

AGREEMENT NO. _____

BETWEEN

THE CITY OF PHOENIX

AND

FOR THE OPERATION OF FIXED ROUTE TRANSIT SERVICE

THIS AGREEMENT is made and entered into this ____ day of ____, 2020, by and between the City of Phoenix, a municipal corporation duly organized and existing under the laws of the state of Arizona acting by and through its Public Transit Department (hereinafter referred to as “CITY”) and _____ (hereinafter referred to as “CONTRACTOR”).

RECITALS

WHEREAS, the City Manager of the City of Phoenix is authorized and empowered by provisions of City Charter to execute contracts; and,

WHEREAS, public transit plays an important role in transporting large numbers of people to and from work places, social service organizations, public events; and activity centers in an energy conscious manner; and,

WHEREAS, CITY desires that public transportation be available to the citizens, residents, and visitors of Phoenix; and,

WHEREAS, public transit systems are of particular and special help, aid, assistance, and benefit to the general public, students, school children, persons who are disadvantaged, infirm, aged, blind, and persons with disabilities; and,

WHEREAS, Chapter 2, Section 2, Subsections (c), (i), and (l), Charter of the City of Phoenix, 1969, authorize CITY to establish, maintain, equip, own, and operate transportation services of any kind and to install, maintain, and operate all systems, proper or convenient, or which may be conducive to the welfare, safety, and health or convenience of the City of Phoenix and to the inhabitants thereof; and,

WHEREAS, by this Agreement, CITY intends to establish arrangements for such transit system; and,

WHEREAS, the CITY has issued its solicitation document, Request for Proposals (RFP) PTD19-007 for Fixed Route Transit Service and conducted a competitive procurement process to select a contractor to provide Fixed Route Services as further described in the RFP; and,

ATTACHMENT A – DRAFT MASTER AGREEMENT

WHEREAS, the CONTRACTOR was selected as the highest ranked proposer under the evaluation process and criteria established in the RFP; and,

WHEREAS, the CITY and CONTRACTOR have finalized mutually acceptable terms and conditions under this Agreement; and,

WHEREAS the City Council has, by Formal Action, dated _____ authorized the CITY to award this contract to CONTRACTOR.

NOW, THEREFORE, it is agreed by and between the parties as follows:

SECTION 1. DEFINED TERMS. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms as contained in the RFP. In addition, the following terms (as used herein) shall have the following meanings:

“Agreement” means this agreement between the CONTRACTOR and the CITY, together with all of its exhibits and appendices, as may be amended or modified from time to time, in accordance with its terms. The terms “Agreement” and “Contract” shall be used interchangeably herein.

“Contract” means this agreement between the CONTRACTOR and the CITY, together with all of its exhibits and appendices, as may be amended or modified from time to time, in accordance with its terms. The terms “Agreement” and “Contract” shall be used interchangeably herein.

“Initial Term” shall have the meaning given in Section 2(A).

“Option Term” shall have the meaning given in Section 2(A).

“Services” shall mean the services set forth in the Scope of Work attached to this Agreement as **CONTRACT EXHIBIT A**.

“Term” shall have the meaning given in Section 2(A).

SECTION 2. TERM OF AGREEMENT.

A. The term of the Agreement is for a five (5) year period commencing on July 1, 2020 and continuing through June 30, 2025 (the **“Initial Term”**). The CITY may, at its sole option, extend the Initial Term for one two (2) year option period (the **“Option Term”**). The CITY may exercise the Option Term, at any time prior to the expiration of the Initial Term. In addition, if the CITY deems it necessary, the CITY may extend the Initial Term or the Option Term on a month-to-month basis for up to six (6) months. The term of this Agreement is the Initial Term, together with the Option Term and any monthly extensions, if exercised by the City, subject to early termination as described herein (the **“Term”**).

B. This Agreement shall terminate upon the earliest occurrence of any of the following:

- 1) The expiration of the Initial Term (if no option has been exercised), or, if exercised, the expiration of the Option Term;

ATTACHMENT A – DRAFT MASTER AGREEMENT

- 2) payment of the maximum compensation under Section 2(A) of this Agreement, unless it is amended to allow additional compensation; or
 - 3) termination pursuant to the provisions of this Agreement.
- C. Notice to Proceed. Within three (3) Business Days after receipt from the Contractor of the documentation required hereunder, including but not limited to Section 6 (Insurance Requirements) and 8 (Performance Surety Requirements), CITY will issue a Notice to Proceed (NTP) to the Contractor. The Contractor is not authorized to perform work under this Agreement prior to receiving the NTP. Upon receipt of the NTP, the Contractor shall commence work in accordance with this Agreement.

SECTION 3. COMPENSATION.

- A. Contract Price. Under this Agreement, CITY will pay for satisfactory and complete performance of work at the rate(s) specified in the Price Proposal, attached as **(CONTRACT EXHIBIT B)**, with no additional charges for equipment, supplies, overhead, travel or administrative support. Total amount to be remitted by the CITY to CONTRACTOR for all Services satisfactorily performed under this Agreement may not exceed \$_____ for the Term of this Agreement.
- B. Invoices. CONTRACTOR shall be paid monthly in arrears. On or before the 10th day of each calendar month, CONTRACTOR shall submit one (1) invoice to the CITY for Services provided during the previous month and each invoice shall contain the following:
- a. date
 - b. Contract number
 - c. number of Revenue Miles/Revenue Hours operated for that month
 - d. supporting documentation
 - e. invoice amount
 - f. “remit to” address which must match the address on file with the CITY. Any changes to the remit to address must be updated by the Vendor in its ProcurePHX vendor profile at <https://www.phoenix.gov/procure>
 - g. any prompt payment discounts offered
 - h. associated purchase order number
- C. Payment. The amount invoiced shall be based on the actual number of Revenue Miles operated for that month, less liquidated damages. Advance payments are not authorized. Payment may only be made for actual Services that have been received.
- D. No Errors. CONTRACTOR's invoices must be free of mathematical errors and/or missing supporting documentation. Upon finding an error and/or missing documentation, the CITY will return the invoice to CONTRACTOR. CONTRACTOR shall promptly resubmit the revised invoice to the CITY. Failure to identify an error does not waive any of the CITY's rights. Payment of an invoice will be delayed if such invoice is incorrect or incomplete.
- E. Maximum Payment. In accordance with the requirements of Chapter 19, § 2, Charter of the City Phoenix, no more than ninety (90%) percent of the total contract price may be paid to CONTRACTOR before completion of all Services required under this Agreement.

ATTACHMENT A – DRAFT MASTER AGREEMENT

- F. Submission for Review. CONTRACTOR shall submit invoices to the following for review:

City of Phoenix/Public Transit Department
Attn: Contract Administrator
302 North First Avenue, Suite 900
Phoenix, Arizona 85003

The CITY shall notify the CONTRACTOR if the invoices have been approved or if they require additional documentation and/or correction.

- G. Submission for Payment. Following approval, CONTRACTOR will email the invoice in PDF format to invoices@phoenix.gov, copying the CITY's Transit Operations Contract Supervisor. Each PDF attachment will contain only one invoice, although multiple PDFs may accompany an email. The email will be in plain text format free of any signatures or images (jpeg, bmp, etc.).

SECTION 4. SCOPE OF WORK. CONTRACTOR shall provide Fixed Route Services to the CITY in accordance with the Scope of Work set forth in **CONTRACT EXHIBIT A**. The CITY may supplement the Scope of Work with additional detail from time to time during the Term of the Contract. Further, as noted in the Scope of Work, the CITY reserves the right to adjust the Service requirements at any time. Such modifications may include but are not limited to extending, deleting or adding routes or parts of routes and expanding or decreasing scheduled revenue miles or frequency of service

SECTION 5. INDEMNIFICATION OF CITY AGAINST LIABILITY. 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 negligent or willful acts or omissions of CONTRACTOR or any of its owners, officers, directors, agents, employees or subcontractors in connection with this Contract. This indemnity includes any Claims arising out of Indemnitor's occupancy and use of the CITY facilities. This indemnity also includes any Claims arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of CONTRACTOR to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that Indemnitee will, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by CONTRACTOR from and against any and all claims. But CONTRACTOR has no duty to indemnify the CITY for the cost to repair collision and comprehensive damage to CITY vehicles operated by CONTRACTOR in excess of the deductible specified in **CONTRACT EXHIBIT C**. CONTRACTOR will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, CONTRACTOR agrees to waive all rights of subrogation against the CITY, its officers, officials, agents and employees for losses arising from the work performed by CONTRACTOR for the CITY.

SECTION 6. INSURANCE REQUIREMENTS. CONTRACTOR and its subcontractors shall have delivered to the CITY, immediately upon receiving notice of Contract award and before the CITY shall have issued a Notice to Proceed, a certificate of insurance acceptable to the CITY in the amounts and form specified in **CONTRACT EXHIBIT C**. Failure of CONTRACTOR and its subcontractors to maintain insurance during the term of the Agreement,

ATTACHMENT A – DRAFT MASTER AGREEMENT

including the Option Term, is a material breach and may result in immediate termination of this Agreement without notice. Insurance requirements are subject to periodic review and adjustment by the CITY.

SECTION 7. RESPONSIBILITY FOR REVENUE VEHICLE PHYSICAL DAMAGE. If an accident results in physical damage to a Revenue Vehicle and Contract Worker is found to be not at fault, the CITY will reimburse CONTRACTOR for costs incurred to repair physical damage to such Revenue Vehicle in excess of the non-refundable deductible of \$25,000 per occurrence. CONTRACTOR is responsible for the first \$25,000 of damage for all collision and comprehensive losses. CONTRACTOR must submit two (2) itemized repair estimates, or other such documentation as agreed upon, to the CITY and provide the vehicle number, date of the accident, a copy of the police accident report and a narrative statement setting forth how the accident occurred. Requests for CONTRACTOR reimbursement must be presented to the CITY for payment on a monthly basis.

If damage to a Revenue Vehicle is caused by a third party (“Other Party”), CONTRACTOR must pursue, in a timely fashion, the Other Party for reimbursement of the total cost of the repairs or the total loss value of the Revenue Vehicle, if the Revenue Vehicle is a total loss. The CITY’s agreement is required prior to CONTRACTOR entering into a settlement agreement for amounts less than the total repair cost or total loss value of the Revenue Vehicle, and for writing off uncollectible matters.

If the entire damage amount is recovered from the Other Party, the CITY must be reimbursed for the amount it has paid CONTRACTOR in excess of CONTRACTOR’S \$25,000 deductible. If only a portion of the total damage is recovered, the amount collected will first be repaid to the CITY for the amount it has paid to CONTRACTOR for repairs made or for the total loss value of the Revenue Vehicle. Any remaining monies collected will be distributed to the CONTRACTOR. The CITY’s share of recoveries must be paid to the CITY within thirty (30) days of receipt. CONTRACTOR is responsible for providing the CITY with copies of all documents relating to the subrogation/collection effort made by CONTRACTOR within thirty (30) days of commencing subrogation proceedings against the Other Party.

SECTION 8. PERFORMANCE SURETY REQUIREMENTS. CONTRACTOR shall provide the CITY with a performance surety in the amount of \$2,500,000 immediately after notice of award. The CITY will not issue a Notice to Proceed in any form until the performance surety has been received by CITY. Performance surety must be in the form of a bond, cashier’s check, certified check, or money order. Personal or company checks are not acceptable unless certified. If performance surety is in the form of a bond, the company issuing the surety bond must be authorized by the Insurance Department of Arizona to transact surety business in the state of Arizona or be named on the approved listing of surplus-lines companies. A certificate of deposit (CD) issued by a local Phoenix bank may also be used as a form of surety provided the CD is issued jointly in the name of the CITY and CONTRACTOR and CONTRACTOR endorses the CD to CITY at the beginning of the Contract period. Interest earned on the CD may be retained by CONTRACTOR, but only if CONTRACTOR is not in default under this Agreement.

SECTION 9. LIQUIDATED DAMAGES. All performance indicators and liquidated damage clauses, including those contained in Section 3.11.12(6) of the RFP, shall be strictly enforced. CONTRACTOR shall pay CITY liquidated damages for non-compliance with the performance indicators contained in Section 5.29 of the Scope of Work set forth in **CONTRACT EXHIBIT A**. The CITY may also assess liquidated damages to CONTRACTOR based on each observed violation committed by CONTRACTOR personnel. CONTRACTOR agrees that any

ATTACHMENT A – DRAFT MASTER AGREEMENT

breach to this Agreement as described in **CONTRACT EXHIBIT A**, Performance Indicators/Liquidated Damages, will result in the CITY suffering damages that are impractical or impossible to determine. CONTRACTOR agrees that the assessments contained in Section 5.29 of the Scope of Work, set forth in **CONTRACT EXHIBIT A**, constitute a reasonable approximation of these damages, and the assessments are not a penalty. The CITY may deduct liquidated damage payments from CONTRACTOR's monthly invoice amount. Special event hours will not be included for calculations of these performance standards.

SECTION 10. LEGAL WORKER REQUIREMENTS. CITY 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. Therefore, CONTRACTOR agrees that:

- A. Each of CONTRACTOR and each subcontractor it uses shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and its compliance with § 23-214.
- B. A breach of a warranty under paragraph A constitutes a material breach of the Agreement that is subject to penalties up to and including termination of the Agreement.
- C. The CITY retains the legal right to inspect the papers of any CONTRACTOR or subcontractor employee who works on the Contract to ensure that CONTRACTOR or subcontractor is complying with the warranty under paragraph A.

SECTION 11. RESPONSIBILITY FOR COMPLIANCE WITH LEGAL REQUIREMENTS. CONTRACTOR's products, service, and facilities must 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 CITY.

At the request of CITY representatives, CONTRACTOR shall provide CITY:

- A. Environmental, safety, and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to Services provided by CONTRACTOR under this Agreement.
- B. A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against CONTRACTOR or its subcontractors including work performed, dates, reasons, dispositions, and resolutions.

CITY shall have the right, but not the obligation, to inspect the facilities, Non-Revenue Vehicles, vessels, containers, and disposal facilities provided by CONTRACTOR or subcontractor. CITY may also inspect operations conducted by CONTRACTOR or subcontractor in the performance of this Agreement. The CITY further reserves the right to make unannounced inspections of CONTRACTOR's facilities (during normal business hours).

SECTION 12. GENERAL CONDITIONS. The following general conditions are material to CITY's entry into this Agreement, and CONTRACTOR's breach of any one or more of them constitute a material breach of contract:

- A. Records
CITY, FTA, the Comptroller General of the United States, or any designee may inspect and copy, as the case may be, any facilities, books, documents, papers, computerized media, and records of CONTRACTOR that are pertinent to this Agreement for any purpose, including an audit, related to the Agreement. CONTRACTOR shall maintain all books, records, data, and documents according to generally accepted accounting

ATTACHMENT A – DRAFT MASTER AGREEMENT

principles as required by the uniform system of accounts and records. All required records must be maintained for a minimum of five (5) years after CITY makes the final payment and all other pending matters are closed. Federal, State, or CITY auditors and any other persons duly authorized by the CITY shall have full access to, and the right to examine, audit, copy, and make use of any and all said materials.

Parties providing documents to the CITY or to CITY employees are hereby advised that notwithstanding anything to the contrary in such party's form of nondisclosure agreement, the CITY intends to comply with all laws relating to preservation and disclosure of public records, and will consider itself to have satisfied the requirements of any nondisclosure agreement by following the procedures described in RFP Section 1.21, Offeror Rights.

B. Covenant Against Contingent Fees

CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and that no member of Congress, no member of the Phoenix City Council, and no officer, agent, or employee of CITY has any interest, financially or otherwise, in this Agreement.

C. CITY's Right to Assign and Novate

The parties agree that if another publicly funded transportation agency desires to provide the service described in this Agreement, CITY may, after consultation with CONTRACTOR, assign all of its rights and obligations under the Agreement to that agency. If such an assignment is made, CITY may assign its FTA Section 13(c) obligations to any successor publicly funded transportation agency, and upon such assignment CITY shall be released and discharged from further Section 13(c) obligations. If such an assignment occurs, all of CITY's duties and obligations will be assumed by any successor publicly funded transportation agency, and CITY will ensure that the agency assumes these duties and obligations as a condition of the assignment.

CONTRACTOR shall not assign the Agreement without the prior written consent of CITY, and any attempt to assign the Agreement without prior written consent is void. This Agreement extends to and is binding upon the parties' respective heirs, successors, legal representatives, and assigns.

D. Lobbying Prohibition

CONTRACTOR shall comply with all requirements of Title 31 U.S.C. Section 1352 and 54 Federal Register 52305, and CONTRACTOR warrants that its activities and those of its officers, agents, employees, and contractors comply, and will continue to comply, with this prohibition against spending federal funds for lobbying. CONTRACTOR shall certify compliance with this prohibition and disclose the activities of all lobbyists paid to influence or attempt to influence government officials for federal grants or contracts. See *also* RFP Section 6.11, Lobbying Restrictions.

E. Alteration in Character of Work

1. If the CITY requires a substantial change in the nature of Services, materially increasing or decreasing the cost of the performance, CONTRACTOR shall perform the work in accordance with this Agreement; however, before any additional work is started, a contract change order or supplemental agreement will be executed by

ATTACHMENT A – DRAFT MASTER AGREEMENT

CITY and CONTRACTOR. CITY and CONTRACTOR agree to negotiate and resolve contract change orders in good faith.

2. No changes in the scope, character, or complexity of work may be made by CONTRACTOR without first receiving approval properly defining and limiting the change. CITY will not pay any claim for extra work done or materials furnished by CONTRACTOR except as provided in this Agreement, and CONTRACTOR may not do any work or furnish any materials not covered by this Agreement unless first approved in writing by CITY. Any such work or materials furnished by CONTRACTOR without prior written approval is CONTRACTOR'S sole risk, cost, and expense, and CONTRACTOR may not make any claim for compensation for any such work or materials.

F. Continuing Obligations.

All of the Revenue Vehicles to be managed and supervised by CONTRACTOR have previously been leased or purchased by CITY. All agreements, contracts (except labor contracts), indebtedness and other similar obligations of the transit system existing before the effective date of this Agreement or arising at any time after the effective date, have been and will remain the CITY'S sole responsibility, except to the extent that CONTRACTOR assumes administrative responsibility for them under this Agreement.

All contracts entered into by CONTRACTOR with CITY'S approval during this Agreement are for the benefit of the transit system. Upon the expiration or other termination of this Agreement, all agreements, contractual obligations, and the like which have been administered by CONTRACTOR on CITY'S behalf or for its benefit shall automatically revert to CITY.

G. Addition or Deletion of Service

The CITY reserves the right to add and/or delete Services required under this contract. If service levels increase beyond the stated percentage range, the cost per Revenue Mile will be adjusted in accordance with the Price Proposal (**CONTRACT EXHIBIT B**).

All contract changes may be incorporated into written and signed change orders to the contract at the sole discretion of the CITY. If applicable, each change order will state any increase or decrease in the amount of the compensation due to CONTRACTOR for the change in service and the effective date of the change. Oral changes to the contract are not authorized, but the CITY may provide changes by written notification to CONTRACTOR.

H. Fiscal Year Clause.

CONTRACTOR recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. CONTRACTOR and the CITY herein recognize that the continuation of any contract after the close of any given fiscal year of the CITY, which ends on June 30 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.

I. Fiscal Year Time for Payment.

Under the provisions of A.R.S. § 42-17108, CITY may pay for services rendered or costs

ATTACHMENT A – DRAFT MASTER AGREEMENT

incurred only during a fiscal year in which the services and costs are budgeted and for a period of 60 days thereafter. CONTRACTOR must submit its invoices for Services performed or costs incurred, together with any required reports, before the close of a fiscal year allowing sufficient time for the processing of payment within the 60-day period.

J. Contract Administration and Dispute Resolution

1. Dispute Resolution: Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the Contracts Specialist II Lead or his/her designee. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, CONTRACTOR mails or otherwise furnishes a written appeal to the Public Transit Director or the Director's designee. In connection with any such appeal, CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Public Transit Director or the Director's designee shall be binding upon CONTRACTOR and CONTRACTOR shall abide by the decision.
2. Performance During Dispute: CONTRACTOR agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, CONTRACTOR will continue to perform the obligations required of the Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.
3. Rights and Remedies: The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by the CITY or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed upon in writing.

K. Contract Order of Precedence

In the event of a conflict between this Agreement and other incorporated documents, the following order of precedence shall be used to resolve the conflict:

- 1) this Agreement, exclusive of all exhibits and appendices;
- 2) all exhibits and appendices to this Agreement;
- 3) the RFP and CONTRACTOR's Offer;
- 4) other applicable Federal terms and conditions; and
- 5) other documents referenced in the RFP.

Unless otherwise specifically provided, in resolving any conflict or inconsistency within the same category of documents listed above, the most recent in time prevails over older documents or provisions covering the same issue, and provisions most favorable to CITY prevail over less favorable conflicting or inconsistent provisions wherever they may be found.

ATTACHMENT A – DRAFT MASTER AGREEMENT

L. Notices

Any notice, consent, or other communication (“Notice”) required or permitted under this Agreement must be in writing and either delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

If to CONTRACTOR:

If to CITY: Jesús Sapien, Public Transit Director
City of Phoenix Public Transit Department
302 North 1st Avenue, Suite 900
Phoenix, AZ 85003
Telephone: (602) 262-7242
Email: Jesús.Sapien@phoenix.gov

Notices will be deemed received at the time they are personally served or on the delivery date shown on proof of delivery through email or by any commercial air courier or express service. Any time period stated in a Notice must be computed from the time the Notice is deemed received. Either party may change its mailing address or the person to receive Notice by notifying the other party as provided in this paragraph.

Notices sent by email must also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice does not change the effective date of a notice sent by email.

M. Enforcement

If suit is brought by either party to enforce the terms of this Agreement, to collect any monies due, or to collect money damages for breach, the prevailing party is entitled to recover, in addition to any other remedy, reimbursement for court costs, costs of investigation, and other related expenses incurred in connection therewith.

N. Federal, State, and Local Laws

CONTRACTOR warrants that it shall comply with all federal, state, and local laws and ordinances and all lawful orders, rules, and regulations applicable to this Agreement.

O. Cancellation Rights

All parties acknowledge that this Agreement is subject to cancellation by the CITY pursuant to the provision of Section 38-511, Arizona Revised Statutes.

P. Waiver

CITY’s failure at any time to require performance of any provision of this Agreement in no way affects the right of CITY to enforce the provision later or to enforce any other provision of this Agreement.

Q. Non-Waiver of Right.

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any default or right to which the party is entitled, nor does it in any way affect the right of the party to enforce such provisions thereafter.

ATTACHMENT A – DRAFT MASTER AGREEMENT

R. Implied Contract Terms

Each and every provision of law and any clause required by law to be in this Agreement must be read and enforced as though it were included in the Agreement, and if any such provision is not inserted or is not correctly inserted, then upon either party's request the Agreement must be promptly amended to insert the correct provision.

S. Severability

This Agreement's provisions are severable, and if any provision is deemed invalid by a forum of competent jurisdiction, all other provisions of the Agreement remain in effect without the invalid provision.

T. Organization Disclaimer

This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture agreement or partnership between the parties or any other formal business organization, and the parties have only the rights and obligations set forth in the Agreement. No person, employee, subcontractor, or supplier of CONTRACTOR may be considered a CITY employee, and no CITY civil service, retirement, or personnel rights or privileges accrue to such persons. CONTRACTOR assumes all liability for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, occupational disease compensation, unemployment compensation, other employee benefits, and all related taxes and premiums for such persons. CONTRACTOR shall defend and indemnify CITY against all of these liabilities.

SECTION 13. TERMINATION OF SERVICES.

A. Termination by Mutual Agreement. The Agreement may be terminated at any time by mutual written consent of the parties. Such termination shall be effective in accordance with a written agreement by the parties. Any other act of termination shall be in accordance with the termination by convenience or default provisions contained in Sections 13 (B) and 13(C).

B. Termination for Convenience. This Contract may be terminated by the CITY, with or without cause, upon giving 30 days' 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. CONTRACTOR 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.

Upon receipt of a Notice of Termination (defined below), CONTRACTOR shall immediately consult with CITY about the goods and materials on order then or that are in place and about CONTRACTOR's plan to proceed with the work had the Agreement not been terminated. After this consultation, CONTRACTOR shall take whatever action CITY may direct related to the Agreement, including cancelling orders; retaining, selling or otherwise disposing of goods and materials; and winding up work or continuing to prosecute it.

C. Termination for Cause. Subject to CONTRACTOR's right to cure under the provisions of Section 13(E), Opportunity to Cure, if CONTRACTOR: (a) fails to provide any of the

ATTACHMENT A – DRAFT MASTER AGREEMENT

deliverables specified in this Agreement within the time specified or any extension; or (b) fails to perform any other material provision of this Agreement, CITY may terminate the Agreement for cause. Failure to perform includes any attempt by CONTRACTOR to use unacceptable personnel or supply materials, to provide defective products or workmanship, or to furnish the required service and/or product later than the time set forth in the Agreement.

If, after termination for cause, it is determined that CONTRACTOR was not in default or that a delay was excusable, then the termination shall be deemed a termination for convenience, and CITY may, in its sole discretion, require CONTRACTOR to continue performance of this Agreement and, if appropriate under the circumstances, allow additional time for performance to be completed, and pay CONTRACTOR its costs of delay, demobilization, and remobilization, if appropriate.

- D. Notice of Termination. CITY shall give CONTRACTOR 30 days' prior written notice before terminating CONTRACTOR for convenience or for cause. To effect either termination, CITY shall deliver a written notice of termination ("**Notice of Termination**") to CONTRACTOR specifying: (a) the nature of the default, if any; (b) the nature of the termination, i.e., whether for convenience or cause; (c) the date upon which the termination takes effect.
- E. Opportunity to Cure. Before termination for cause, as provided in Section 13(C), the Procurement Officer, after consultation with CONTRACTOR, will deliver to CONTRACTOR a written notice to cure ("Notice to Cure") and allow CONTRACTOR 30 calendar days (or such other period identified in the Notice to Cure) within which CONTRACTOR shall correct and cure the defect. Upon receiving the Notice to Cure, CONTRACTOR shall diligently pursue the cure to completion. The Notice to Cure shall state the time period within which cure is permitted together with other reasonable conditions.

If CONTRACTOR fails to correct and cure the breach or default within the time allotted in the Notice to Cure, then CITY may terminate this Agreement by delivering a Notice of Termination for Cause in accordance with Section 13(C), Termination for Cause.

Any termination for cause will not preclude CITY from also pursuing all other available remedies against CONTRACTOR and its sureties for the default or breach.

SECTION 14. CONFIDENTIALITY AND DATA SECURITY.

- A. 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. Except as specifically provided in this Agreement, 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.
- B. Personal identifying information, financial account information, protected health information, or restricted CITY information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, CONTRACTOR must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices, handheld devices, networking

ATTACHMENT A – DRAFT MASTER AGREEMENT

devices, removable storage devices, or other electronic media, as well as data in transit, such as during email or file transfer.

When personal identifying information, financial account information, protected health information, or restricted CITY information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. CONTRACTOR must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal. This includes implementing and monitoring compliance with policies and procedures that require the redaction, destruction, erasure, or other disposal of paper documents and electronic media containing personal identifying information, financial account information, protected health information, or restricted CITY information so that these types of information cannot practicably be read or reconstructed. CONTRACTOR will provide the CITY with its information security policies and procedures regarding the redaction, destruction, erasure, or other disposal of documents and information.

- C. In the event that data collected or obtained by CONTRACTOR in connection with this Agreement is suspected to have been compromised, CONTRACTOR shall notify the contracting CITY department immediately. CONTRACTOR agrees to reimburse the CITY for any costs incurred by the CITY to investigate and respond to potential breaches of this data, including, where applicable, the cost of notifying individuals who may be impacted by the breach, attorneys' fees, and for any monetary damages or penalties the CITY is assessed. In case of a breach or critical breach of the CITY's information, it will be the CITY, not CONTRACTOR, that will inform any and all individuals affected by any such breach. Only upon prior written consent of the CITY, or at the specific direction of the CITY, will CONTRACTOR notify individuals affected by a breach or critical breach of the CITY's information.
- D. CONTRACTOR agrees that the CITY may assess or test the security of any applications, web services, or computerized systems created or provided by CONTRACTOR that process, store, or transmit CITY information. If the CITY finds vulnerabilities that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS) in these applications, web services, or computerized systems, CONTRACTOR agrees to remediate the vulnerability at no cost to the CITY and within an agreed-upon timeframe not to exceed 90 days. To clarify, CONTRACTOR must remediate found vulnerabilities in computerized systems it provides; CONTRACTOR is not liable for remediating any vulnerability found in the CITY's network or computing infrastructure used to support the applications, web services, or systems created or provided by CONTRACTOR.
- E. CONTRACTOR agrees to abide by all current applicable legal and industry data security and privacy requirements. These include, but are not limited to, Arizona Revised Statutes § 44-7501 (Notification of breach of security system); Arizona Revised Statutes § 44-7601 (Discarding and disposing of records containing personal identifying information); Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules; Health Information Technology for Economic and Clinical Health (HITECH) Act; and Payment Card Industry Data Security Standards.

ATTACHMENT A – DRAFT MASTER AGREEMENT

- F. CONTRACTOR agrees to demonstrate it has adequate controls and safeguards for hosting or processing personal identifying information, financial account information, protected health information, or restricted CITY information. This may be accomplished through a third-party audit utilizing a widely recognized auditing standard, such as Statement on Standards for Attestation Engagements (SSAE) No. 16, or through earning industry certification, such as ISO/IEC 27001.
- G. By signing and entering this Agreement, CONTRACTOR specifically acknowledges that it is responsible for the security of cardholder data that CONTRACTOR possesses or otherwise stores, processes, or transmits on behalf of the CITY. Additionally, CONTRACTOR must provide to the CITY a copy of CONTRACTOR's written Notice to customers that CONTRACTOR is responsible for the security of cardholder data that CONTRACTOR obtains and otherwise stores, processes, or transmits.
- H. 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.
- I. CONTRACTOR agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by CONTRACTOR. Any violation of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court, notwithstanding the parties have agreed to arbitrate other disputes under the Agreement. A violation of this section may result in immediate termination of Agreement without notice.
- J. CONTRACTOR shall defend, indemnify, and hold harmless the CITY and its officers, officials, agents, and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorney's and experts' fees, and cost of claims-processing, investigation, and litigation) for any loss caused, or alleged to be caused, in whole or in part, by CONTRACTOR's or any of its owners', officers', directors', agents', or employees' failure to comply with the requirements of this section. As used herein, "CONTRACTOR" shall include CONTRACTOR and any of its owners, officers, directors, agents, and employees. This indemnity includes any claim arising out of CONTRACTOR's failure to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree.
- K. The obligations of CONTRACTOR under this Section shall survive the termination of this Agreement.

SECTION 15. CONTACTS WITH THIRD PARTIES. CONTRACTOR or its subcontractors shall not contact third parties to provide any information in connection with the Deliverables provided under this Agreement without the prior written consent of the CITY. Should CONTRACTOR or its subcontractors be contacted by any person requesting information or requiring testimony relative to the Services provided under this Agreement or any other prior or existing Agreement with the CITY, CONTRACTOR or its subcontractors shall promptly inform the CITY, giving the particulars of the information sought, and shall not disclose such information or give such testimony without the written consent of the CITY or court order. The obligations of CONTRACTOR and its subcontractors under this Section shall survive the termination of this Agreement.

ATTACHMENT A – DRAFT MASTER AGREEMENT

CONTRACTOR agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by CONTRACTOR. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

SECTION 16. NON-DISCLOSURE. In addition to the confidentiality and data security requirements in Section 14 (Confidentiality and Data Security), CONTRACTOR shall not disclose, without the CITY's prior written consent, any information in the performance of the Services under this Agreement to any person, firm, corporation, association, or other entity other than persons in the CITY's organization qualified to receive such information, for any reason or purpose whatsoever, nor shall CONTRACTOR make use of any such confidential or proprietary information for its own purposes or for the benefit of any person, firm, corporation, or other entity, except the CITY.

CONTRACTOR agrees to act as a trustee of the foregoing information and as trustee of any other confidential information learned in connection by CONTRACTOR's relationship with the CITY. CONTRACTOR further represents to the CITY that, as an inducement to enter this Agreement, CONTRACTOR will hold this information in trust and confidence for the CITY's sole benefit and use.

Further, there shall be no dissemination or publication of any information gathered, or documents prepared in the course of the performance of the Services without the prior written consent of the CITY.

Should the CITY, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Agreement, then, and in that event, upon written demand, CONTRACTOR shall relinquish to the possession and control of the CITY its entire file related to this Agreement and only those portions of said file deemed by the CITY to be not privileged shall be returned to CONTRACTOR pending the resolution of the existing or anticipated litigation.

CONTRACTOR agrees that the requirements of this Section shall be incorporated into any subcontractor agreements entered into by CONTRACTOR. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. 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.

SECTION 17. EQUAL EMPLOYMENT OPPORTUNITY. 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.

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. 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

ATTACHMENT A – DRAFT MASTER AGREEMENT

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. 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-order agreements, or subleases of this Agreement entered into by supplier/lessee. CONTRACTOR further agrees not to discriminate against any worker, employee, or applicant, or any member of the public, because of sexual orientation, gender identity, or gender expression and shall ensure that applicants are employed, and employees are dealt with during employment, without regard to their sexual orientation, gender identity, or gender expression.

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

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.

SECTION 18. INTEGRATION. This Agreement, together with the Exhibits attached hereto and the RFP, constitutes the full and complete understanding and agreement of the parties and supersedes all prior understandings, agreements, discussion, proposals, bids, negotiations, communications, and correspondence, whether oral or written. Neither party has made any representation, promise, inducement, or statement of intention that is not embodied in this Agreement and neither party is bound by or liable for any matter not in the Agreement.

SECTION 19. GOVERNING LAW; FORUM; VENUE. This Agreement is executed and delivered in the state of Arizona, and the substantive laws of Arizona (without reference to choice-of-law principles) govern the Agreement's interpretation and enforcement. Any action to interpret or enforce this Agreement must be commenced and maintained in the state or federal courts of the state of Arizona, Maricopa County.

SECTION 20. FORCE MAJEURE. Except for payment of sums due for Services previously performed, 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.

SECTION 21. REPORTING REQUIREMENTS. CONTRACTOR shall collect data as required and provide periodic reports comparing the transit system's past and present performance and discussing various management goals and objectives as described in Section 5.14 of the Scope of Work set forth in **CONTRACT EXHIBIT A** and CONTRACTOR's Offer. Reports and required submissions may be revised, reorganized, deleted, or changed as directed by CITY.

SECTION 22. CONFLICTS OF INTEREST.

- A. CONTRACTOR acknowledges that, to the best of its knowledge, information, and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Phoenix City Council or any employee of the CITY has any financial interest in the contracting firm. For breach of violation of this warranty, CITY shall have the right to annul this Agreement without liability, including any such commission, percentage, brokerage, or contingent fee.
- B. If CITY finds that CONTRACTOR or anyone acting on its behalf offered or gave gratuities in the form of entertainment, gifts, or inducements to any CITY officer or employee for the purpose of securing this Agreement or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Agreement, CITY may, on one (1) calendar day written notice to CONTRACTOR, terminate CONTRACTOR's right to perform this Agreement; provided that the issue may be litigated in an Arizona court of competent jurisdiction. In the event of such termination, the CITY is entitled to the same remedies against CONTRACTOR as could be pursued for CONTRACTOR's default or breach.
- C. This Agreement is subject to cancellation by CITY pursuant to the provisions of Arizona Revised Statutes § 38-511.

SECTION 23. CLAIMS OR DEMANDS AGAINST THE CITY. CONTRACTOR shall comply with the provisions of Chapter 18, Section 14 of the Charter of the City of Phoenix, pertaining to claims or demands against the CITY, including provisions therein for set-off of indebtedness to the CITY against demands on the CITY. CONTRACTOR shall follow the prescribed procedure for presentation of claims and demands. In addition, CONTRACTOR shall comply with the claim statutes, A.R.S. §§ 12-821 and 12-821.01, pertaining to claims against CITY.

Nothing in this Agreement constitutes a dispute resolution process, an administrative claims process, or contractual term as used in A.R.S § 12-821.01(C) to affect the date on which a claim accrues under A.R.S § 12-821.01(A) and (B).

SECTION 24. DOCUMENT CONFIDENTIALITY. If CONTRACTOR believes that any document it provides to CITY is confidential, the CONTRACTOR shall mark the section "CONFIDENTIAL" and segregate it in a specific manner. CONTRACTOR may request that specific information within provided documents be treated by the CITY as confidential provided the CONTRACTOR clearly labels the information "confidential." CONTRACTOR shall state the basis for considering the marked section confidential, including the specific harm or prejudice that may result from disclosure.

ATTACHMENT A – DRAFT MASTER AGREEMENT

If a public records request for such information is received, the CITY will promptly notify the CONTRACTOR that a request or requirement to produce the documents has been received. Notice will be given as soon as practicable, and may include facsimile transmission, electronic mail, and/or regular mail. Immediately upon notification, the CONTRACTOR shall identify the documents that it desires to remain confidential. The CONTRACTOR may then take such measures as it deems necessary, at the CONTRACTOR's sole cost and expense, to protect the documents against disclosure. If the CONTRACTOR fails to obtain and provide to the CITY a court order prohibiting disclosure of the requested documents within seven (7) days after receiving notice of the request for disclosure, the CITY will deem the CONTRACTOR to have consented to the disclosure, and the requested documents or information may be disclosed by the CITY.

SECTION 25. RELEASE OF INFORMATION – ADVERTISING AND PROMOTION.

CONTRACTOR shall not publish, release, disclose, or announce to any member of the public, press, official body, or any other third party: (1) any information concerning this Agreement or the Services provided under it, or (2) any Agreement-related documents or their contents without the prior written consent of CITY, except as required by law. The name of any site on which Services are performed shall not be used in any advertising or other promotional context by CONTRACTOR without CITY's prior written consent.

SECTION 26. TRANSITION COOPERATION AGREEMENT. Upon the expiration, termination, or other conclusion of this Agreement and of CONTRACTOR's rights and obligations under the Agreement, the parties anticipate that CITY will select a successor provider to perform the same or similar work. The parties further acknowledge that the successor provider may be CONTRACTOR or another individual, firm, or entity.

If the successor provider is an individual, firm, or entity other than CONTRACTOR, then CONTRACTOR shall cooperate fully with the successor provider to effect a smooth and seamless transition. This cooperation must include, but is not limited to, the following:

- A. CONTRACTOR shall share and permit the copying of all books and records necessary or convenient for the successor provider to undertake its work. These records include, but are not limited to, maintenance records, inventory records, supplier contracts, and support Agreements.
- B. If original records are necessary for the successor provider to properly perform its legal obligations, CONTRACTOR shall provide the originals to the successor, and CONTRACTOR shall keep copies of them.
- C. CONTRACTOR shall execute documents necessary to effect a transfer of all contracts, goods, and Services.
- D. CONTRACTOR shall not sell, transfer, convey, or encumber any CITY assets or any of the assets to be transferred to the successor provider.
- E. CONTRACTOR shall maintain all inventory levels necessary for the successor provider to continue to perform the work.
- F. As CITY may direct, CONTRACTOR shall surrender to the successor provider or to CITY all CITY-owned real, personal, and/or intellectual property.
- G. CONTRACTOR shall inventory all property (real, personal or mixed) purchased or leased with CITY funds and all property in which CITY has an ownership or possessory interest. CONTRACTOR shall include a description of the property and its location in sufficient detail to permit easy identification.

ATTACHMENT A – DRAFT MASTER AGREEMENT

Until the date that the successor provider assumes its position, CONTRACTOR shall fully and conscientiously perform its obligations under this Agreement in a professional and workmanlike manner.

If CITY elects to perform the same or similar work using CITY forces, CONTRACTOR's duty of cooperation, as described above, shall extend to CITY as the successor provider.

SECTION 27. COMPLIANCE WITH ENVIRONMENTAL LAWS. CONTRACTOR shall comply with all provisions of **CONTRACT EXHIBIT E.**

SECTION 28. EFFECTIVE DATE. This Agreement will be in full force and effect only when it has been approved by the City Council of the City of Phoenix, Arizona, executed by the duly authorized officials of the respective parties, and filed with the Phoenix City Clerk.

SECTION 29. EXHIBITS; INCORPORATION BY REFERENCE. The RFP, addenda and CONTRACTOR's Offer are incorporated into this Agreement by reference as if set out in full herein. The following attached Exhibits are each by this reference also incorporated into this Agreement.

Exhibit "A"	Technical Specification
Exhibit "B"	Price Proposal
Exhibit "C"	Insurance Requirements
Exhibit "D"	FTA Required Clauses
Exhibit "E"	Compliance with Environmental Laws

ATTACHMENT A – DRAFT MASTER AGREEMENT

IN WITNESS WHEREOF, the parties herein have caused this Agreement to be executed in triplicate originals.

CITY OF PHOENIX, ARIZONA
ED ZUERCHER, CITY MANAGER

By _____
Jesús Sapien
Public Transit Director

ATTEST:

City Clerk

APPROVED AS TO FORM:

Acting City Attorney

APPROVED BY CITY COUNCIL ORDINANCE NO. _____ on _____

ATTEST:

By _____

ATTACHMENT A – DRAFT MASTER AGREEMENT

**CONTRACT EXHIBIT A
SCOPE OF WORK**

(Scope of Work attached as Section V of the RFP)

ATTACHMENT A – DRAFT MASTER AGREEMENT

**CONTRACT EXHIBIT B
PRICE PROPOSAL**

(Price Proposal to be completed based upon the Offer accepted and awarded by the City)

ATTACHMENT A – DRAFT MASTER AGREEMENT

**CONTRACT EXHIBIT C
INSURANCE REQUIREMENTS**

(Insurance requirements as stated in Sections 4.3 and 4.4 of RFP PTD19-007)

**CONTRACT EXHIBIT D
FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED CLAUSES**

This Agreement is being funded, in whole or in part, with federal funds through the Federal Transit Administration (FTA). As a consequence of that funding, the FTA mandated provisions, listed below by title, are incorporated into this Agreement. The clauses are fully stated in Section 6 of RFP PTD19-007.

1. **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**
2. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**
3. **ACCESS TO RECORDS AND REPORTS**
4. **FEDERAL CHANGES**
5. **CIVIL RIGHTS AND REGULATIONS**
6. **TERMINATION**
7. **INCORPORATION OF FTA TERMS**
8. **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**
9. **BUY AMERICA**
10. **VIOLATION AND BREACH OF CONTRACT**
11. **LOBBYING RESTRICTIONS**
12. **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**
13. **CARGO PREFERENCE REQUIREMENTS**
14. **FLY AMERICA**
15. **EMPLOYEE PROTECTIONS**
16. **SAFE OPERATIONS OF MOTOR VEHICLES**
17. **CHARTER SERVICE**
18. **SCHOOL BUS OPERATIONS**
19. **TEXT MESSAGING WHILE DRIVING**
20. **SUBSTANCE ABUSE REQUIREMENTS**
21. **ENERGY CONSERVATION**
22. **RECYCLED PRODUCTS**
23. **TRAFFICKING IN PERSONS**
24. **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

**CONTRACT EXHIBIT E
COMPLIANCE WITH ENVIRONMENTAL LAWS**

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

A. DEFINITIONS

1. "Environmental Laws" means those laws promulgated for the protection of human health or the environment, including but not limited to, the following as the same are amended from time to time: the **Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA]**, 42 U.S.C. Sections 9601 et seq., as amended by the **Superfund Amendment and Reauthorization Act [SARA]**; the **Solid Waste Disposal Act [SWDA]**, 42 U.S.C. Sections 6901 et seq., as amended by the **Resource Conservation and Recovery Act [RCRA]** including Subtitle I, Underground Storage Tanks; the **Toxic Substances Control Act [TSCA]**, 15 U.S.C. Sections 2601 et seq.; the **Public Health Service Act (Title XIV) [PHSA]** a.k.a. the **Safe Drinking Water Act [SDWA]** and SDWA Amendments of 1996, 42 U.S.C. Sections 300f et seq.; the **Federal Water Pollution Control Act [FWPCA]**, as amended by the **Clean Water Act**, 33 U.S.C. Sections 1251 et seq.; the **Clean Air Act**, 42 U.S.C. Sections 7401 et seq.; **Title 49 of the Arizona Revised Statutes**, including the **Arizona Environmental Quality Act**, A.R.S. Sections 49-201 et seq.; the **Arizona Hazardous Waste Management Act**, A.R.S. Sections 49-921 et seq.; the **Arizona Underground Storage Tank Regulation Act**, A.R.S. Sections 49-1001 et seq.; the **Arizona Solid Waste Management Act**, A.R.S. Section 49-701 et seq.; the **Occupational Safety and Health Act of 1970** as amended, 29 U.S.C. Sections 651-678 and the regulations promulgated thereunder, and, any other laws, regulations and ordinances (whether enacted by local, state or federal government) now in effect or hereafter enacted, that provide for the regulation or protection of human health or the environment, including the ambient air, ground water, surface water, and land use, including substrata soils.
2. In this Contract, the term "**regulated substances**" means:
 - a. Those substances identified or listed as a hazardous substance, pollutant, hazardous material, and petroleum in **CERCLA/SARA**; the **Hazardous Materials Transportation Act**, 49 U.S.C. Sections 5101 et seq.; **RCRA, Subtitle I, Regulation of Underground Storage Tanks**, 42 U.S.C. Sections 6991 through 6991i; **Clean Air Act**, 42 U.S.C. Section 7412 et seq.; and in any rule or regulation adopted to implement said statutes.
 - b. Those substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a hazardous, special, or solid waste in the **Arizona Environmental Quality Act**, A.R.S. Sections 49-201 et seq., including but not limited to, the **Water Quality Assurance Revolving Fund Act [WQARF]**, A.R.S. Sections 49-281 et seq.; the **Solid Waste Management Act**, A.R.S. Sections 49-701 et seq.; the **Underground Storage Tank Regulation Act**, A.R.S. Sections 49-1001 et seq.; A.R.S. Sections 49-851 through 49-868 pertaining to **Management of Special Waste**; the **Hazardous Waste Management Act**, A.R.S. Sections 49-921 et seq.; and in any rule or regulation adopted to implement said statutes.
 - c. All substances, materials, and wastes that are, or that become, regulated, or that otherwise are classified as hazardous or toxic, under any Environmental Law during

the term of this Contract.

3. The term “release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.
4. As used herein, the term “Premises” means CONTRACTOR’s leasehold and/or any part or portion of Transit facility or City owned property where CONTRACTOR or its employees or agents causes to occur a release of a regulated substance.
5. As used herein, the term “CONTRACTOR” means every consultant, lessee, sublessee, licensee, permittee, concessionaire, tenant, or other person, firm, or corporation occupying or using the Premises pursuant to an agreement and includes CONTRACTOR’s heirs, personal representatives, successors-in-interest, and assigns.

B. COMPLIANCE

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

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

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

water on or under the Premises or present in surface waters on or adjacent to the Premises.

2. Without limiting the foregoing, if the release by CONTRACTOR of any regulated substance on or under the Premises, or in surface waters on or adjacent to the Premises results in any contamination of the Premises or surface waters, CONTRACTOR shall promptly take all actions at its sole cost and expense that are necessary to mitigate any immediate threat to human health or the environment. CONTRACTOR shall then undertake any further action necessary to return the contaminated site to the condition existing prior to the introduction by CONTRACTOR of any regulated substance; provided that City's approval of such actions shall first be obtained. CONTRACTOR shall undertake such actions without regard to the potential legal liability of any other person; however, any remedial activities by CONTRACTOR shall not be construed to impair CONTRACTOR's rights, if any, to seek contribution or indemnity from another person.
3. CONTRACTOR shall, at CONTRACTOR's own cost and expense, make all tests, reports, and studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to CONTRACTOR's occupancy or use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment, and/or remediation plan that may be necessary due to any actual or potential spills or discharges of regulated substances on, under or from the Premises, or in surface waters on or adjacent to the Premises during the term of this Contract. At no cost or expense to City, CONTRACTOR shall promptly provide all information requested by City pertaining to the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

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

4. CONTRACTOR shall notify the Public Transit Director within twenty-four (24) hours upon learning of the following:
 - a. Any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or CONTRACTOR's occupancy or use of the Premises;
 - b. Any change in CONTRACTOR's activities on the Premises that will change or have the potential to change CONTRACTOR's or City's obligations or liabilities under Environmental Laws;
 - c. Any assertion of a claim or other occurrence for which CONTRACTOR may incur an obligation under this Section.
5. CONTRACTOR shall at its own expense obtain and comply with any permits or approvals that are required or may become required as result of any occupancy or use of the Premises by CONTRACTOR, its agents, employees, invitees, and assigns.

6. CONTRACTOR shall insert the provisions of this Exhibit E in any agreement or contract by which it grants a right or privilege to any person, firm, or corporation under this Contract.
7. CONTRACTOR shall obtain and maintain compliance with any applicable financial responsibility requirements of federal, state, and/or local law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a regulated substance and present evidence thereof to the City, as may be applicable.
8. CONTRACTOR shall take reasonable precautions to prevent other persons not acting under CONTRACTOR's authority from conducting any activity that would result in the release of a regulated substance on, under, or from the Premises or in surface waters on or adjacent to the Premises. CONTRACTOR shall also exercise due care with respect to any regulated substance that may come to be located on the Premises as a result of the actions of third parties who are not under CONTRACTOR's authority.
9. CONTRACTOR shall make its best efforts to minimize its production of a waste stream that includes regulated substances, and shall minimize the storage of regulated substances on, in, and around the Premises.

C. TERMINATION OF AGREEMENT

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

1. The City of Phoenix may, at the City's election, keep this Contract in effect and enforce all of its rights and remedies under the Contract, including (1) the right to recover rent and other sums as they become due by appropriate legal action and/or (2) the right, upon ten (10) day's written notice to CONTRACTOR, to make payments required of CONTRACTOR or perform CONTRACTOR's obligations and be reimbursed by CONTRACTOR for the cost thereof, unless such payment is made or obligation performed by CONTRACTOR within such ten (10) day period.
2. The City of Phoenix may, at the City's election, terminate this Contract in accordance with the provisions of Section 13 (C).
3. Notwithstanding any other provision in this Contract to the contrary, the City shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties, and related fees or costs, arising from or related to a violation of Environmental Laws on, under, or from the Premises or in surface waters on or adjacent to the Premises, without waiving any of its rights under this Contract.
4. The exercise by the City of any of its rights under Section C of this Exhibit shall not release CONTRACTOR from any obligation it would otherwise have under this Exhibit.
5. The covenants of this Exhibit shall survive the termination of this Contract.