

CITY OF PHOENIX
TERMINAL DELIVERY SERVICE LICENSE AGREEMENT

between

THE CITY OF PHOENIX,
an Arizona municipal corporation

and

a _____ company,

Licensee

TABLE OF CONTENTS

SECTION 1 TERMINAL DELIVERY SERVICE1

SECTION 2 USE2

SECTION 3 LICENSE FEE.....2

SECTION 4 TERM.....3

SECTION 5 TERMINATION4

SECTION 6 IDEMNIFICATION.....4

SECTION 7 INSURANCE REQUIREMENTS4

SECTION 8 NOTICE5

SECTION 9 PERFORMANCE GUARANTEE.....6

SECTION 10 NO ASSIGNMENT7

SECTION 11 COMPLIANCE WITH LAWS7

SECTION 12 CITY'S RIGHT TO INSPECT8

SECTION 13 DAMAGE AND CUSTODIAL.....8

SECTION 14 BREACH AND REMEDIES FOR BREACH.....9

SECTION 15 NO WAIVER OR RELEASE10

SECTION 16 AIRPORT SECURITY PROGRAM.....10

SECTION 17 GENERAL PROVISIONS.....11

SECTION 18 SMALL BUSINESS PARTICIPATION15

EXHIBIT 1 MAPS OF EXISTING TERMINALS 3 AND TERMINAL 4 CONCESSIONS

EXHIBIT 2 INSURANCE REQUIREMENTS

EXHIBIT 3 SUPPLEMENTAL TERMS AND CONDITIONS TO ALL AIRPORT AGREEMENTS (REV. 2-1-19)

EXHIBIT 4 COMPLIANCE WITH ENVIRONMENTAL LAWS (Rev. 4-4-12)

EXHIBIT 4 Supp AZPDES STORMWATER GENERAL PERMIT COMPLIANCE (Rev. 4-4-12)

EXHIBIT 5 LETTER OF CREDIT FORM

EXHIBIT 6 CASH DEPOSIT FOR PERFORMANCE GUARANTEE FORM

EXHIBIT 7 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM RACE- AND GENDER-NEUTRAL CLAUSE

**CITY OF PHOENIX AVIATION DEPARTMENT
TERMINAL DELIVERY SERVICE LICENSE AGREEMENT
NO. _____**

This Terminal Delivery Service License Agreement (License) is made and entered into by and between the City of Phoenix, an Arizona municipal corporation (City), and _____, a _____ (Licensee). The City and Licensee are collectively referred to herein as the “Parties” and individually as a “Party.” This License is effective when signed by the City (Effective Date).

RECITALS

A. The City owns and operates Phoenix Sky Harbor International Airport (Airport) located in Phoenix, Arizona. The Airport includes Terminal 3 (T3) and Terminal 4 (T4).

B. The City desires to grant to Licensee the non-exclusive privilege to provide a terminal delivery service concession in T3 and/or T4 of the Airport (Terminal Delivery Service). Terminal Delivery Service is defined as the management, operation, and maintenance of a mobile phone application (App) that allows passengers, customers, and employees in T3 and T4 to order food, beverages, and retail items from certain Airport concessionaires with whom Licensee has a written Terminal Delivery Service agreement. Terminal Delivery Service includes the management, operation, and staffing necessary to deliver the food, beverages, and retail items to the customers who ordered them on the App from their locations in T3 and/or T4. The Terminal Delivery Service will allow Airport passengers to purchase and receive food, beverages, and retail items directly to their gates, hold rooms, and other locations by using the App.

C. The City desires to have food, beverage, and retail Terminal Delivery Service provided to passengers, customers, and employees in T3 and T4.

D. The City has solicited responses from Terminal Delivery Service concessionaries who have an existing operational mobile App with the ability to order and deliver food, beverages, and retail items to passengers, customers, and employees at T3 and T4.

AGREEMENT

THEREFORE, the Parties agree as followings.

SECTION ONE: TERMINAL DELIVERY SERVICE

1.1 The provisions of the Terminal Delivery Service Revenue Contract Solicitation (RCS) are incorporated into this License by this reference. If there is any conflict between any provision of the RCS and this License, then the provisions of this License shall control.

1.2 In order to conduct a Terminal Delivery Service at the Airport, Licensee must have and maintain at least one (1) written Terminal Delivery Service agreement with an existing food and beverage or retail concessionaire in T3 and/or T4 to deliver food, beverages, and/or retail items to customers, passengers, and employees in T3 and T4.

1.3 The Airport is open seven days a week, 365 days a year. Airport concessions open at least 90 minutes prior to the first scheduled flight departure and close at least 30 minutes after the last scheduled flight arrival. This License does not dictate the hours of operation for Licensee's Terminal Delivery Service. Hours of operation will be determined by Licensee and the concessionaires with whom Licensee has a Terminal Delivery Service agreement.

SECTION TWO: USE

2.1 The Recitals and attached Exhibits are material parts of this License and are incorporated herein by this reference.

2.2 The City hereby grants to Licensee a non-exclusive, revocable license to provide a Terminal Delivery Service in T3, or T4, or both. Licensee will use the Airport solely for the purpose of providing a Terminal Delivery Service. Licensee shall strictly comply with the provisions of this License. Licensee shall not use the Airport, or any part thereof, for any other use or purpose whatsoever without the City's prior written approval.

2.3 Licensee shall operate a Terminal Delivery Service in a manner that does not interfere with, obstruct, or delay the City's operation of the Airport.

2.4 Licensee shall not install, post, or erect any sign, poster, banner, flag, or other signage on or about T3, T4, or the Airport without the City's prior written approval. A request for signage shall be submitted to the City in writing. Licensee shall immediately remove all unapproved signage upon demand by the City. If the signage is not removed upon demand, then the City may remove the signage without liability to Licensee and at Licensee's expense.

SECTION THREE: LICENSE FEE

3.1 Not later than the twentieth (20th) day of each month during the Term of this License, Licensee shall pay to the City by a license fee equal to eight percent (8%) of Licensee's gross revenue from its Terminal Delivery Services provided during the preceding month (License Fee), plus all applicable taxes as may be adjusted by the taxing authority throughout the term of this Lease. The current tax rate is 2.9% for sales tax. Payment of the License Fee shall be accompanied by a sales report indicating the (A) total gross revenue from each customer for the period being reported, (B) name of the Airport concessionaire for whom the service was provided, (C) type of product delivered, (D) total number of deliveries, (E) the number of deliveries made by location,

and (F) ACDBE participation. The sales report may be in any other format the City deems necessary or appropriate. For purposes of computing License Fees, gross revenue means gross billings less only applicable sales taxes.

3.2 License Fees, Delinquent Account Fees (as that term is defined below), and other charges that become due must be paid to the order of the "City of Phoenix" and mailed or delivered to the City of Phoenix Aviation Department, P.O. Box 29110, Phoenix, AZ 85038-9110. The City may change the address for License Fee payments at any time and from time to time by giving Licensee at least thirty (30) days prior notice of the change. License Fees paid by mail are not considered paid until they are actually received by the City. Licensee assumes the risk of loss or delay and the imposition of Delinquent Account Fees if License Fees are not received by the City when due.

3.3 Without waiving any other right or remedy available to the City, if any License Fee or other amount due under this License is not received within ten (10) days of the due date, Licensee shall pay a Delinquent Account Fee assessed at the rate of eighteen percent (18%) per annum pursuant to Phoenix City Code § 4-7 (Delinquent Account Fees). Tenant shall pay Delinquent Account Fees from the date the amount became due until the amount is paid in full. Delinquent Account Fees shall be computed and accrued on a daily basis and assessed until the account balance, including Delinquent Account Fees, is paid in full. Delinquent Account Fees are due and payable upon demand by the City.

3.4 If any sales report is not received within ten (10) days of the due date, then Licensee shall pay one hundred dollars (\$100) per late sales report to the City as liquidated damages for the additional administrative costs incurred by the City in processing and reviewing delinquent sales reports. The Parties agree that the liquidated damage amount is a fair and reasonable estimate of the City's damages incurred in processing a delinquent sales report.

3.5 The expiration or earlier termination of this License will not relieve Licensee of its obligation to pay all License Fees, Delinquent Account Fees, and any other amounts that become due during the Term of this License.

SECTION FOUR: TERM

4.1 The Term of this License is three (3) years. The Term shall commence on _____, 202__ and shall expire on _____, 202__.

4.2 The Term is subject to one (1) two-year option to extend the Term, which may be exercised at the sole discretion of the City.

SECTION FIVE: TERMINATION

5.1 Either Party may terminate this License at any time and for any reason or no reason by giving notice to the other Party specifying the date of termination. The notice must be given at least thirty (30) days prior to the expiration of the Term of this License. On or before the termination date, Licensee must cease conducting its Terminal Delivery Service and leave the Airport in a clean and neat condition free of damage and debris related to Licensee's Terminal Delivery Service business.

5.2 If Licensee fails to obtain and maintain a Terminal Delivery Service agreement with an existing concessionaire in T3 or T4 at any time, then Licensee shall be deemed in material breach of this License and this License shall automatically terminate without notice from the City and without an opportunity to cure the breach. Licensee shall immediately cease conducting its Terminal Delivery Service and leave the Airport in a clean and neat condition free of damage and debris related to Licensee's Terminal Delivery Service business.

SECTION SIX: INDEMNIFICATION

Licensee (Indemnitor) must indemnify, defend, save, and hold harmless the City and its officers, officials, agents, and employees (Indemnitee) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs; attorney fees; and costs of claim processing, investigation and litigation) (Claims) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent, or willful acts, errors, or omissions of Indemnitor or any of its owners, officers, directors, agents, employees, or contractors arising out of or related to Indemnitor's occupancy and use of the Airport. This indemnity includes any Claim arising out of or recovered under the Workers' Compensation Law or arising out of the failure of Indemnitor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. Indemnitor must indemnify Indemnitee from and against any and all Claims, except those arising solely from Indemnitee's own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification applies. In consideration for the use and occupancy of the Airport, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from the use, occupancy, or condition of the Airport. The obligations of Indemnitor under this provision survive the termination or expiration of this License.

SECTION SEVEN: INSURANCE REQUIREMENTS

7.1 Licensee shall obtain and continuously maintain throughout the term of this License insurance against claims for injuries to persons and damage to property that arise out of or are related to Licensee's use or occupancy of the Airport or are caused by the acts, errors, or omissions of Licensee or its owners, officers, directors, managers, agents, employees, contractors, guests, and invitees. Licensee shall strictly comply with the provisions of **Insurance Requirements** marked **Exhibit 2** attached.

7.2 The City is not required to carry any insurance covering any of Licensee's personal property on the Airport. Licensee assumes the risk of any loss, damage, and claims related to its personal property on the Airport.

7.3 If Licensee fails to provide the City with a copy of the renewal insurance certificates required by the **Insurance Requirements** marked **Exhibit 2** attached or otherwise fails to procure and maintain the insurance required by this License, then the City, among other things, may procure and maintain such insurance without prior notice to Licensee. The City shall give Licensee notice of the City's payment of the premiums, the amounts paid, and the name of each insurer. Licensee shall reimburse the City for all deductibles, premiums, and other amounts paid by the City to procure and maintain the insurance upon demand.

7.4 Insurance requirements are subject to periodic review and adjustment by the City. The City may increase the amount of insurance coverage or change the insurance requirements by giving Licensee at least thirty (30) days' prior notice of the increase or change.

7.5 Licensee's failure to continuously maintain insurance during the Term of this License is an immediate material breach of this License. Licensee may cure its breach by obtaining a new or renewed policy within two (2) calendar days of the breach. The cure period shall run without prior notice from the City. The replacement policy or policies shall provide insurance coverage to the City for any liability arising during the lapsed or previously uncovered period.

7.6 Licensee shall require all its contractors and subcontractors, if any, to name the City as an additional insured to the same extent that the City is named as an additional insured under this License.

SECTION EIGHT: NOTICE

8.1 All notices, consents, approvals, and other communication (collectively, notices) between the City and Licensee that are required under this License shall be in writing and given by (A) personal delivery, (B) email with return receipt requested (read receipt), (C) facsimile transmittal with delivery confirmation, (D) prepaid delivery to any commercial air courier or express delivery service, or (E) registered or certified mail, postage prepaid and return receipt requested, through the United States Postal Service.

8.2 Notices to the City shall be sent to:

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

8.3 Notices to Licensee shall be sent to:

Company Name

Address 1

Address 2

ATTN: Contact Name

Facsimile: _____

Email: _____

8.4 Notice given in compliance with this Section is deemed received (A) on the day it is personally served, (B) on the day it is sent by email, (C) on the day it is sent by facsimile transmittal, (D) two (2) days after it is deposited with any commercial air courier or express delivery service, or (E) five (5) days after it is sent by registered or certified mail as above provided. Any time period stated in a notice shall commence on the date the notice is deemed received. Actual notice is not required.

8.5 If notice is sent by e-mail or facsimile transmittal, then a paper copy shall be sent by prepaid regular first-class mail through the United States Postal Service to the Party at the address listed above. Duplicate notice is merely a courtesy and does not change or extend the effective date of the notice. The failure to receive the duplicate notice does not affect the validity of the notice sent by email or facsimile transmittal.

8.6 If either Party changes the person or address for notice, then the Party making the change shall give notice of the change to the other Party in compliance with this Section. Unless there is a proper change of address, the Parties are not required to give notice to any person or address other than as set forth above. A Party may not raise failure of or of defect in Notice as a defense if the Party failed to give the other Party proper notice that it had changed the person or address for notice.

8.7 Notice given orally is invalid, and a notice may not be proven with parol evidence.

SECTION NINE: PERFORMANCE GUARANTEE

9.1 Licensee shall provide and maintain during the Term of this License a performance guarantee in the form of an irrevocable standby letter of credit (LOC) guaranteeing the full and faithful performance by Licensee of all the terms and conditions of this License, including security for payment by Licensee of all claims by the City. The amount of the performance guarantee for this License shall be \$_____. The City may increase the amount of the performance guarantee by giving notice to Licensee at least 30 days prior to the increase. The City may draw or make a claim against the performance guarantee for Licensee's failure to perform according to the provisions of this License. If the City draws or makes a claim on the performance guarantee, Licensee shall replenish the performance guarantee to

its original amount within thirty (30) days of the City's draw or claim. The performance guarantee shall be in place for the entire Term of this License. Licensee's failure to provide and maintain a performance guarantee shall be deemed a material breach of this License.

9.2 If the performance guarantee is in the form of a LOC, Licensee will use the City's approved **LOC Form** marked **Exhibit 5** attached. The LOC shall be issued by a local financial institution preferably in the Phoenix Metropolitan area in a form that is satisfactory to the City and the City must be able to draw upon the LOC at any of the financial institution's counters in the Phoenix Metropolitan area. Any modification to the City-approved LOC form must be approved in advance by the City. Unless the City receives a written extension of the LOC in a form acceptable to the City at least sixty (60) days before the end of the term of the LOC, then the City, without notice to Licensee, may draw upon the full amount of the LOC and retain all proceeds as a cash deposit performance guarantee pursuant to this Section. The City will not pay interest to Licensee on any performance guarantee.

9.3 If the performance guarantee is in the form of cash, Licensee will be required to execute a cash deposit performance guarantee agreement that sets out the terms and conditions for the posting and handling of the cash security and each Party's obligations. The required **Cash Deposit Performance Guarantee Agreement** is marked **Exhibit 6** attached. The City will not pay interest to Licensee on any performance guarantee.

SECTION TEN: NO ASSIGNMENT

The privileges and access rights granted to Licensee by this License are personal to Licensee and may not be assigned or transferred to any person or entity either voluntarily or by operation of law.

SECTION ELEVEN: COMPLIANCE WITH LAWS

11.1 Licensee shall comply with all Applicable Laws that apply to this License, to Licensee's activities under this License, and to Licensee's use and occupancy of the Airport. Upon request, Licensee shall provide the City with a copy of all permits, licenses, and other evidence of Licensee's compliance with such laws. As used in this License, "Applicable Laws" means all federal, state, and local laws, rules, regulations, ordinances, and FAA Advisory Circulars that apply to this License, the Airport, and/or Licensee's use or occupancy of the Airport, including all future amendments, supplements, and revisions to those laws. Applicable Laws also includes all covenants, restrictions, easements, and agreements related to the Airport and all applicable Airport Rules and Regulations and Chapter 4 of the Phoenix City Code.

11.2 Licensee agrees that the Airport is part of the national transportation system and, as such, is operated for the benefit of the public and is, from time to time, the recipient of federal funds for Airport purposes. As a recipient, the City is obligated to

make certain assurances to the FAA or other federal agencies that the City is in compliance with the requirements of federal law, which requirements also become the obligation of the City's contracting parties. Therefore, Licensee shall comply with the applicable requirements set forth in the **Supplemental Terms and Conditions to All Airport Agreements (Rev. 2/1/19)** marked **Exhibit 3** attached.

11.3 This License is subject and subordinate to any current and future agreement between the City and the FAA or any other federal agency related to the operation or maintenance of the Airport, including agreements that are required as a condition to the City receiving federal rights or property for Airport purposes or required in order for the City to spend federal funds to improve or further develop the Airport in accordance with the Federal Aviation Act of 1958 (Pub. L. No. 85-726, 72 Stat. 731) and 49 U.S.C. §§ 47101-47144. The City's federal grant assurances and affirmative action requirements are listed in the **Supplemental Terms and Conditions to All Airport Agreements (Rev. 2/1/19)** marked **Exhibit 3** attached.

11.4 Licensee shall comply with all current and future environmental laws that apply to this License, to Licensee's activities under this License, and to Licensee's use and occupancy of the Airport, including the requirements set forth in the **Compliance with Environmental Laws (Rev. 4/4/12)** marked **Exhibit 4** attached and the **AZPDES Stormwater General Permit Compliance (Rev. 4/4/12)** marked **Supplement to Exhibit 4** attached.

11.5 According to Aviation Department's Minimum Standards (Rule & Regulation 02-01 to 02-5) and Notice of Violation Program (Rule & Regulation 03-07), this License is subject to suspension or revocation for any violation of the Aviation Department's Rules and Regulations, including the failure to comply with any Applicable Law.

SECTION TWELVE: CITY'S RIGHT TO INSPECT

The City may inspect Licensee's Terminal Delivery Service at any time and without prior notice in order to determine whether Licensee is in compliance with the provisions of this License and Applicable Laws.

SECTION THIRTEEN: DAMAGE AND CUSTODIAL

13.1 Licensee shall use the Airport in a prudent manner so as not to cause any damage to it. Licensee, at its expense, must repair any damage it or its owners, officer, directors, managers, agents, employees, contractors, guests, and invitees cause to the Airport. Licensee is responsible for all loss or damage to any of its personal property and equipment located on the Airport.

13.2. Licensee is responsible for all custodial and janitorial services associated with its Terminal Deliver Service at the Airport. Licensee shall promptly remove and

properly dispose of all trash, soda cans, paper, food products, and other debris related to its Terminal Delivery Service.

SECTION FOURTEEN: BREACH AND REMEDIES FOR BREACH

14.1 Events of Breach. The occurrence of any of the following events shall be deemed a material breach of this License by Licensee:

A. License fails to pay any License Fee or any other amount when due and the failure continues for ten (10) days after notice from the City.

B. Except for the events of breach listed below, Licensee fails to perform any non-monetary obligation under this License and the failure continues for ten (10) days after notice from the City.

C. Tenant's use or occupancy of the Airport creates a condition that the City determines is a danger to the health, safety, or welfare of the Airport or the public and Licensee fails to correct the condition to the City's satisfaction within one (1) day after notice from the City.

D. Licensee or its trustees, owners, officers, directors, managers, agents, employees, contractors, guests, and invitees cause any lien or encumbrance to be filed or recorded against the Airport that is not completely discharged and released within ten (10) days after the date the lien or encumbrance was filed or recorded.

E. Licensee files a voluntary petition in bankruptcy; is adjudicated bankrupt or insolvent; takes the benefit of any law applicable to bankrupt or insolvent debtors; files a petition or action seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any applicable law; seeks or acquiesces to the appointment of a trustee, receiver, or liquidator of all or a substantial part of Tenant's assets; or makes any general assignment for the benefit of creditors.

14.2. Remedies. Upon the occurrence of any breach by Licensee, the City may elect to do any or all the following:

A. File a civil action or actions to, among other things, enforce this License; recover all License Fees and other amounts due; recover all attorney fees, court costs, and other expenses incurred; and bar License from entering and using the Airport.

B. If the City determines that Licensee's default or breach involves a condition that endangers the health, safety, or welfare of the Airport or the public, then The City may, without prior notice, bar License from entering and using the Airport.

C. Terminate this License.

D. Exercise any and all other remedies allowed at law or in equity. The foregoing list of remedies is not exhaustive.

SECTION FIFTEEN: NO WAIVER OR RELEASE

15.1. The City's failure or delay in insisting on Licensee's strict performance of any provision of this License or to exercise any right or remedy upon Licensee's default or breach of this License is not and may not be construed as a waiver of the default, breach, or enforceability of the provision. The City's acceptance of any amount while Licensee is in default or breach of this License is not and may not be construed as a waiver of the default or breach. The City's rights and remedies under this License and Applicable Law can only be waived, altered, or modified by a written instrument signed by the City for that purpose. The City's waiver of a default or breach of any provision of this License by Licensee is not and may not be construed as a waiver of Licensee's subsequent default or breach of that provision or of Licensee's default or breach of any other provision.

15.2 The expiration or termination of this License will not relieve Licensee of its obligation to pay any License Fees and other amounts that accrued during the Term or during the period of time Licensee operated a Terminal Delivery Service on the Airport.

15.3 Except as otherwise expressly provided in this License, no event, occurrence, or situation, whether foreseen or unforeseen and however extraordinary, relieves Licensee of its obligation to pay all License Fees and other amounts due and that become due or relieves Licensee of any other obligation under this License.

SECTION SIXTEEN: AIRPORT SECURITY PROGRAM

The City has implemented an Airport Security Program (Program) that has been approved by Federal Aviation Administration (FAA) and Transportation Security Administration (TSA) in accordance with Title 49 of the Code of Federal Regulations, Part 1542, Subpart B (Airport Security Program) (49 C.F.R. §§ 1542.101-1542.113). The Program provides for the safety and security of persons and property on an aircraft operating in air transportation against acts of criminal violence, aircraft piracy, and the introduction of an unauthorized weapon, explosive, or incendiary onto an aircraft. The City reserves the right to modify the Program at any time the City deems appropriate and without notice to Licensee. Licensee shall comply with the Program, as it may be amended from time to time, and indemnify, defend, save, and hold harmless the City from and against any and all claims, actions, liabilities, damages, losses, and expenses arising out of a violation of the Program by Licensee or its owners, officers, directors, managers, members, agents, employees, contractors, guests, and invitees. Licensee shall maintain and, upon request, provide the City with an up-to-date list of its employees and contractors who are authorized to gain access to a restricted, secure, or sterile area of the Airport. Licensee shall immediately notify the City when any badged employee or contractor is no longer employed by Licensee, and Licensee shall

confiscate and return the employee's or contractor's media badge to the City. If the TSA or FAA, or any successor agency, requires any amendment, modification, revision, supplement, or deletion of any provision of this License as a condition to granting funds for the improvement of the Airport or otherwise, then Licensee shall consent to the amendment, modification, revision, supplement, and deletion to the extent necessary to satisfy the FAA or TSA requirement.

SECTION SEVENTEEN: GENERAL PROVISIONS

17.1 Amendments and Approvals. All approvals, consents, and amendments required by this License shall be in writing, signed by the Parties, and may not be established by oral testimony. This License cannot be modified or amended by any verbal agreement or communication with the City either before or after this License was entered into. Except as expressly provided in this License, where the City's approval or consent is required, the City may withhold its approval or consent in its sole discretion and its decision is final, non-appealable, and without liability to Licensee.

17.2 Attorney Fees and Costs. In any contested action related to or arising out of this License, the prevailing Party shall recover its attorney fees, court costs, and other expenses from the other Party. Where there are no competing claims, "prevailing Party" means the Party that substantially obtained the relief sought. Where there is any counterclaim, the prevailing Party is the net winner or the Party who prevailed in a totality of the litigation.

17.3 Business Certification. If Licensee is a trust, then Licensee certifies that it is authorized to do business in the state of Arizona. If Licensee is a corporation, limited liability company, or other business entity regulated by the Arizona Corporation Commission (ACC), then Licensee certifies that it is authorized to do business in the state of Arizona, is in good standing with the ACC, and shall remain in good standing with the ACC throughout the Term of this License. If Licensee is a limited partnership or other business entity regulated by the Arizona Secretary of State (ASOS), then Licensee certifies that it is registered with the ASOS, is in good standing with the ASOS, and shall remain in good standing with the ASOS throughout the Term of this License. Licensee certifies that it is authorized to transact business in the state of Arizona and shall remain authorized throughout the Term of this License. Licensee certifies that the person signing this License on its behalf is authorized to bind Licensee to this License.

17.4 City Council Approval and Cancellation. This License is subject to prior approval by the Phoenix City Council and may be cancelled by the City pursuant to A.R.S. § 38-511.

17.5 Claims Against the City. Licensee agrees to comply with the procedures set forth in Chapter XVIII, § 14 of the Charter of the City of Phoenix (claims or demands against the City) and A.R.S. § 12-821 and § 12-821.01 (notice of claim statutes) for presenting claims or demands against the City. Nothing in this License constitutes a contractual term, an alternative dispute resolution procedure, or an administrative

claims process or review process, as those terms are used in A.R.S. § 12-821.01(C), so as to affect the date on which a cause of action accrues under A.R.S. § 12-821.01(A) and (B).

17.6 Continuation During Disputes. The Parties shall continue to perform under this License during any period of any dispute between them, unless enjoined by a court order. This provision does not apply to the City when Licensee is in default or breach of this License.

17.7 Damage to City Property. Licensee and its owners, officers, directors, managers, agents, employees, contractors, guests, and invitees shall not cause any damage to the Airport or any other City property. Licensee is liable for all damage caused by the wrongful, negligent, or willful acts or omissions of Licensee or its owners, officers, director, managers, members, agents, employees, contractors, guests, or invitees. Licensee shall repair any such damage at its expense and to the City's satisfaction.

17.8 Delinquent Account Fee. Without waiving any other right or remedy available to the City, if any License Fee or other amount required to be paid by Licensee to the City under this License is not received within ten (10) days of the due date, then delinquent account fees shall be assessed at the rate of eighteen percent (18%) per annum pursuant to Phoenix City Code § 4-7 (Delinquent Account Fees). Licensee shall pay Delinquent Account Fees from the date the amount became due until the amount is paid in full. Delinquent Account Fees shall be computed and accrued on a daily basis and assessed until the account balance, including Delinquent Account Fees, are paid in full. Delinquent Account Fees are due and payable upon demand by the City.

17.9 Entire Agreement. This License constitutes the entire agreement between the Parties and supersedes all prior written and oral agreements, understandings, discussions, proposals, negotiations, communications, representations, and correspondence related to this License. The Parties are not bound by any obligation not expressed in this License. Licensee certifies that it was not induced to enter into the License by any misrepresentation, undue influence, or coercion by the City or any of its offices, officials, agents, or employees.

17.10 Fair Interpretation. Licensee agrees that the rule that any ambiguous or vague language in a contract is construed against the drafter is waived and does not apply to this License. Licensee agrees that this License shall be interpreted fairly and not against the City simply because the City drafted this License.

17.11 Governing Law, Forum, and Venue. This License shall be interpreted and enforced according to the laws of the state of Arizona (without reference to choice of law principles). Any action or proceeding related to or arising out of this License shall be filed and maintained in a state or federal court located in Maricopa County, Arizona, and the Parties consent to the jurisdiction and venue of such courts. All Applicable

Laws referred to or cited in this License include all amendments and supplements thereto.

17.12 Headings. Headings for all articles, sections, and paragraphs are for reference only and shall not be construed to limit the content or scope of any provision of this License.

17.12 The City's Officials Not Liable. The City's officers, officials, agents, and employees are not personally liable to Licensee for any default or breach of this License by the City, are not liable for any amount that may become due to Licensee, and are not obligated to perform under any provision of this License.

17.13 National Emergency. This License is subject to the right of the United States to control, operate, and regulate the Airport and to use Airport property during the time of war or national emergency.

17.14 No Conflicts. Licensee represents to the City that the execution, delivery, and consummation of this License by Licensee is not prohibited by and does not conflict with any other agreement or instrument to which Licensee is a party or is otherwise subject. As of the Effective Date, Licensee further represents that it has not received any notice asserting that Licensee is not in compliance with any Applicable Law or other federal, state, or local agency having jurisdiction over this License or Licensee's use or occupancy of the Airport. Licensee further represents that it is not in default under any judgment, order, injunction, or decree of any court, administrative agency, or other governmental authority with respect to the Airport or the activities contemplated by this License.

17.15 No Exclusive Rights. Except as expressly provided in this License, Licensee has no right or privilege to exclusively conduct any activity on the Airport.

17.16 No Liability to Third Parties. The City has no liability to any third party for Licensee's negligence or failure to comply with any provision of this License, including any absence or inadequacy of insurance required to be carried by Licensee.

17.17 No Third-Party Beneficiaries. Except as expressly provided in this License, this License does not create and may not be construed to create any right in any person that is not a Party to this License.

17.18 Nuisances. Licensee shall not cause or allow any other person or entity to cause any nuisance, annoyance, or hazardous or potentially hazardous condition to exist on or to emanate out of its Terminal Delivery Service. Any such condition shall be immediately corrected by Licensee upon learning of the condition or upon receipt of oral or written notice from the City, whichever occurs first. Nothing in this provision precludes the City from pursuing any other remedy available to it under this License and any Applicable Law.

17.19 Recitals and Exhibits Incorporated. The Recitals and Exhibits attached to this License are material parts of this License and are incorporated herein by this reference.

17.20 Relationship of the Parties. The relationship of the Parties is solely that of licensor and licensee. Nothing in this License creates or may be construed to create a principal-agent, employer-employee, partnership, joint venture, or similar relationship between the Parties. Licensee agrees that it is not an agent or employee of the City. Licensee agrees that its employees and contractors are not employees of the City and that the City's civil service, retirement, or personnel rules and benefits do not accrue or apply to Licensee's employees or contractors. Licensee shall pay all salaries, wages, bonuses, retirement, withholdings, workers' compensation, unemployment compensation, other benefits, taxes, and premiums appurtenant thereto concerning Licensee's employees, and Licensee shall indemnify, defend, and hold harmless the City with respect thereto.

17.21 Right to Amend. If the FAA or any federal agency requires any amendment, modification, revision, supplement, or deletion of any provision of this License as a condition to granting funds to the City, then Licensee hereby consents to the amendment, modification, revision, supplement, or deletion to the extent necessary to satisfy the FAA's or other federal agency's requirements. At the City's request, Licensee shall execute and deliver to the City all instruments and other documents necessary to evidence its consent.

17.22 Right to Develop Airport. Licensee agrees that the City may improve and further develop the Airport and all landing areas and taxiways as the City deems necessary or appropriate, regardless of the desire or views of Licensee and without any interference or hindrance from Licensee.

17.23 Savings Clause. If any provision of this License is ruled invalid or unenforceable by a court, then the provision shall be modified to the extent necessary to make it valid or enforceable, if practicable. If a provision is ruled invalid or unenforceable, then the remaining provisions of this License shall remain unchanged and in full force and effect, provided that elimination of the provision by the court does not materially prejudice either Party's rights and obligations under this License, in which case this License will terminate.

17.24 Time is of the Essence. Time is of the essence in Licensee's payment of License Fees and other amounts due and the performance of all its other obligations under this License.

17.25 Support Space. The City may, but is not obligated, to make limited support and office space available to Licensee upon request. Support space, if available, will be charged at the rate for the terminal in effect at the time. The current terminal rate is \$135.72 per square foot and may be adjusted every year in July. Due to the limited amount of support space available in the terminals, Licensee may need to secure off-Airport storage and office space to support its operations.

SECTION EIGHTEEN: SMALL BUSINESS PARTICIPATION

18.1 This License is subject to ACDBE Program requirements issued by USDOT in 49 C.F.R. Parts 23 and 26. Despite the lack of a race- and gender-conscious ACDBE participation goal for this License, the City must track and report all Small Business participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving Small Business. For this reason, Licensee shall provide all relevant information to enable the required reporting.

18.2 The Airport has a national market for small business participation. Licensee shall fulfill all required small business outreach requirements and submit all required outreach efforts documentation set forth in the **Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Race- and Gender-Neutral Clause** marked **Exhibit 7** attached for the opportunities within 60 days of the Effective Date of this License or another date determined by the City.

18.3 Licensee shall provide a Small Business Participation Plan (Participation Plan) within 60 days following the Effective Date of this License for the City's approval, which shall not be unreasonably withheld. The Participation Plan shall contain strategies to foster small business participation and information concerning the small businesses, including names of firms and addresses.

18.4 Every year after the Effective Date of this License, Licensee shall provide to the City any material changes to the Equal Opportunity Department-approved Participation Plan.

18.5 Licensee is required to comply with Airport ACDBE Program Plan and 49 C.F.R. Parts 23 and 26. Licensee shall track and report all small business participation that occurs at the Airport as a result of a contract, procurements, purchase orders, subleases, JV, goods/services or other arrangements involving sub-tier participation. Such documentation must be entered monthly into the internet-based reporting program Business2Government (B2G) System at www.phoenix.diversitycompliance.com.

18.6 The City encourages Licensee to voluntarily utilize small businesses wherever possible in accordance with the service standards of this License.

18.7 Licensee agrees to maintain the level of Small Business participation outlined in the Equal Opportunity Department-approved Small Business Participation Plan throughout the Term of this License. Licensee agrees to notify the City of Phoenix Equal Opportunity Department of any changes in Small Business status, including level of participation, identity of Small Business Partners and suppliers of goods and services. Licensee agrees to use continued good faith efforts to maintain the participation of its Small Business partners in its concession(s) included in this License.

18.8 If, during the Term of this License, a Small Business Partner or supplier of goods and services is no longer available to conduct business with Licensee, then Licensee will be required to conduct outreach efforts to continue to achieve Small

Business participation in accordance with this License. The outreach efforts by Licensee must meet requirements of the City and the selection of the replacement partner or supplier of goods and services is subject to the approval of the City.

18.9 This License shall be subject to review for Small Business participation and goals may be established before any License extension.

18.10 Failure of Licensee to maintain its Small Business participation throughout the Term of this License, or to demonstrate that it has met the outreach requirements for a reduction in the amount of participation, is a material breach of this License.

(The remainder of this page is intentionally left blank.
The signature page follows.)

THEREFORE, the Parties cause this License to be executed.

LICENSOR
CITY OF PHOENIX, an Arizona municipal corporation
ED ZUERCHER, City Manager

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

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Acting City Attorney

LICENSEE
Name
Type of Business Entity

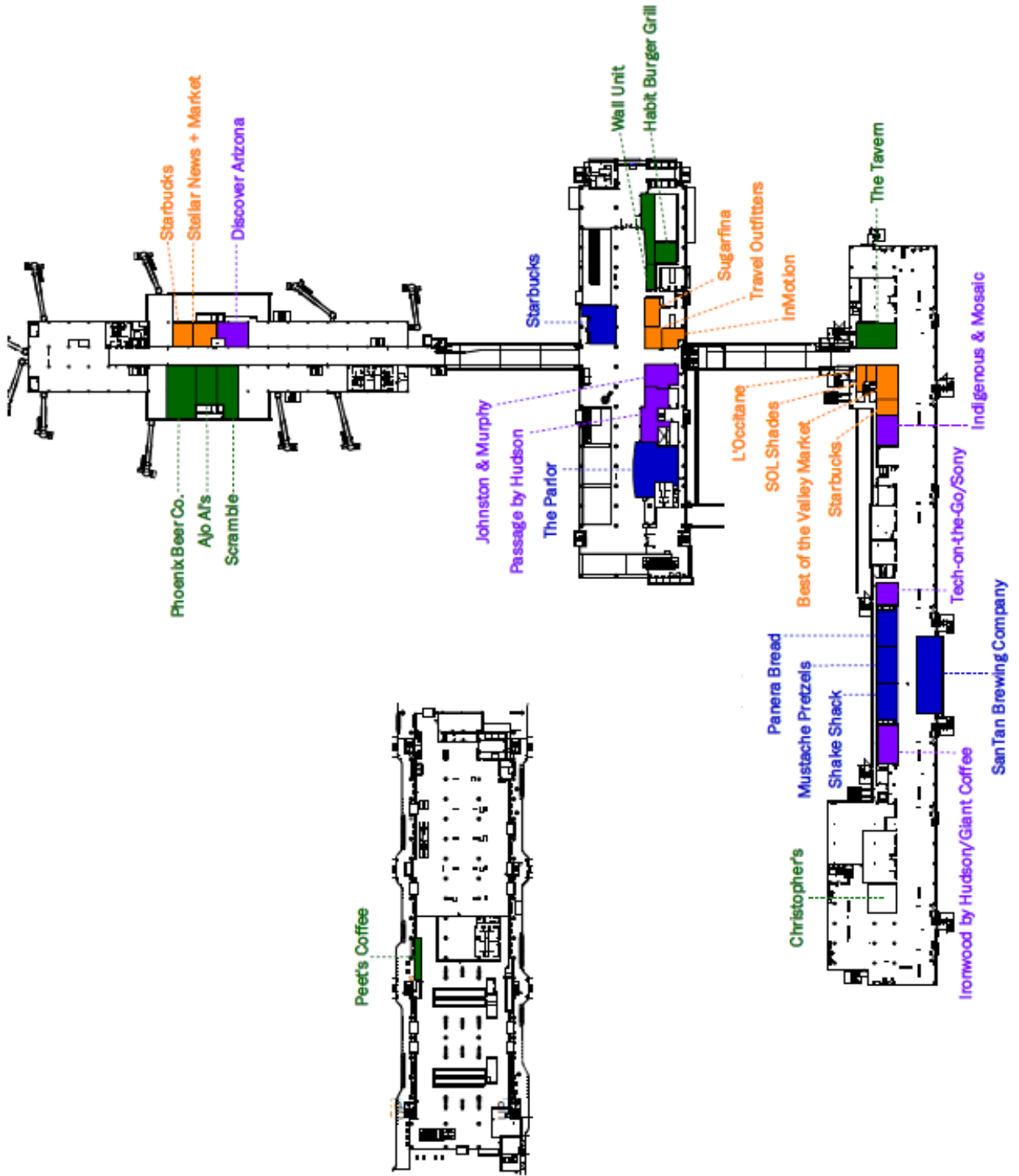
By: _____

Title: _____

Date: _____

EXHIBIT 1

MAP OF EXISTING TERMINAL 3 CONCESSION



- LEGEND:**
- Host International
 - SSP America
 - Hudson Group
 - Stellar Retail

**EXHIBIT 2
INSURANCE REQUIREMENTS**

Licensee shall procure and maintain for the duration of this License insurance against claims for injury to persons or damage to Property which may arise from or in connection with this License.

The insurance requirements herein are minimum requirements for this License and do not limit the indemnity covenants contained in this License. The City in no way warrants that the minimum limits contained herein are sufficient to protect Licensee from liabilities that might arise out of this License. Licensee is free to purchase such additional insurance as Licensee determines necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Licensee must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. Commercial General Liability – Occurrence Form

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

- Each Occurrence \$ 1,000,000
- General Aggregate \$ 2,000,000
- Products – Completed Operations Aggregate \$ 1,000,000
- Personal and Advertising Injury \$ 1,000,000
- Fire Damage (Damaged to Premises) \$ 100,000

a. The policy shall be endorsed to include the following additional insured language: **"The City of Phoenix shall be named as an additional insured with respect to liability arising out of the use and/or occupancy by Licensee of the Premises subject to this License."**

b. The policy shall not contain any restrictions of coverage with regard to operations on or near Airport Premises.

2. Automobile Liability

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

- Combined Single Limit (CSL) airside driving \$ 5,000,000
- Combined Single Limit (CSL) non-airside driving \$ 1,000,000

a. The policy shall not contain any restrictions of coverage with regard to operations on or near the Airport.

3. Worker's Compensation and Employer's Liability

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

a. Policy shall contain a waiver of subrogation against the City of Phoenix.

- b. This requirement shall not apply when a Licensee or sublessee is exempt under A.R.S. 23-901, **AND** when such Licensee or sublessee executes the appropriate sole proprietor waiver form.

4. Fidelity Bond or Crime Insurance – Employee Theft

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

Bond or Policy Limit One-month License Fee

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

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

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

C. NOTICE OF CANCELLATION: For each insurance policy required by the insurance provisions of this License, the Licensee must provide to the City within two (2) business days of receipt, a notice if a policy is suspended, voided or canceled for any reason. Such notice shall be electronically mailed, hard copy mailed, hand delivered, or sent by facsimile transmission to:

**City of Phoenix Aviation Department
c/o EXIGIS Insurance Compliance Services
P.O. Box 4668 – ECM #35050
New York, NY 10163-4668**

Email: certificates-cityofphoenix@riskworks.com

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

E. VERIFICATION OF COVERAGE: Licensee must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this

License. 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 prior to the Effective Date. Each insurance policy required by this License must be in effect at or prior to the Effective Date and remain in effect for the duration of the License. Failure to maintain the insurance policies as required by this License or to provide evidence of renewal is a material breach of contract.

All certificates required by this License shall be sent directly to:

**City of Phoenix Aviation Department
c/o EXIGIS Insurance Compliance Services
P.O. Box 4668 – ECM #35050
New York, NY 10163-4668**

Email: certificates-cityofphoenix@riskworks.com

The City project/License 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 License at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

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

- G. **APPROVAL:** Any modification or variation from the insurance requirements in this License will be made by the Law Department, whose decision will be final. Such action will not require a formal License amendment, but may be made by administrative action.

**EXHIBIT 3
SUPPLEMENTAL TERMS AND CONDITIONS
TO ALL AIRPORT AGREEMENTS**

1. Definitions

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

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

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

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

2. Federal Aviation Administration (FAA) Grant Assurances

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

During the performance of this Contract, Contractor agrees as follows:

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

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

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

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

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

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

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

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

G. Incorporation of Provisions. Contractor will include the provisions of paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, the Regulations, and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the City of Phoenix or the FAA may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, Contractor may request the City of Phoenix to enter into any litigation to protect the interests of the City of Phoenix. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

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

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

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

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

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

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

B. Charge reasonable, and not unjustly discriminatory prices for each unit or services, provided that Contractor may be allowed to make reasonable and non-

discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City of Phoenix shall have the right to terminate this Contract and any estate created herewith without liability therefor or, at the election of the City of Phoenix or the United States shall have the right to judicially enforce said requirement.

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

A. Contract Assurance (§ 26.13). To the extent that this Contract is covered by 49 C.F.R. Part 26, Contractor agrees that this Contract is subject to the requirements of the U.S. Department of Transportation regulations at 49 C.F.R. Part 26. Contractor or its subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City of Phoenix deems appropriate, which may include (i) withholding monthly progress payments, (ii) assessing sanctions, (iii) liquidated damages, and/or (iv) disqualifying Contractor from future bidding as non-responsible. Contractor agrees to include the foregoing statement in any subsequent contract that it enters into and cause those businesses to similarly include the statement in further agreements.

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

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

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

2.6 Miscellaneous

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

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

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

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

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

F. Contractor agrees to comply with the notification and review requirements, as required by 14 C.F.R. Part 77 (Safe, Efficient Use, and Preservation of the Navigable Airspace), if future construction of a structure is planned for the Premises or a planned modification of a structure on the Premises. Contractor shall submit the required FAA Form 7460-1 (Notice of Proposed Construction or Alteration) and provide

documentation showing compliance with the federal requirements. After the FAA has completed the aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself and its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree on the Premises above the mean sea level elevation for (1) Phoenix Sky Harbor International Airport, 1,134 feet, (2) Phoenix Goodyear Airport, 968 feet, and (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and remove the offending structure or cut the offending tree at Contractor's expense.

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

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

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

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

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

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

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

4. Conflict of Interest

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

5. Legal Worker Requirements

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

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

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

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

6. City of Phoenix Equal Employment Opportunity Requirement

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

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

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

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

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

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

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

7. Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Contract, Contractor agrees to comply with all federal, state, and local nondiscrimination laws, rules, and regulation, including the following:

A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) (prohibits discrimination on the basis of race, color, or national origin).

B. 49 C.F.R. Part 21 (Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964).

C. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §§ 4601, *et seq.*) (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal aid programs and projects).

D. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 701, *et seq.*), as amended (prohibits discrimination on the basis of disability), and 49 C.F.R. Part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance).

E. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101, *et seq.*) (prohibits discrimination on the basis of age). Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex).

F. The Civil Rights Restoration Act of 1987 (Public Law 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973 by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, sub-recipients, and contractors, whether the programs or activities are federally funded or not).

G. Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, *et seq.*), which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities as implemented by U.S. Department of Transportation regulations at 49 C.F.R. Part 37 (Transportation Services for Individual with Disabilities) and Part 38 (Americans with Disabilities Act Accessibility Specification for Transportation Vehicles).

H. Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.

I. Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency) and resulting agency guidance and national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100).

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

2068157
Revised 2/1/19

EXHIBIT 4
COMPLIANCE WITH ENVIRONMENTAL LAWS

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

A. DEFINITIONS

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

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

- a. Those substances identified or listed as a hazardous substance, pollutant, hazardous material, and, petroleum, in **CERCLA/SARA**; the **Hazardous Materials Transportation Act**, 49 U.S.C. Sections 5101 et seq.; **RCRA, Subtitle I, Regulation of Underground Storage Tanks**, 42 U.S.C. Sections 6991 through 6991i; **Clean Air Act**, 42 U.S.C. Section 7412 et seq.; and in any rule or regulation adopted to implement said statutes.
- b. Those substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a hazardous, special, or solid waste in the

Arizona Environmental Quality Act, A.R.S. Sections 49-101 et seq., including but not limited to, the **Water Quality Assurance Revolving Fund Act [WQARF]**, A.R.S. Sections 49-281 et seq.; the **Arizona Comprehensive Air Quality Act**, A.R.S. Sections 49-401 et seq.; the **Arizona Solid Waste Management Act**, A.R.S. Sections 49-701 et seq.; the **Arizona Underground Storage Tank Regulation Act**, A.R.S. Sections 49-1001 et seq.; A.R.S. Sections 49-851 through 49-868 pertaining to **Management of Special Waste**; the **Arizona Hazardous Waste Management Act**, A.R.S. Sections 49-921 et seq.; and in any rule or regulation adopted to implement said statutes.

c. All substances, materials and wastes that are, or that become, regulated, or that otherwise are classified as hazardous or toxic, under any Environmental Law during the term of this Contract.

3. The term “release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

4. As used herein, the term “Premises” means Contractor’s leasehold and/or any part or portion of Phoenix Sky Harbor International Airport (PSHIA), Phoenix Deer Valley Airport (DVT), Phoenix Goodyear Airport (GYR) or City owned property where Contractor or its employees or agents causes to occur a release of a regulated substance.

5. As used herein, the term “Contractor” means every consultant, lessee, sublessee, licensee, permittee, concessionaire, tenant or other person, firm or corporation occupying or using the Premises pursuant to an agreement and includes Contractor’s heirs, personal representatives, successors-in-interest and assigns.

B. COMPLIANCE

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

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

Contractor shall indemnify, defend and hold harmless, on demand, City of Phoenix (“City”), its successors and assigns, its elected and appointed officials, employees,

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

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

3. Contractor shall, at Contractor's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Contractor's occupancy or use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or remediation plan that may be necessary due to any actual or potential spills or discharges of regulated substances on, under or from the Premises, or to the air, groundwater or surface waters on or adjacent to the Premises during the term of this Contract. At no cost or expense to City, Contractor shall promptly provide all information requested by City pertaining to the applicability of

the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

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

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

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

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

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

7. Contractor shall obtain and maintain compliance with any applicable financial responsibility requirements of federal, state and/or local law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a regulated substance and present evidence thereof to the City, as may be applicable.

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

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

C. TERMINATION OF AGREEMENT

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

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

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

3. Notwithstanding any other provision in this Contract to the contrary, the City shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Laws on, under or from the Premises or in surface waters on or adjacent to the Premises, without waiving any of its rights under this Contract.

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

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

D. AZPDES STORMWATER GENERAL PERMIT COMPLIANCE SUPPLEMENT

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

Revised February 26, 2013

SUPPLEMENT TO EXHIBIT 4 AZPDES STORMWATER GENERAL PERMIT COMPLIANCE

With the exception of discharges on Indian Country, stormwater discharges in Arizona are regulated by the Arizona Department of Environmental Quality through the Arizona Pollutant Discharge Elimination System (AZPDES) program. An AZPDES permit is required for any point source discharge of pollutants to waters of the United States. Because stormwater runoff can transport pollutants to either a municipal separate storm sewer system (MS4) or to waters of the United States, AZPDES permits are required for stormwater discharges.

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

The City has obtained coverage under the AZPDES Multi-Sector General Permit for its "air transportation" facilities at Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport and Phoenix Goodyear Airport (collectively hereinafter referred to as the "Airports"). The City has adopted a Stormwater Quality Protection ordinance, Phoenix City Code Ch. 32C, and has in place an "Aviation Department Stormwater Enforcement Procedures and Civil Penalty Policy" ("Aviation Stormwater Policy"), both of which were developed to comply with federal and local laws governing stormwater pollution.

Compliance Generally

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

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

that are agreed to by the parties. Contractor acknowledges that time is of the essence in the implementation of all City Permit requirements.

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

AZPDES Construction General Permit

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

AZPDES Multi-Sector General Permit

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

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

In connection with its coverage under the AZPDES Multi-Sector General Permit, the City has developed a SWPPP for the Airports to minimize the contact of storm and other precipitation event water with "significant materials" (as defined in the Regulations and City Ordinances) generated, stored, handled or otherwise used on Airport facilities. The City shall provide a copy of the SWPPP, including Best Management Practices, Control

Measures, schedules, and procedures to Contractor, and Contractor shall implement that portion of the SWPPP applicable to its activities.

The City agrees that, to the extent allowed by law, Contractor shall have the right to be removed as a Co-Permittee from coverage under the AZPDES Multi-Sector General Permit should its Contract be canceled or terminated for other reasons, or due to Contractor's relocation, noncompliance with the AZPDES Multi-Sector General Permit requirements or Contractor's exercise of choice. In no event shall Contractor be relieved of its obligation to comply with the requirements of the AZPDES permit program with regard to its occupation and use of the Premises at the Airports, nor shall Contractor be excused from any obligations or indemnifications incurred and owed to City prior to Contractor's removal as a Co-Permittee that result from a failure of Contractor to fulfill an obligation of a Co-Permittee.

Pollution Controls

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

As used herein, "extreme emergency conditions" means:

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

Covenant of Good Faith

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

Indemnification

The covenants of insurance and indemnification in favor of City imposed by other provisions of the Contract shall extend to, and are incorporated into, the provisions of this Supplement to **Exhibit "4"**.

Revised April 4, 2012
968985

EXHIBIT 5

Letter of Credit Form

[BANK]

IRREVOCABLE STANDBY LETTER OF CREDIT
NO. _____

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

Applicant: Company Name

Amount: \$ xxx.xx

Expiration Date: mm/dd/yyyy

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

1. A certificate purportedly signed by Aviation Director, or by any other director of the City of Phoenix Aviation Department, stating one or more of the following:

A. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. _____ as Company Name has failed to perform its obligations under or failed to comply with its Agreement No. _____, or any amendments thereto, or any replacement agreement, and the City requires payment under this Standby Letter of Credit of \$ _____.

B. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. _____ as Company Name has failed to provide a replacement Standby Letter of Credit prior to sixty (60) days before the expiration date as required by its Agreement No. _____ or any amendments thereto, or any replacement agreement, and the City of Phoenix requires payment under this Standby Letter of Credit of \$ _____.

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

2. This original Standby letter of credit for endorsement.

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

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

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

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

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

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

[Bank]

By: _____
Authorized Signature

2021044
Revised 2/2018

EXHIBIT 6

CASH DEPOSIT FOR PERFORMANCE GUARANTEE

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

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

Date: [Insert Date]

Amount: [Insert Amount]

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

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

If [Insert Tenant Name] defaults with respect to any provision of the [Agreement No. TBD – dated] or [Permit No. _____], including but not limited to the provisions relating to payment of all amounts owed by [Insert Tenant Name] to City, the City may use, apply or retain all or any part of the performance guarantee for the payment of any amounts owed to the City or any other sum in default, or for the payment of any other amount which the City may spend or become obligated to spend by reason of the [Insert Tenant Name]'s default or to compensate the City for any other loss which the City may suffer by reason of the [Insert Tenant Name]'s default. If any portion of the performance

guarantee is so used or applied, [Insert Tenant Name] shall, within ten (10) business days after written demand from the City, deposit with the City cash in an amount sufficient to restore the performance guarantee to its original amount, and [Insert Tenant Name]'s failure to do so shall be a material breach of the [Agreement No. TBD – dated] or [Permit No. _____].

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

AGREED AND ACCEPTED:

By: _____
[Insert Tenant Full Legal Name]

Title: _____
Print

Name: _____
Print

Date: _____

1310931 rev. 8-24-18

EXHIBIT 7

Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Race- and Gender-Neutral Clause

A. SECTION I DEFINITIONS

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

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

Arizona Unified Certification Program (AZUCP) is a consortium of government agencies organized to provide reciprocal ACDBE and DBE certification within Arizona pursuant to 49 CFR Part 26. The official ACDBE and DBE database containing eligible ACDBE and DBE firms certified by AZUCP can be accessed at: www.adot.dbesystem.com. The certification system is called the Arizona Unified Transportation Registration and Certification System (AZ UTRACS).

City means the City of Phoenix.

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

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

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

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

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

EOD means the City of Phoenix Equal Opportunity Department.

Goods and Services Providers are firms that provide goods and services that represent a Commercially Useful Function directly to airport concessionaires as an ACDBE, DBE or small business.

Joint Venture (JV) means an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. For purposes of this Clause, one participant in the JV arrangement must be a certified ACDBE or DBE by an AZUCP member. The JV is limited in scope and duration to this License. The resources, asset and labor of the participants must be combined in an effort to accrue profit.

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

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

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

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

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

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

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

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

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

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

B. SECTION II GENERAL REQUIREMENTS

- A. **Applicable Federal Regulations.** This License is subject to ACDBE requirements issued by USDOT in 49 CFR Parts 26 and 23. Despite the lack of a race- and gender-conscious ACDBE participation goal for this License, the Agency must track and report ACDBE and DBE participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving an ACDBE or DBE. For this reason, the Successful Respondent shall provide all relevant information to enable the required reporting.
- B. **ACDBE Participation.** For this solicitation, the City has *not* established a race- or gender-*conscious* ACDBE participation goal. The City extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The City uses race- and gender-*neutral* measures to facilitate participation of Small Businesses. The City *encourages* each Respondent to voluntarily subcontract or joint venture with Small Businesses to perform part of the work—a Commercially Useful Function—that Respondent might otherwise perform with its own forces. The City also encourages each Respondent to voluntarily utilize Small Businesses as suppliers of Goods and Services.
- C. **Counting ACDBE and DBE Participation.** The City will count ACDBE and DBE participation as authorized by federal regulations. A summary of these regulations can be found at www.phoenix.gov/eod .
- D. **ACDBE and DBE Certification.** *Only* firms (1) certified by the City or another AZUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine ACDBE and DBE participation resulting from RGN measures on this License. This ACDBE and DBE determination affects the City’s tracking and reporting obligations to USDOT.
- E. **Civil Rights Assurances.** As a recipient of USDOT funding, the City has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each License signed by the City and the Successful Respondent, and each Subcontract signed by the Successful Respondent and a Subcontractor, must include the following assurance *verbatim*:

“The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or creed in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Parts 21 and 23 in the award and administration of USDOT- assisted contracts. Failure by the

contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Phoenix deems appropriate.”

Note: For purposes of the required Contract and Subcontract language above, the Successful Respondent is the “contractor.”

C. SECTION III REQUIRED OUTREACH EFFORTS

The City has implemented outreach requirements for this License. Specifically, each Respondent shall: (1) identify small-business-participation opportunities, including Commercially Useful Functions; (2) actively solicit proposals from small businesses; (3) evaluate small-business proposals; and (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal. If a Respondent fails to conduct these Outreach Efforts or fails to submit the required documentation of Respondent’s Outreach Efforts as indicated in Section IV, Parts A, B and C below, the City may determine that the Respondent’s proposal is *nonresponsive*. A determination of non-responsiveness *disqualifies* Respondent from further consideration for the License award.

D. SECTION IV SUBMITTAL REQUIREMENTS

Documentation due with initial Response.

A. Form EO1 – Statement of Outreach Commitment

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

B. Failure to Submit Form EO1

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

E. SECTION V POST-AWARD GENERAL REQUIREMENTS

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

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

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

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

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

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

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

1. Respondent shall submit with Form EO2 all supporting documentation of Respondent's contacts with Small Businesses for each scope of work or business opportunity selected for Small Business Outreach Efforts.
2. This documentation must include: (1) descriptions of scopes of work and business opportunities identified for Small Business participation, and (2) a copy of the actual solicitation sent to Small Businesses. The solicitation may be in the form of a letter, attachment to an e-mail, advertisements in newspapers and trade papers, or written communications with chambers of commerce and/or other organizations.

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

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

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

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

D. Failure to Meet Small Business Outreach Requirements. The Compliance Specialist will determine, in writing, whether Respondent has satisfied all outreach requirements. If the Compliance Specialist determines that Respondent has failed to satisfy the outreach requirements (specified in Sections III and IV, Parts A, B, and C), then the Compliance Specialist may determine that the Response is non-responsive. A non-responsive determination *disqualifies* Respondent from further consideration for the License award. The City shall send written notice to Respondent stating the basis for the Compliance Specialist’s decision.

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

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

Respondent in breach of the License.

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

The Successful Respondent's waiver request must contain the amount of relief being sought, evidence demonstrating why the relief is necessary, and any additional relevant information the Compliance Specialist should consider. The Successful Respondent shall include with the request all documentation of its attempts to subcontract with Small Businesses and any other action taken to locate and solicit a replacement Small Business.

- G. **Substitutions.** If a Small Business was approved by the City, but the firm subsequently loses its Small Business status before execution of a contract, the Compliance Specialist will consider whether or not the Successful Respondent has exercised diligent and good-faith efforts to find another Small Business as a replacement. The Successful Respondent shall notify the Equal Opportunity Department in writing of the necessity to substitute a Small Business and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a Small Business may not occur before the Compliance Specialist's written approval has been obtained.

H. SECTION VI. RECORDS & REPORTING REQUIREMENTS

Records. During performance of the License, the Successful Respondent shall keep all records necessary to document ACDBE, DBE and Small Business participation. The Successful Respondent shall provide the records to the City within 72 hours of the City's request and at final completion of the License. The City will prescribe the form, manner, and content of reports. The required records include:

1. A complete listing of all Subcontractors and suppliers on the project;
2. Each Subcontractor's and supplier's scope performed;
3. The dollar value of all subcontracting work, services, and procurement;
4. Copies of all executed Subcontracts, purchase orders, and invoices;
5. Total operating expenses and total costs of goods sales; and
6. Copies of all payment documentation.

Reports. The Successful Respondent shall be required to track and report all Small Business participation that occurs as a result of a contract, procurements, purchase orders, subleases, JV, goods/services or other arrangements involving sub-tier participation. Such documentation must be entered monthly into the internet based reporting program Business2Government (B2G) System at www.phoenix.diversitycompliance.com .

I. **Annual Submittals of Small Business Participation Plan.** As a matter of compliance, the Successful Respondent must submit a **Small Business Participation Plan** and the associated **Supporting Documentation**, on an annual basis by the anniversary date of contract award. The Successful Respondent is required to maintain a **Small Business Participation Plan** and document its ongoing efforts to foster small business participation throughout the life of this Contract. The Successful Respondent is required to conduct a shortfall analysis and develop a corrective action plan in the event the Successful Respondent is unable to achieve its Small Business Participation Commitment.

a. **Failure to Foster Small Business Participation**

The Compliance Specialist will determine whether Successful Respondent has satisfied all outreach activities in the development of the **Small Business Participation Plan**. If the Compliance Specialist determines that Successful Respondent has failed to satisfy the **Small Business Participation Plan** requirements as specified in this clause, then the Compliance Specialist may determine that the Successful Respondent is not compliant. The City shall send a written notice to the Successful Respondent stating the basis for the Compliance Specialist's decision. The Successful Respondent has seven (7) business days to cure the deficiency. If Successful Respondent fails to submit the required forms and supporting documentation by the due dates, the City may formally deem the Successful Respondent noncompliant, in default of the License and not in good standing with the City of Phoenix.

J. **Counting of Small Business Participation:**

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