualified from further evaluation.

SECTION V POST-AWARD GENERAL REQUIREMENTS

Following the award of the contract, as a matter of compliance, the documentation of Small Business Outreach efforts must be submitted and approved on a date to be determined by the City:

A. Form EO2. The Successful Respondent shall complete and submit Form EO2 documenting its diligent, earnest Small Business Outreach Efforts.

1. Each Respondent shall list in Form EO2 all Small Businesses contacted by Respondent in preparing its Response. Each Respondent shall also provide the following minimum information to document its Outreach Efforts. The Compliance Specialist will consider this information to determine whether Respondent has demonstrated the required Small Business Outreach Efforts:

- a. Each business’s full legal name and contact information;
- b. Business status (ACDBE, DBE, Small Business, SBE, or unknown);
- c. Scope of work solicited (brief description, percentage of contract value);
- d. Solicitation method (personal contact, telephone, fax, e-mail, other);
- e. Selection process; and
- f. Communication of selection outcome to each participant*.

Respondent shall provide supporting documentation that shows Respondent has communicated its final selection decisions and outcomes to **all Small Businesses **not** chosen to participate in this Lease.*

2. Each Respondent shall complete Form EO2 in accordance with the following instructions.
 - a. Each Respondent shall actively contact Small Businesses for each scope of work or business opportunity selected for Small Business Outreach Efforts (Columns A and C).
 - b. Respondent's contacts with Small Businesses should occur well before the Response deadline to afford the firms contacted a reasonable opportunity to prepare a proposal and participate in the Lease.
 - c. Respondent shall ask each firm to indicate the number of its employees (Column A).
 - d. For each ACDBE's, DBE's or Small Business's annual gross receipts, Respondent shall ask the firm to indicate the gross-receipts bracket into which it fits (e.g., less than \$500,000; \$500,000 – \$1 million; \$1 – 2 million; \$2 – 5 million; etc.) rather than requesting an exact figure from the firm (Column A).
 - e. If Respondent does not select a particular Small Business to participate in the Lease, Respondent shall explain the reason why (Column E).
 - f. Respondent shall notify each Small Business contacted whether or not Respondent selected the firm. Respondent shall notify all firms not selected, and Respondent shall state when (date) and how (method) the selection outcome was communicated to each firm (Column F).

B. Form EO2 Supporting Documentation. Each Respondent shall complete and submit supporting documentation of its Outreach Efforts related to Form EO2.

1. Respondent shall submit with Form EO2 all supporting documentation of Respondent's contacts with Small Businesses for each scope of work or business opportunity selected for Small Business Outreach Efforts.
2. This documentation must include: (1) descriptions of scopes of work and business opportunities identified for Small Business participation, and (2) a copy of the actual solicitation sent to Small Businesses. The solicitation may be in the form of a letter, attachment to an e-mail, advertisements in newspapers and trade papers, or written communications with chambers of commerce and/or other organizations.
3. Respondent shall 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, e-mail, fax, or a telephone log and must show the name of the person contacted and date.
4. For all of the above documentation, if Respondent uses a blast e-mail or fax format, the documentation submitted must include a copy of the e-mail or fax, and Respondent must disclose all e-mail 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.

C. **Form EO3.** Respondent shall sign and submit Form EO3, which commits Respondent to the City as follows:

1. The firms indicated as “selected” in Form EO2 will participate in the Lease;
2. The Respondent will comply with the Race- and Gender-Neutral post-award requirements as stated in Sections V and VI below;
3. Any and all changes or substitutions will be authorized by the Compliance Specialist before implementation; and
4. The proposed total Small Business participation percentage is true and correct.

Respondent shall ensure that the percentages proposed for Small Business participation on Form EO2 equal the total percentage proposed in Form EO3.

D. **Failure to Meet Small Business Outreach Requirements.** The Compliance Specialist will determine, in writing, whether Successful Respondent has satisfied all outreach requirements. If the Compliance Specialist determines that the Successful Respondent has failed to satisfy the outreach requirements (specified in Sections III and IV, Parts A, B, and C), then the Compliance Specialist may determine that the Successful Respondent is non-compliant.

E. **Subcontracting Commitment.** Promptly after Lease award, the Successful Respondent shall submit to City copies of all executed contracts, purchase orders, subleases, JV agreements, and other arrangements formalizing agreements between Successful Respondent and any Small Businesses.

The Successful Respondent shall not reduce the amount, alter the scope of work, or terminate the Subcontractor without the Compliance Specialist’s prior written approval. Any request to alter a Small Business Subcontract must be submitted in writing to the Equal Opportunity Department before any change is made. If the Successful Respondent fails to do so, the City may declare the Successful Respondent in breach of the Lease.

F. **Post-Award Relief from DBE Requirements.** After Lease award, the City will not grant relief from the proposed Small Business Participation Plan except in extraordinary circumstances. The Successful Respondent’s request to modify Small Business participation must be in writing to the Compliance Specialist, who has final discretion and authority to determine if the request should be granted.

The Successful Respondent’s waiver request must contain the amount of relief being sought, evidence demonstrating why the relief is necessary, and any additional relevant information the Compliance Specialist should consider. The Successful Respondent 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.

- G. 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 Compliance Specialist will consider whether or not the Successful Respondent has exercised diligent and good-faith efforts to find another Small Business as a replacement. The Successful Respondent shall notify the Equal Opportunity Department in writing of the necessity to substitute a Small Business and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a Small Business may not occur before the Compliance Specialist's written approval has been obtained.

SECTION VI. RECORDS & REPORTING REQUIREMENTS

- A. Records.** During performance of the Lease, the Successful Respondent shall keep all records necessary to document ACDBE, DBE and Small Business participation. The Successful Respondent 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 Subcontractors and suppliers on the project;
 2. Each Subcontractor's and supplier's scope performed;
 3. The dollar value of all subcontracting work, services, and procurement;
 4. Copies of all executed Subcontracts, purchase orders, and invoices;
 5. Total operating expenses and total costs of goods sales; and
 6. Copies of all payment documentation.
- B. Reports.** The Successful Respondent shall be required to track and report all 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 Business2Government (B2G) System at www.phoenix.diversitycompliance.com.
- C. Annual Submittals of Small Business Participation Plan.** As a matter of compliance, the Successful Respondent must submit a **Small Business Participation Plan** and the associated **Supporting Documentation**, on an annual basis by the anniversary date of contract award. The Successful Respondent is required to maintain a **Small Business Participation Plan** and document its ongoing efforts to foster small business participation throughout the life of this Contract. The Successful Respondent is required to conduct a shortfall analysis and develop a corrective action plan in the event the Successful Respondent is unable to achieve its Small Business Participation Commitment.
1. Failure to Foster Small Business Participation
The Compliance Specialist will determine whether Successful Respondent has satisfied all outreach activities in the development of the **Small Business Participation Plan**. If the Compliance Specialist determines that Successful Respondent has failed to satisfy the **Small Business Participation Plan**

requirements as specified in this clause, then the Compliance Specialist may determine that the Successful Respondent is not compliant. The City shall send a written notice to the Successful Respondent stating the basis for the Compliance Specialist's decision. The Successful Respondent has seven (7) business days to cure the deficiency. If Successful Respondent fails to submit the required forms and supporting documentation by the due dates, the City may formally deem the Successful Respondent noncompliant, in default of the Lease and not in good standing with the City of Phoenix.

D. Counting of Small Business Participation:

1. In instances where Small Business participation occurs as the result of a JV arrangement with a Respondent, the Successful Respondent is required to complete JV documentation, and cooperate and participate in a review of the participation of the JV partners at least once a year. The review will determine the percentage of participation that will be counted for Small Businesses and the participation of ACDBE firms to be reported to the Federal Aviation Administration each year of the Lease.
2. If an approved ACDBE or DBE allows its ACDBE or DBE status to expire or its ACDBE or DBE certification is removed during the course of the subcontract, the City will consider all work performed by the ACDBE or DBE under the original contract to count as ACDBE or DBE participation. No increased scopes of work negotiated after expiration or revocation of the ACDBE's or DBE's certification may be counted. Likewise, any work performed under a Lease extension granted by the City may not be counted as ACDBE or DBE participation.

EXHIBIT I

Small Business Utilization Form

To be added from successful proposer's outreach documentation

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EXHIBIT J

Phoenix Sky Harbor International Airport Map

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