



**CITY OF PHOENIX  
Water Services Department  
200 West Washington Street  
9<sup>th</sup> Floor  
Phoenix, AZ 85003**

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**Date posted on website July 29, 2019:**

**INVITATION FOR BID  
IFB 1920-WCE-262 (CR)**

**RESIDENTIAL WATER CONSERVATION DEVICE RETROFIT  
REQUIREMENTS CONTRACT**



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**CITY OF PHOENIX**

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**SECTION I – INSTRUCTIONS**

**Please read before continuing to the offer document. This list may not include every requirement; the purpose is to assist vendors, but vendors are expected to read and comply with the entire solicitation.**

**SOLICITATION RESPONSE CHECK LIST**

Check off each of the following as the necessary action is completed.

- All forms have been completed and signed, including Solicitation Disclosure form.
- All Submittals are included.
- Reviewed and verified prices offered.
- Checked price extensions and totals.
- Included any required drawings or descriptive literature.
- If required, checked and included the amount of the offer surety.
- Reviewed the insurance requirements, if any, to assure compliance.
- Included the specified number of copies of the offer as indicated in Submittal section.
- Included signed addenda, if any.
- Addressed the mailing envelope to the Procurement Officer on the solicitation front page, at the address listed.
- The mailing envelope clearly shows your company name and address, the solicitation number, solicitation title and the offer opening date.

**Mailed the response in time – City must receive offers no later than the date and time indicated in the Schedule of Events or addenda.**



1. DESCRIPTION – STATEMENT OF NEED:

- 1.1. The City of Phoenix Water Services Department (WSD) invites sealed offers for Residential Water Conservation Device Retrofit for a five-year period commencing on or about October 1, 2019, in accordance with the specifications and provisions contained herein or the “Effective Date” which is upon award by City Council, conditioned upon signature and recording by the City Clerk’s department, as required by the Phoenix City Code, whichever is later.
- 1.2. This Program replaces toilets that have a flush volume that is equal to or greater than 6 liters or 1.6 gallons with high-efficiency, EPA WaterSense approved toilets. All work will be performed within identified regional areas or neighborhoods. The retrofit devices and installation parts will be provided by the City of Phoenix and stored in WSD warehouse facilities.
- 1.3. This solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800-367-8939 for assistance.
- 1.4. Notwithstanding the foregoing, this Agreement will terminate upon the earliest occurrence: by reaching the end of the term including any extensions exercised, or termination pursuant to the provisions of this Agreement.

2. CITY’S VENDOR SELF-REGISTRATION AND NOTIFICATION:

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

3. SCHEDULE OF EVENTS:

ACTIVITY (All times are local Phoenix time)	LOCATION	DATE/TIME
<b>Pre-Offer Conference Date and Location</b>	Phoenix City Hall 200 W. Washington Street 9 <sup>th</sup> Floor Training Room Phoenix, Arizona 85003	August 6, 2019 9:00 AM Phoenix Time
<b>Written Inquiries Due</b>	Email to: wsdprocurement@phoenix.gov	August 9, 2019 5:00 PM
<b>Offer Due Date and Submittal Location</b>	Phoenix City Hall 200 W. Washington Street 9 <sup>th</sup> Floor Reception Desk Phoenix, Arizona 85003	August 16, 2019 2:00 PM



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

**4. PREPARATION OF OFFER:**

- 4.1.** All forms provided in Submittal Section must be completed and submitted with the offer. The signed and completed Solicitation Disclosure form must be included or your offer may be deemed non-responsive.
- 4.2.** It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of the offer must be initialed in original ink by the authorized person signing the offer. No offer will be altered, amended or withdrawn after the specified offer due date and time. The City is not responsible for Offeror's errors or omissions.
- 4.3.** All time periods stated as a number of days will be calendar days.
- 4.4.** It is the responsibility of all Offerors to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:
  - 4.4.1.** Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
  - 4.4.2.** Study and carefully correlate Offeror's knowledge and observations with the solicitation and other related data.
  - 4.4.3.** Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in or between the solicitation and other related documents.
  - 4.4.4.** The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.



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

**5. OBTAINING A COPY OF THE SOLICITATION AND ADDENDA:**

Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/> Internet access is available at all public libraries. Any interested offerors without internet access may obtain this solicitation by calling the Procurement Officer or picking up a copy during regular business hours at the City of Phoenix Water Services Department, 200 W. Washington Street, 9<sup>th</sup> Floor, Phoenix, AZ. It is the Offeror's responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their offer.

**6. EXCEPTIONS:**

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

**7. INQUIRIES:**

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



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

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

**8. ADDENDA:**

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

**9. BUSINESS IN ARIZONA:**

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

**10. LICENSES:**

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

**11. CERTIFICATION:**

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

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



**12. SUBMISSION OF OFFER:**

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

Offers must be submitted in a sealed envelope and the following information should be noted on the outside of the envelope:

- Offeror's Name
- Offeror's Address (as shown on the Certification Page)
- Solicitation Number
- Solicitation Title
- Offer Opening Date

All offers must be completed in ink or typewritten. Include the number of copies that are required as indicated in the Submittal section.

**13. WITHDRAWAL OF OFFER:**

At any time prior to the solicitation due date and time, an Offeror (or designated representative) may withdraw the offer by submitting a request in writing and signed by a duly authorized representative.

**14. OFFER RESULTS:**

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

The City will post a preliminary offer tabulation on the City's website, <https://solicitations.phoenix.gov/Awards> within five calendar days of the offer opening. The City will post the information on the preliminary tabulation as it was read during the offer opening. The City makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the City has evaluated the offers, the City will post an award recommendation on the website. The City will not provide any further notification to unsuccessful Offerors.





**15. PRE-AWARD QUALIFICATIONS:**

- 15.1.** Offeror must have been in operation a minimum of two years. The Offeror's normal business activity during the past two years will have been for providing the goods or services in this solicitation.
- 15.2.** Upon notification of an award the Offeror will have 10 calendar days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this solicitation. Insurance requirements are non-negotiable.

**16. AWARD OF CONTRACT:**

- 16.1.** Unless otherwise indicated, award(s) will be made to the most responsive, responsible Offeror(s) who are regularly established in the service, or providing the goods, contained in this solicitation and who have demonstrated the ability to perform in an acceptable manner.
- 16.2.** Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.
- 16.3.** A response to a solicitation is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Offers do not become contracts until they are executed by the Deputy Finance Director or Department Director. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.

**17. CITY'S RIGHT TO DISQUALIFY FOR CONFLICT OF INTEREST:**

The City reserves the right to disqualify any Offeror based on any real or apparent conflict of interest that is disclosed by the offer submitted or any other data available to the City. This disqualification is at the sole discretion of the City. Any Offeror submitting an offer herein waives any right to object now or at any future time, before any agency or body, including but not limited to, the City Council of the City of Phoenix or any court.

**18. SOLICITATION TRANSPARENCY POLICY:**

- 18.1.** Commencing on the date and time a solicitation is published, potential or actual offerors or respondents(including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or



- any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under Arizona Statutes, until the resulting contract(s) are awarded to all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation.
- 18.2. As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff. Offerors may not discuss the solicitation with any City employees or evaluation panel members.
  - 18.3. Offerors may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.
  - 18.4. With respect to the selection of the successful Offerors, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.
  - 18.5. This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. **OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED.** After official Notice is received by the City for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.
  - 18.6. "To discuss" means any contact by the Offeror, regardless of whether the City responds to the contact. Offerors that violate this policy will be disqualified until the resulting contract(s) are awarded, or all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or a similar solicitation. The City interprets the policy as continuing



through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

**19. PROTEST PROCESS:**

- 19.1.** Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an amendment to the solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City's best interests to set new deadlines, amend the solicitation, cancel or re-bid.
- 19.2.** Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.
- 19.3.** Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.
- 19.4.** Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The City will post recommendations on the City's website to award the contract(s) to an Offeror(s). Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the City's full and final discretion.
- 19.5.** All protests will be in writing, filed with the Procurement Officer identified in the solicitation and include the following:
  - 19.5.1. Identification of the solicitation number;
  - 19.5.2. The name, address and telephone number of the protester;
  - 19.5.3. A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
  - 19.5.4. The form of relief requested; and
  - 19.5.5. The signature of the protester or its authorized representative.
- 19.6.** The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council



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

**20. PUBLIC RECORD:**

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

**21. LATE OFFERS:**

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

**22. RIGHT TO DISQUALIFY:**

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



conflict of interest determined by the City. The City reserves the right to replace the disqualified Offeror.

**23. CONTRACT AWARD:**

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

**24. DETERMINING RESPONSIVENESS AND RESPONSIBILITY:**

- 24.1 Offers will be reviewed for documentation of any required minimum qualifications, and completeness and compliance with the solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.
- 24.2 Responsiveness: Nonresponsive Offers will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers will render an Offer nonresponsive.
- 24.3 Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the Offeror, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible Offeror. Responsibility includes the Offeror's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.

**25. EQUAL LOW OFFER:**

Contract award will be made by putting the names of the tied vendors in a cup for a blind drawing limited to those bidders with tied offers. If time permits, the offerors involved will be given an opportunity to attend the drawing. The drawing will be witnessed by at least three persons, and the contract file will contain the names and addresses of the witnesses.



**1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:**

- Shall, Will, Must:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of Offer as non-responsive.
- Should:** Indicates something that is recommended but not mandatory. If the Contractor fails to provide recommended information, the City may, at its sole option, ask the Contractor to provide the information or evaluate the offer without the information.
- May:** Indicates something that is not mandatory but permissible.

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

- “A.R.S.” Arizona Revised Statute
- “Buyer” or “Procurement Officer” City of Phoenix staff person responsible for the solicitation. The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor's performance under this contract.
- "City" The City of Phoenix
- "Contractor" The individual, partnership, or corporation who, as a result of the competitive process, is awarded a contract by the City of Phoenix.
- "Contract" or "Agreement" The legal agreement executed between the City of Phoenix, AZ and the Contractor.
- “Days” Means calendar days unless otherwise specified.
- “Deputy Director” Finance The contracting authority for the City of Phoenix, AZ, authorized to sign contracts and amendments thereto on behalf of the City of Phoenix, AZ.



## SECTION II – STANDARD TERMS AND CONDITIONS

CITY OF PHOENIX

“Employer”	Any individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and employs one or more employees in this state. Employer includes this state, any political subdivision of this state and self-employed persons. In the case of an independent contractor, employer means the independent contractor and does not mean the person or organization that uses contract labor. (A.R.S. 23-211).
“Offer”	Means a response from a supplier, contractor or service provider to a solicitation request that, if awarded, binds the supplier, contractor or service provider to perform in accordance with the contract. Same as bid, proposal, quotation or tender.
“Offeror”	Any Vendor, Seller or Supplier submitting a competitive offer in response to a solicitation from the City. Same as Bidder or Proposer.
“Solicitation”	Means an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Quotations (RFQ), Request for Qualifications (RFQu) and request for sealed bids, or any other type of formal procurement which the City makes public through advertising, mailings, or some other method of communication. It is the process by which the City seeks information, proposals, bids or quotes from suppliers.
“Suppliers”	Firms, entities or individuals furnishing goods or services to the City.
“Vendor or Seller”	A seller of goods or services.

## 2. CONTRACT INTERPRETATION:

**2.1. APPLICABLE LAW:** This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.

**2.2. CONTRACT ORDER OF PRECEDENCE:** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:

- 2.2.1. Special terms and conditions
- 2.2.2. Standard terms and conditions



- 2.2.3. Amendments
- 2.2.4. Statement or scope of work
- 2.2.5. Specifications
- 2.2.6. Attachments
- 2.2.7. Exhibits
- 2.2.8. Instructions to Contractors
- 2.2.9. Other documents referenced or included in the Solicitation

- 2.3. ORGANIZATION – EMPLOYMENT DISCLAIMER:** The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor’s obligations under the agreement are considered to be City’s employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen’s compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.
- 2.4. SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.
- 2.5. NON-WAIVER OF LIABILITY:** The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.
- 2.6. PAROL EVIDENCE:** This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the





accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

**3. CONTRACT ADMINISTRATION AND OPERATION:**

**3.1. RECORDS:** All books, accounts, reports, files and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Phoenix office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements vendor has in place.

**3.2. DISCRIMINATION PROHIBITED:** Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended.

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

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

**3.3.1 For a Contractor with 35 employees or fewer:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor



otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, Contractor agreements or subleases of this agreement entered into by supplier/lessee.

**3.3.2 For a Contractor with more than 35 employees:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-Contractor agreements or subleases of this Agreement entered into by supplier/lessee. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.



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

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

**3.4. LEGAL WORKER REQUIREMENTS:** The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:

3.4.1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.

3.4.2. A breach of a warranty under paragraph 1 will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.

3.4.3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.

**3.5. HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS:** The Contractor's products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City.

At the request of City representatives, the Contractor will provide the City:

3.5.1. Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract

3.5.2. A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.

The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance



of this agreement. The City further reserves the right to make unannounced inspections of the Contractor's facilities (during normal business hours).

- 3.6. COMPLIANCE WITH LAWS:** Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance.

Because the contractor will be acting as an independent contractor, the City assumes no responsibility for the Contractor's acts.

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

- 3.8. CONTINUATION DURING DISPUTES:** Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.

- 3.9. EMERGENCY PURCHASES:** The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

**4. COSTS AND PAYMENTS:**

- 4.1. GENERAL:** Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Offer.



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- 4.2. PAYMENT DEDUCTION OFFSET PROVISION:** Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.
- 4.3. LATE SUBMISSION OF CLAIM BY CONTRACTOR:** The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.
- 4.4. DISCOUNTS:** Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.
- 4.5. NO ADVANCE PAYMENTS:** Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.
- 4.6. FUND APPROPRIATION CONTINGENCY:** The Vendor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Vendor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.
- 4.7. MAXIMUM PRICES:** The City will not be invoiced at prices higher than those stated in any contract resulting from this Offer. Contractor certifies, by signing this Offer that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Offer and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.
- 4.8. F.O.B. POINT:** All prices are to be quoted F.O.B. delivered, unless specified elsewhere in this solicitation.



**5. CONTRACT CHANGES:**

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

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

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

**6. RISK OF LOSS AND LIABILITY:**

**6.1. TITLE AND RISK OF LOSS:** The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.

**6.2. ACCEPTANCE:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.

**6.3. FORCE MAJEURE:** Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition.



If either party is delayed at any time in the progress of the work by force majeure, the delayed party will notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be hand-delivered or mailed certified-return receipt and will make a specific reference to this provision, thereby invoking its provisions. The delayed party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.

**6.4. LOSS OF MATERIALS:** The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the project manager.

**6.5. CONTRACT PERFORMANCE:** Contractor will furnish all necessary labor, tools, equipment, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor.

The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the work to its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

**6.6. DAMAGE TO CITY PROPERTY:** Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City.

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



**7. CITY’S CONTRACTUAL RIGHTS:**

- 7.1.** Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.
- 7.2. NON-EXCLUSIVE REMEDIES:** The rights and remedies of the City under this Contract are non-exclusive.
- 7.3. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE BREACH:** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.
- 7.4. ON TIME DELIVERY:** Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.
- 7.5. DEFAULT:** In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.
- 7.6. COVENANT AGAINST CONTINGENT FEES:** Seller warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.
- 7.7. COST JUSTIFICATION:** In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.





**7.8. WORK PRODUCT, EQUIPMENT AND MATERIALS:** All work product, equipment, or materials created or purchased under this contract belongs to the City and must be delivered to the City at City’s request upon termination of this contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this contract that are “works for hire” within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

**8. CONTRACT TERMINATION:**

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

**8.2. CONDITIONS AND CAUSES FOR TERMINATION:**

8.2.1 This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

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

- In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
- In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;



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

**8.3. CONTRACT CANCELLATION:** All parties acknowledge that this contract is subject to cancellation by the City of Phoenix pursuant to the provision of Section 38-511, Arizona Revised Statutes.

### 9. STATE AND LOCAL TRANSACTION PRIVILEGE TAXES:

In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden is on the person who is conducting business in Arizona and the City of Phoenix. The legal liability to remit the tax is on the person conducting business in Arizona. Any failure by the Contractor to collect applicable taxes from the City shall not relieve the Contractor from its obligation to remit taxes. It is the responsibility of the prospective Offeror to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your Offer. You may also find information at [Phoenix Tax Division](#) or [State of AZ Department of Revenue](#) Once your Offer is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City agrees to remit any overpayments back to the City for miscalculations on taxes included in a Offer price.

### 10. TAX INDEMNIFICATION:

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



**11. TAX RESPONSIBILITY QUALIFICATION:**

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



**1. PRICE:**

All labor rate prices submitted shall be firm and fixed for the initial one-year contract period. Thereafter, price adjustments will be considered annually provided the adjustments are submitted in writing with 30-days advance notice. Requests shall be accompanied with written documentation from the manufacturer and/or published indexes confirming the labor rate increase. The City of Phoenix will be the sole judge in determining the allowable increase amount. Price adjustment requests shall be sent to the procurement officer at the address on the front page of the solicitation, referencing the solicitation #. Price increases agreed to by any staff other than Deputy Finance Director or Department Director are invalid. The contractor acknowledges and agrees that it will repay all monies paid as a result of a requested price increase unless the price increase was specifically approved in writing by the Deputy Finance Director or Department Director.

**2. METHOD OF ORDERING (PURCHASE ORDERS):**

Issuance of written purchase order(s) by the Procurement Division. Contractor shall deliver items and/or services only upon receipt of a written purchase order issued by the Procurement Division. All Contractor invoices and packing/delivery tickets must include the City of Phoenix purchase order number.

**3. METHOD OF INVOICING:**

Invoice must include the following, as is applicable:

- City purchase order number, requisition number, or contract agreement number.
- Items listed individually by the written description and part number.
- Unit price, extended and totaled.
- Quantity ordered, back ordered, and shipped.
- Applicable tax.
- Invoice number and date.
- Requesting department name and "ship-to" address.
- Payment terms.
- FOB terms.

**4. METHOD OF PAYMENT:**

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



Invoices must contain the agreement number or Offer number under which the contract is awarded.

**5. CONFIDENTIALITY AND DATA SECURITY:**

- 5.1.** All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this Agreement is confidential, proprietary information owned by the City, unless otherwise agreed upon within this Agreement. Except as specifically provided in this Agreement, the Contractor shall not disclose data generated in the performance of the service to any third person without the prior written consent of the City Manager or his/her designee.
- 5.2.** Contractor agrees to abide by all current applicable legal and industry data security and privacy requirements and to notify the City immediately if the scope of work changes or personal identifying information or information subject to Payment Card Industry Standards becomes part of the Agreement.
- 5.3.** Contractor agrees to comply with all City information security and technology policies, standards, and procedures when accessing City networks and computerized systems whether onsite or remotely.
- 5.4.** A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

**6. STRICT PERFORMANCE:**

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

**7. AUTHORIZED CHANGES:**

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



**8. LICENSES AND PERMITS:**

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

**9. ADVERTISING:**

Contractor will not advertise or publish news releases concerning this contract without the prior written consent of the Deputy Finance Director, and the City will not unreasonably withhold permission.

**10. EXCLUSIVE POSSESSION:**

All services, information, computer program elements, reports, and other deliverables which may be created under this contract are the sole property of the City of Phoenix and will not be used or released by the Contractor or any other person except with prior written permission by the City.

**11. COOPERATIVE AGREEMENT:**

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

A current listing of eligible entities may be found at [S.A.V.E. | Maricopa County, AZ](#) and then click on Contracts, “S.A.V.E.” listing and “ICPA”. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City shall not be responsible for any disputes arising out of transactions made by other public entities who utilize this Agreement.

**12. PROCUREMENT REPORTS:**

Contractor shall submit reports upon the City’s request in an electronic format acceptable to the City during the term of this contract and any extensions commencing one month after start period. Total purchases for each division must be shown on a separate line. Report should be rounded to the nearest dollar. Contractor will provide sample forms for approval by the City.

Contractor shall electronically prepare and submit a completed Retrofit Report (Exhibit A) in a format acceptable to the City within five business days of completing a retrofit. Other reports may be requested by the City as deemed necessary.

**13. AWARD QUALIFICATION:**



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

**14. POST AWARD CONFERENCE:**

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

**15. SUSPENSIONS OF WORK:**

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

**16. CLEANING:**

The Contractor shall keep the premises clean of all rubbish and debris generated by the work involved and shall leave the premises neat and clean. All surplus material, rubbish, and debris shall be disposed of by the Contractor at their expense. The work area shall be cleaned at the end of each work day.

All materials, tools, equipment, etc., shall be removed or safely stored. The City is not responsible for theft or damage to the Contractor's property. All possible safety hazards to workers or the public shall be corrected immediately and left in a safe condition at the end of each work day. If there is a question in this area, the City's project manager will be consulted.

**17. HOURS OF WORK:**

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

**18. CONTRACT WORKER ACCESS CONTROLS, BADGE AND KEY ACCESS REQUIREMENT:**

**18.1 Contractor and Subcontractor Workers Background Screening:**

**18.1.1** Contractor agrees that all Contractor and subcontractors' workers (collectively "Contractor's Worker(s)") that Contractor furnishes to the City



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pursuant to this agreement will be subject to background and security checks and screening (collectively “Background Screening”) at Contractor’s sole cost and expense, unless otherwise addressed in the Scope of Work.

- 18.1.2** The City requires a completed Contract Worker Badge/Key/Intrusion Detection Responsibilities Agreement for each Contract Worker who requires a badge or key.
- 18.1.3** The background screening provided by Contractor will comply with all applicable laws, rules and regulations. Contractor further agrees that the background screening required in this section is necessary to preserve and protect the public health, safety and welfare.
- 18.1.4** The background screening requirements set forth in this section are the minimum requirements for the agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor’s services under this agreement or Contractor’s failure to comply with this section. Therefore, in addition to the specific measures set forth below, Contractor and its Contract Workers will take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this agreement.
- 18.1.5** Unless otherwise addressed in the scope of work, the contracting department will review and approve maximum risk background check results provided by the Contractor. Information to verify the results will be returned to the Contractor after the City’s review. The City will not keep records related to background checks. The City will only respond with an approve or deny.

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

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

- 18.3.1** work directly with vulnerable adults or children, (under age 18); or
- 18.3.2** any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or
- 18.3.3** unescorted access to:
- City data centers, money rooms, high-value equipment rooms; or
  - unescorted access to private residences; or
  - access to critical infrastructure sites/facilities





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

**18.5 Additional Maximum Risk Background Checks:** Maximum screening will additionally require:

**18.5.1** Credit Check (for cash handling, accounting, and compliance positions only)

**18.5.2** Driving records (for driving positions only)

**18.5.3** Fingerprint verification (when Contract Worker is working directly with children or vulnerable adults or scope takes the individual to a City location with Criminal Justice Information System (CJIS) access.)

**18.6 Contractor Certification; City Approval of Maximum Risk Background Screening:**

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

**18.6.1.1** determining whether Contract Worker(s) are disqualified from performing work for the City for maximum risk level background checks; and,

**18.6.1.2** submitting pass/fail results to the City for approval; and,

**18.6.1.3** for reviewing the results of the background check every three to five years, dependent on scope; and,

**18.6.1.4** to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,

**18.6.1.5** Submitting the list of qualified Contract Workers to the contracting department; and,

**18.6.1.6** If, upon review of the background information, the City will advise the Contractor if it believes a Contract Worker should be disqualified. The Contractor will evaluate the Contract Worker and if the Contractor believes that there are extenuating circumstances that suggest that the person should not be disqualified, the Contractor will discuss those circumstances with the contracting department. The contracting department decision on disqualification of a Contract Worker is final.

**18.6.2** For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will



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- assist on the contract and for whom the requirements of the Agreement apply.
- 18.6.3** By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current.
- 18.6.4** The City final documented decision will be an “approve” or “deny” for identified Contract Workers.
- 18.6.5** The City will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the Contractor, or any contracted agency that assists with review, after the City’s completed review.
- 18.6.6** By executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all such background screening requirements for the maximum risk background screening, and verified legal worker status, as required.
- 18.6.7** Contract Workers will not apply for the appropriate City of Phoenix identification and access badge or keys until Contractor has received the City’s written acceptance of Contract Worker’s maximum risk background screening. The City may, in its sole discretion, accept or reject any or all the Contract Workers proposed by Contractor for performing work under this Agreement. A Contract Worker rejected for work at a maximum risk level under this agreement will not be proposed to perform work under other city contracts or engagements without city’s prior written approval.
- 18.7** **Terms of This Section Applicable to all of Contractor’s Contracts and Subcontracts:** Contractor will include the terms of this section for Contract Worker background screening in all contracts and subcontracts for services furnished under this Agreement.
- 18.8** **Materiality of Background Screening Requirements; Indemnity:** The background screening requirements are material to City’s entry into this agreement and any breach of these provisions will be deemed a material breach of this contract. In addition to the indemnity provisions set forth in this agreement, Contractor will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Contractor. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor’s services under this Agreement or Contractor’s failure to comply with this section. Therefore, Contractor and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.



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CITY OF PHOENIX

- 18.9 Continuing Duty; Audit:** Contractor's obligations and requirements that Contract Workers satisfy this background screening section will continue throughout the entire term of this agreement. Contractor will notify the City immediately of any change to a background screening of a Contract Worker previously approved by the City. Contractor will maintain all records and documents related to all background screenings and the City reserves the right to audit Contractor's compliance with this section.
- 18.10 Contractor's Default; Liquidated Damages; Reservation of Remedies for Material Breach:** If Contractor is required to access any City facilities without an escort, City badging is required. Contractor's default under this section will include, but is not limited to, the following:
- 18.10.1** Contract Worker gains access to a City facility(s) without the proper badge or key;
  - 18.10.2** Contract Worker uses a badge or key of another to gain access to a City facility;
  - 18.10.3** Contract Worker commences services under this agreement without the proper badge, key or background screening;
  - 18.10.4** Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable background screening; or
  - 18.10.5** Contractor fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this agreement.
  - 18.10.6** Contractor acknowledges and agrees that the access control, badge and key requirements in this section are necessary to preserve and protect the public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this section within three business days (excluding weekends and City holidays) from the date notice of default is sent by the City. The parties agree that Contractor's failure to properly cure any default under this section will constitute a breach of this section. In addition to any other remedy available to the City at law or in equity, the Contractor will be liable for and pay to the City the sum of \$1,000.00 for each breach by Contractor in this section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this agreement if Contractor breaches this section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages if Contractor breaches this section. The parties further agree that three breaches by Contractor in this section arising out of any default within a consecutive period of three months or three



## SECTION III – SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX

breaches by Contractor in this section arising out of the same default within a period of 12 consecutive months will constitute a material breach of this agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this agreement, at law and in equity including, but not limited to, termination of this agreement.

- 18.11 Employee Identification and Access:** It is mandatory that Contractor's employees always have badges and some form of verifiable company identification (badge, uniform, employee id or W-2) unless the Department implements a verification procedure, addressed in the scope of work.
- 18.11.1** Contractor employees are forbidden access to designated restricted areas. Access to each building will be as directed by the authorized Phoenix authorized representative. Contractor employees are not authorized access other than during scheduled hours.
- 18.11.2** Within twenty days of the notice of recommendation of award, Contractor will supply a list of the names and titles of all service employees requiring access to the buildings. It is the Contractor's responsibility to provide updates and changes of personnel as necessary. Access to the building will be directed by the City's authorized representative. Contract Worker's will sign in at the security desk when arriving to service enter location and sign out when leaving. No access will be granted without the employee's name being on the approved list.
- 18.12 Key Access Procedures:** If the Contractor worker's services require keyed access to enter a City facility(ies), a separate key issue/return form must be completed and submitted by the Contractor for each key issued. The key issue/return form is available and the completed form will be submitted to the badging office at the address above.
- 18.13 Stolen or Lost Badges or Keys:** Contractor must immediately report lost or stolen badges or keys to the City's appropriate badging office. If the badge/key was stolen, Contract Worker's must report the theft to their local police department. Prior to issuance of a new badge or key, a new badge application or key issue form must be completed, submittal of a police department report for stolen badges, and applicable payment of the fee(s) listed herein.
- 18.14 Return of Badge or Key:** All badges and keys are the property of the City and must be returned to the City at the badging office within one business day (excluding weekends and City holidays) of when the Contract Worker's access to a City facility is no longer required to furnish the services under this agreement. Contractor will collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contractor



**SECTION III – SPECIAL TERMS AND CONDITIONS**

**CITY OF PHOENIX**

worker’s services are no longer required at a City facility(s); or upon termination, cancellation or expiration of this agreement.

**18.15 Badge and Key Fees:** The following constitute the badge and key fees under this agreement. The City reserves the right to amend these fees upon a 30-day prior written notice to Contractor.

Replacement Badge Fee:	\$55.00	per badge
Lost/Stolen Badge Fee:	\$55.00	per badge
Replacement Key Fee:	\$55.00	per key
Replacement Locks:	\$55.00	per lock

**18.16 HANDLING OF PHOTOGRAPHS**

The US Department of Homeland Security has designated water and wastewater treatment facilities as ‘critical infrastructure/key resources’. Because of federal directives, only persons authorized by the WSD Security Management Unit are permitted to photograph or film Water infrastructure, facilities, and assets which any include, but are not limited to: pay stations, warehouses, lift stations, treatment plants, service yards, booster stations, well sites, vehicles and related equipment and supplies.

**19 TRANSITION OF CONTRACT:**

At least thirty days prior to the expiration or termination of this contract vendor must provide all services necessary to ensure an orderly and efficient transition of the services, in whole or in part, to another provider and the City, including a transition plan, if required by the scope. Vendor will, without limitation, provide important information to the successor vendor and the City to ensure continuity of service at the required level of proficiency. Vendor agrees to provide to the city all files in ASCII format (or other city-designated format), supplies, data, records, and any other properties or materials of the City, which the City owns or has rights to pursuant to this contract and which are in the possession of vendor. The provisions of this section will survive the expiration or termination of this contract. Within the City’s sole discretion, the vendor agrees to a month-to-month extension at the same price(s) for continued services or goods deemed as essential by the City.

**20 SECURITY INQUIRIES:**

Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor’s expense, be subject to background and security checks and screening at the request of the City. Contractor shall perform all such security inquiries and shall make the results available to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may,



at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Contractor for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City's prior approval.

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

- 20.1** have an employee/prospective employee of the Contractor 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);
- 20.2** act on newly acquired information whether or not such information should have been previously discovered;
- 20.3** unilaterally change its standards and criteria relative to the acceptability of Contractor's employees and/or prospective employees; and
- 20.4** object, at any time and for any reason, to an employee of Contractor performing work (including supervision and oversight) under this Agreement. Contractor will bear the costs of any and all inquiries requested by the City.

## **21 STORAGE SPACE:**

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

No materials or equipment will be stored or temporarily set in restrooms, under stairwells or other spaces accessible to the public.

Hazardous chemicals such as solvent based strippers and cleaners will not be stored on City property.

If storage is in an electrical closet, a minimum of 36 inches shall be provided in front of all electrical panels. The width shall be a minimum of 30 inches or the width of the panel. The width of working space in front of the electrical equipment shall be the



**SECTION III – SPECIAL TERMS AND CONDITIONS**

**CITY OF PHOENIX**

width of the equipment or 30 inches, whichever is greater. In all cases, the work space shall permit at least a 90 degree opening of equipment

**22 COMMUNICATION IN ENGLISH:**

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

| []



**1. 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 claim or amount 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 agrees to waive 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.

**2. INSURANCE REQUIREMENTS:**

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontractors. Contractor and subcontractors must maintain that insurance until all 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.

**2.1. 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.

**2.1.1. Commercial General Liability – Occurrence Form**

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





**SECTION IV – INSURANCE AND INDEMNIFICATION**

**CITY OF PHOENIX**

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 coverage for sexual abuse and molestation.
- 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.”

**2.1.2. 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)	\$1,000,000
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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.”

**2.1.3. 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.

**2.1.4. Professional Liability (Errors and Omissions Liability)**

The policy must cover professional misconduct or lack of ordinary skill for those



**SECTION IV – INSURANCE AND INDEMNIFICATION**

**CITY OF PHOENIX**

positions 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.

- 3. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies must include, or be endorsed to include, the following provisions:
  - 3.1. 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.
  - 3.2. The Contractor’s insurance coverage must be primary insurance and non-contributory with respect to all other available sources.
- 4. **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, Attn: James Ho, 200 W. Washington St. 9<sup>th</sup> floor, Phoenix, AZ 85003.**
- 5. **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.
- 6. **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, Attn: James Ho, 200 W. Washington St. 9<sup>th</sup> floor, Phoenix, AZ 85003**. 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.**

7. **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.
  
8. **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 V – SCOPE OF WORK

CITY OF PHOENIX

### 1. PURPOSE AND INTRODUCTION:

The Contractor will operate a Residential Water Conservation Device Retrofit (program) for the City of Phoenix Water Services Department (WSD) which will retrofit owner-occupied, single-family homes with efficient toilets provided by WSD.

### 2. CITY OF PHOENIX REQUIREMENTS:

- 2.1 Identify regional areas or neighborhoods for the program and provide homeowner information to the Contractor to schedule and conduct the retrofit.
- 2.2 Provide all retrofit toilets and installation parts, and store the water saving toilets at WSD warehouse facilities. Should an installation part not be available in the WSD warehouse, WSD will reimburse the Contractor for the actual cost of the part.
- 2.2 WSD intends to keep this program operational until the water saving toilets in storage have been depleted.
- 2.3 Conduct random audit(s) of homeowners pertaining to the conduct and professionalism of the Contractor.
- 2.4 If the City determines for any reason that the qualifications, actions or conduct of any particular Contractor employee has violated this agreement by performing unsatisfactory services; interfering with operation of property; bothering or annoying any occupants, other contractors or subcontractors then at the property; or that such actions or conduct is otherwise detrimental to the City of Phoenix, the City of Phoenix will provide written notice to the Contractor that the employee must be removed from the job and immediately replaced with a qualified employee.

### 3. CONTRACTOR REQUIREMENTS:

- 3.1 Provide all management, supervision, labor, materials, tools, equipment, certification/licensing, training, transportation, mileage, report generation, etc. necessary to conduct a Residential Water Conservation Device Retrofit Program.
- 3.2 Ensure that each employee is properly qualified and will use reasonable care in the performance of services.



## SECTION V – SCOPE OF WORK

CITY OF PHOENIX

- 3.3 Immediately remove any employee that the City has determined for any reason has violated the qualifications, actions or conduct of this agreement by performing unsatisfactory services; interfering with operation of property; bothering or annoying any occupants, other contractors or subcontractors then at the property; or that the employee's actions or conduct is otherwise detrimental to the City of Phoenix and immediately replace the employee with a qualified employee.
- 3.4 Ensure that the Contractor, the Contractor's employees, and any subcontractor's employees wear badges that clearly display the employee's name, photo, and company name or logo on the front of the badge.
- 3.5 This Scope of Work may be supplemented with additional detail from time to time during the Term of Agreement.
- 3.6 Upon receipt of a Purchase Order, replace all toilets having a flush volume that is equal to or greater than 6 liters or 1.6 gallons with high-efficiency, EPA WaterSense approved toilets.
- 3.7 Maintain excellent customer service at all times and to coordinate with WSD as issues or problems may arise
- 3.8 Collect, maintain, and report all work activity, including:
  1. Plumbing devices removed and installed (including flow or flush rate of replaced devices);
  2. Basic household characteristics data;
  3. Customer e-mail (if available);
  4. Signed affidavits;
  5. Signed referral forms (as required).
  6. Number of homeowner visits scheduled, rescheduled and cancellations
- 3.9 Meet regularly with the City's program/project manager to review status of program.

#### **4. CONTRACTOR QUALIFICATIONS AND QUALITY ASSURANCE:**

- 4.1 Contractor must hold an Arizona Plumbing License and keep on file with WSD an Arizona Registrar of Contractors' License,
- 4.2 Contractor's key personnel shall have a minimum of 2 years of experience providing new and/or repair plumbing services, preferably in the State of Arizona.



## SECTION V – SCOPE OF WORK

CITY OF PHOENIX

- 4.3 Employ a sufficient number of employees that are trained in accordance with industry standards and capable of properly, adequately, safely, and promptly providing services requested herein. Unskilled employees are not permitted to perform or assist in any manner.
- 4.4 Ensure that a current list of all persons responsible for providing services, their specific responsibilities, and their training related to the new installation of plumbing products is on file with WSD.
- 4.5 Contractor will not subcontract or use any other parties to perform services without written authorization from the City. Contractors use of any subcontractors or other parties to perform services shall not relieve, release or affect in any manner any of Contractor's duties, liabilities or obligations hereunder, and Contractor shall at all times be and remain fully liable hereunder

### **5 PERSONAL APPEARANCES AND CLEANLINESS:**

- 5.1 Ensure that the Contractor's employees and subcontractors' employees dress and grooming is appropriate to the requirements of this service and the safety requirements of the job.
- 5.2 Some infractions of the above policy include:
  - 1. Low cut or otherwise revealing clothes.
  - 2. Dangling necklaces, earrings or sleeves.
  - 3. Clothing that is torn, has holes, or frayed edges.
  - 4. Shirts, hats or other items with profanity, written or pictures, or which could be considered to be a violation.
  - 5. Personal hygiene must not be offensive to customers.
  - 6. Showing tattoos, piercings in/on face.

### **6 CONTRACTOR VEHICLES:**

- 6.1 Maintain vehicle in a clean condition and in good repair at all times to maintain a positive public image as reasonably determined by the City of Phoenix.
- 6.2 Contractors name, Arizona Registrar of Contractor's license number, telephone number and vehicle number shall be visibly displayed on both sides of all vehicles.

### **7. CONTRACTOR SAFETY MEASURES:**



## SECTION V – SCOPE OF WORK

CITY OF PHOENIX

- 7.1 Have sole responsibility for means, methods, techniques, procedures, and safety precautions in connection with performance of these services.
- 7.2 Be responsible for the supervision and execution of services by its employees.
- 7.3 Adhere to all local, state, and national regulations including Occupational Safety and Health Administration (OSHA), National Fire Protection Association (NFPA) requirements, state, local and manufacturer operating procedures and generally accepted procedures.
- 7.4 The Contractor shall be responsible for implementing all final setting and adjustments on installed plumbing fixtures in accordance with manufacturers/owners/engineer's specifications.

### 8. STANDARDS:

- 8.1 Unless specified elsewhere in the Scope of Work, workmanship shall conform to all of the methods and operations of best standards and accepted practices of the trade(s) involved, and shall include all items of installation regularly furnished or required for completion of the services.
- 8.2 If a retrofit toilet or installation parts provided by the City become damaged or broken while in the possession of the Contractor, the Contractor shall replace the damaged or broken toilet or installation parts with like or comparable devices.

### 9. DELIVERABLE:

The Contractor will submit a Retrofit Worksheet (Exhibit A) indicating the services rendered within five days of the completion of a retrofit.

### 10. CRITERIA OF ACCEPTANCE:

- 10.1 The City's authorized representative will determine the quality and acceptability of any work performed under this contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City shall notify the Contractor.
- 10.2 The Contractor will have 14 days from the date of notification to correct any specific instances of unsatisfactory performance. In the event the unsatisfactory performance is not corrected within 14 days, the City shall have the immediate right to complete the work to its satisfaction and shall



**SECTION V – SCOPE OF WORK**

**CITY OF PHOENIX**

deduct the cost of the work performed from any balances due, or that becomes due, to the Contractor.





**1. COPIES:**

**1.1 Please submit one (1) original, and one (1) electronic copy (portable drive or CD) of Section VI – Submittals:**

- page 49: Costs and Payments, Contractor Contact Information, Years in Business
- page 50: OFFER
- Attachment A - Conflict of Interest & Solicitation Transparency Disclosure Form
- Attachment B - References
- Attachment C - Price Schedule
- Addendum(s) (if any)
- all other required documentation.

**1.2. Do not submit a copy of the entire solicitation document.** This bid will remain in effect for a period of 180 calendar days from the bid opening date and is irrevocable unless it is in the City's best interest to do so.

**2. SUBMITTAL FORMAT:**

**2.1** The written bid should be:

- Typewritten for ease of evaluation;
- Signed by an authorized representative of the Bidder;
- Submitted with contact information for the individual(s) authorized to negotiate with the City;
- Submitted in a binder, preferably using double-sided copying;

**2.2** The written bid should be organized as follows utilizing tabs:

Tab A, Section VI – Submittals, pages 49 - 50

Tab B, Attachment A – Conflict of Interest & Solicitation Transparency Disclosure Form

Tab C, Attachment B – References

Tab D, Attachment C – Price Schedule

Tab E, Addendum(s) (if any)



3. COSTS AND PAYMENTS:

3.1 PAYMENT TERMS & OPTIONS: Vendors must choose an option. If a box is not checked, the City will default to 0% - net 45 days:

- Contractor offers a prompt payment discount of either \_\_\_\_\_% - 30 days or 0% – 45 days - to apply after receipt of invoice or final acceptance of the products (invoice approval), whichever date is later, starts the 30 days. If no prompt payment discount is offered, the default is 0%, net 45 days; effective after receipt of invoice or final acceptance of the products, whichever is later. **Payment terms offering a discount will not be considered in the price evaluation of your offer.**
- Contractor may be paid immediately upon invoice approval, if enrollment is made to the Single Use Account (SUA) Program, administered by the City’s servicing bank (“Bank”). By checking this box, the vendor accepts transaction costs charged by their merchant bank and agrees not to transfer to the City those extra charges. The City will not pay an increase in our services for the SUA charges; if an audit uncovers an upcharge for the SUA charges the vendor will owe the City all costs. The vendor may opt-out of the SUA program once, but then may not rejoin during the same contract term.

4. CONTRACTOR CONTACT INFORMATION:

Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Alternate Contact: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

5. YEARS IN BUSINESS:

Contractor certifies that they have provided Retrofit related services for a period of \_\_\_\_\_ years.



SECTION VI - SUBMITTALS

CITY OF PHOENIX

**OFFER**

**TO THE CITY OF PHOENIX** - The Undersigned hereby offers and agrees to furnish the material and or service(s) in compliance with all terms, conditions, specifications, and addenda issued as a result of solicitation and any written exceptions in the offer.

Arizona Sales Tax No. \_\_\_\_\_  
Use Tax No. for Out-of State Suppliers \_\_\_\_\_  
City of Phoenix Sales Tax No. \_\_\_\_\_  
Arizona Corporation Commission File No. \_\_\_\_\_

Taxpayer's Federal Identification No.: If recommended for contract award, Bidder agrees to provide its federal taxpayer identification number or as applicable its social security number to the City of Phoenix for the purposes of reporting to appropriate taxing authorities, monies paid by the City of Phoenix under the awarded contract. If the Bidder provides its social security number, the City will only share this number with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.

Enter City's Registration System ID Number  
Located at City's eProcurement website (see  
SECTION I – INSTRUCTIONS - CITY'S  
REGISTRATION)

Offeror has read, understands, and will fully and faithfully comply with this solicitation, its attachments and any referenced documents. Offeror certifies that the prices offered were independently developed without consultation with any other Offeror or potential Offerors.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Verify Name and type of company  
(LLC, Inc., Sole Proprietor)

\_\_\_\_\_  
Printed Name and Title  
(Member, Manager, President)

Address \_\_\_\_\_  
City, State and Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Company's Fax Number \_\_\_\_\_  
Company's Toll Free # \_\_\_\_\_  
Email Address \_\_\_\_\_



**SECTION VI - SUBMITTALS**

**CITY OF PHOENIX**

**ACCEPTANCE OF OFFER**

The Offer is hereby accepted.

The Contractor is now bound to sell the material(s) or service(s) listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc. and the Contractor’s Offer as accepted by the City.

This contract shall henceforth be referred to as Contract No.\_\_\_\_\_. The Contractor has been cautioned not to commence any billable work or provide any material or service under this contract until Contractor receives purchase order, or contract documentation.

**CITY OF PHOENIX**

A Municipal Corporation  
Ed Zuercher, City Manager

\_\_\_\_\_ Awarded this \_\_\_\_ day of \_\_\_\_\_ 2019  
Director or delegate, Department

\_\_\_\_\_  
City Clerk

Approved as to form this 19<sup>th</sup> day of January 2017. This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.



**ATTACHMENT A – CONFLICT OF INTEREST & SOLICITATION TRANSPARENCY DISCLOSURE FORM**

**CITY OF PHOENIX**

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

1. Name of person submitting this disclosure form.

First	MI	Last	Suffix
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2. Contract Information

Solicitation # or Name:

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

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

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

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

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



**ATTACHMENT A – CONFLICT OF INTEREST & SOLICITATION TRANSPARENCY DISCLOSURE FORM**

**CITY OF PHOENIX**

**7. Disclosure of conflict of interest:**

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

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

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

**8. Notice Regarding Prohibited Interest in Contracts**

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

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

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

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

**9. Acknowledgements**

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



**ATTACHMENT A – CONFLICT OF INTEREST & SOLICITATION TRANSPARENCY DISCLOSURE FORM**

**CITY OF PHOENIX**

- I understand that a person or entity who seeks or applies for a city contract, or any other person acting on behalf of that person or entity, is prohibited from contacting city officials and employees regarding the contract after a solicitation has been posted.
- This “no-contact” provision only concludes when the contract is awarded at a City Council meeting. If contact is required with City official or employees, the contact will take place in accordance with procedures by the City. Violation of this prohibited contacts provision, set out in City Code Sections 2-190.4 and 43-36, by respondents, or their agents, will lead to **disqualification**.

**10. Fraud Prevention and Reporting Policy**

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

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

**OATH**

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

**PRINT NAME**

**TITLE**

**SIGNATURE**

**DATE**

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



**ATTACHMENT B - REFERENCES**

**CITY OF PHOENIX**

Contractor shall furnish the names, addresses, and telephone numbers of a minimum of three firms or government organizations for which the Contractor is currently furnishing or has furnished Residential Water Conservation Device Retrofit. **The Bidder may not use the City of Phoenix as a reference.**

Company Name \_\_\_\_\_

Address \_\_\_\_\_

Reference \_\_\_\_\_

Telephone Number \_\_\_\_\_

Email address \_\_\_\_\_

Company Name \_\_\_\_\_

Address \_\_\_\_\_

Reference \_\_\_\_\_

Telephone Number \_\_\_\_\_

Email address \_\_\_\_\_

Company Name \_\_\_\_\_

Address \_\_\_\_\_

Reference \_\_\_\_\_

Telephone Number \_\_\_\_\_

Email address \_\_\_\_\_





**ATTACHMENT C – PRICE SCHEDULE**

**CITY OF PHOENIX**

**1. PRICES:**

- 1.1 Submit a unit price and total price as applicable. If a discrepancy occurs between the unit price and the total price, the unit price will prevail. The annual quantity is an estimate and the City does not guarantee that the Contractor will receive a specific amount of work.
- 1.2 Additional charges for management, supervision, labor, materials, tools, equipment, certification/licensing, training, transportation, mileage, report generation, etc. necessary to conduct a Residential Water Conservation Device Retrofit Program will not be paid separately; these charges must be included in the submittal unit price.
- 1.3 For purposes of determining the price, the City will not take tax into consideration. After contract award, all applicable taxes will apply. Prices shall be all-inclusive except for tax.

Item No.	Description	Estimated Annual Quantity	Unit of Measure	Unit Price Excluding Tax	Total Price Excluding Tax
1	All Inclusive Installation of WSD Supplied High-Efficiency EPA WaterSense Approved Toilet	300	Each	\$_____	\$_____



**EXHIBIT A – RETROFIT WORKSHEET**

**CITY OF PHOENIX**

**Date and Time:** \_\_\_\_\_

**Customer Information**

First Name:
Last Name:
Address:
Phone:
Email:

**Retrofit Information**

<b>Description</b>	<b>Replace</b>	<b>Hours Worked</b>	<b>Notes</b>
Bath 1 Toilet			
Bath 2 Toilet			
Bath 3 Toilet			
*Installation Parts			

\* Contractor must submit original receipts with the Retrofit invoice for reimbursement of installation parts that were not available at the WSD warehouse.