

PHX DVT BYR

CITY OF PHOENIX AVIATION DEPARTMENT

Revenue Contract Solicitation (“RCS”) Request for Responses

SLEEP SUITE AVN RCS 20-021

SCHEDULE OF EVENTS

All dates are subject to change without prior notice.

The City of Phoenix is not responsible for cost or losses incurred by any Respondent in the preparation of a Response or due to date changes.

ACTIVITY	DATE & TIME (All times are local Phoenix, AZ time)
Publish RCS	Tuesday, January 21, 2020
Pre-Response Meeting Business Outreach Meeting	Friday, February 7, 2020 at 9:00 a.m.
Question Deadline: Submittal of Written Questions	Friday, February 14, 2020 at 2:00 p.m.
Answer Deadline: Answers to Written Questions	Friday, February 21, 2020
Solicitation Deadline	Friday, March 13, 2020 at 2:00 p.m.
Interviews / Discussion (If Necessary)	Tuesday, April 14, 2020
Award Recommendation to Phoenix City Council	June 2020
Commencement of Contract	July 2020

Submit Responses and request for alternate formats to:

Nichol Shrum
Procurement Officer
City of Phoenix Aviation Department
2485 East Buckeye Road, Phoenix, AZ 85034-4301
602-273-4082 (TEL) / 800-781-1010 (TTY)
busopps.aviation@phoenix.gov

<https://solicitations.phoenix.gov/Solicitations/Details/660>

This RCS is issued pursuant to Phoenix City Code Chapter 43 and Administrative Regulation 3.10. This RCS does not commit the City to award any contract(s).



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Aviation Department
Contracts & Services
2485 East Buckeye Road,
Phoenix, AZ 85034

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SECTION I – INTRODUCTION

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I. INTRODUCTION

The City of Phoenix (“City”), Aviation Department (“Aviation”) is seeking Responses from qualified Respondents to maintain, manage, and operate an airport sleep suite concept that can accommodate multiple suites that provide a private, clean, quiet, and secured atmosphere for passengers at Terminal 4 (“T4”) at Phoenix Sky Harbor International Airport (“Airport”), in accordance with the specification and provisions contained herein. The Successful Respondent will enter into a Concession Lease Agreement (“Lease”) with the City. A copy of the draft Lease is attached as **Exhibit 1**.

A. BACKGROUND

Phoenix Sky Harbor International Airport (PHX) is the 11th busiest airport in the U.S. in terms of operations, serving nearly 45 million passengers through three terminals in calendar year (CY) 2018. More PHX statistics are available at <https://www.skyharbor.com/About/Information>.

Terminal 4 is the largest of the three terminals at PHX with approximately 85% of PHX's passengers traveling through it. Terminal 2 (T2) is scheduled to close and be demolished in CY 2020. Airlines currently operating in T2 will relocate to Terminal 3 (T3).

Refer to **Exhibit 2** for a map of existing concession spaces in T4. T4's existing program consists of 51 News & Gifts and Specialty Retail concessions in approximately 40,000 square feet. They are operated by 7 concessionaires with 14 leases.

In CY 2018, the program generated gross sales of \$74.1 million or \$1,529 per square foot, and \$3.28 per enplaned passenger. Historical gross sales and the square footage of existing concession spaces are available at <https://solicitations.phoenix.gov/Solicitations/Details/660>.

Airline	CY 2016	CY 2017	CY 2018	YTD 2019 (thru August)
Air Canada	113,438	135,852	150,512	142,768
American Airlines (1)	10,364,372	10,207,086	10,409,354	9,719,010
British Airways	104,075	107,586	120,960	87,131
Condor	-	-	9,101	18,206
Southwest Airlines	7,238,184	7,462,745	7,719,923	7,058,935
Volaris	26,695	34,435	29,018	32,220
WestJet	218,924	230,468	233,716	202,192



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Total	18,065,688	18,178,172	18,672,584	17,260,462
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T4 enplaned passengers by airline and calendar year are shown on the table above. The City makes no representation or warranties, expressed or implied, as to the accuracy or relevancy of the statistical data. These numbers are reported by the airlines and the Respondent assumes all risk associated with using the data, including its accuracy, relevance, and/or materiality to the formulation of its Response.

Monthly enplanement statistics are available at:

<https://www.skyharbor.com/about/Information/AirportStatistics>

The City of Phoenix conducted market research from various user groups at PHX. The data from the overall process was used to identify passenger demographics and existing shopping trends. A summary of key survey responses is found in the “Business Information Meeting Presentation 9-11-19” posted at <https://solicitations.phoenix.gov/Solicitations/Details/660>.

B. DEFINITIONS

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

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

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

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

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

DISCUSSIONS means an exchange between the procurement officer and one or more Respondents submitting Responses determined to be



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Reasonably Susceptible Responses.

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

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

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

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

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

RESPONSE means a written response to this Revenue Contract Solicitation.

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

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

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

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

SUBTENANT a person or entity that leases property from Respondent.

SUCCESSFUL RESPONDENT means an individual, corporation, firm or



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JV that has been selected by the City to perform services requested by a RCS.

C. MINIMUM QUALIFICATIONS

Each Respondent must demonstrate in its Response that it meets the minimum qualifications as required and include all information requested in this section or the Response will be rejected as non-responsive.

Respondents must demonstrate and submit documentation providing evidence that the minimum qualifications listed below have been met in order to have their Response considered. **The City of Phoenix Aviation Department reserves the sole right to determine if Respondents meet the minimum qualifications.**

- Respondent shall have a minimum of three (3) consecutive years' experience within the last five (5) years, in the operation and management of one or more sleep suite(s), and/or miniature hotel(s), in locations that include shopping centers, airports, transportation centers, and/or other prominent settings.
- If the Respondent forms a new entity (ie. corporation, joint venture, and/or an individual, etc.), Respondent must have cumulatively generated a minimum of \$150,000 (one hundred fifty thousand dollars) in annual gross revenue within the last three (3) years and present evidence of that experience in its proposal.

Interested persons or entities that do not meet the minimum qualifications are encouraged to joint venture partner or sublease with more established retailers.

Respondents must also provide:

- The required Response Guarantee, as defined in Section I(I)(1);
- Bank's Letter of Commitment – Respondents must provide a letter from their bank communicating the bank's commitment to provide the Respondent, if successful, with a Letter of Credit as that term is defined in Section I (I)(1), in an amount equal to six (6) months' Minimum Annual Guarantee (MAG), as that term is defined in Section II (D). If the Respondent intends to submit a cash deposit in lieu of a Letter of Credit, the Respondent must submit a letter from the Respondent's bank confirming the ability of the Respondent to provide a cash deposit in an amount equal to six (6) months' MAG.;
- Evidence of ability to obtain required insurance; such as a commitment letter from an underwriter confirming that Respondent is insurable for the required coverages in the required limits.



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- At least three business references (**Exhibit 18**)

D. **GOOD STANDING**

Any Respondent that currently contracts with the City must be in good standing for its Response to be considered responsive. For purposes of this RCS, good standing refers to compliance with all contractual provisions, including payment of financial obligations.

E. **SMALL BUSINESS OUTREACH REQUIREMENTS**

To be considered for award, each Respondent must conduct and document Small Business Outreach Efforts in compliance with the Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Race and Gender-Neutral Lease Clause. Although there is no ACDBE, goal for this RCS, the City strongly encourages each Respondent to voluntarily utilize Small Businesses in its Response. Responses received from Respondents that do not meet the outreach requirements established in **Exhibit 16** – Form EO2 will be rejected. The Successful Respondent will be held to the percentages Small Business participation proposed in **Exhibit 17** – Form EO3.

F. **EQUAL PAY REQUIREMENTS**

In 2015, Phoenix City Council amended Phoenix City Code Section IV, Article V, 18-21 Equal Opportunity Requirements, known as the Equal Pay Act, to define expectations of all lessees with the City of Phoenix. **Exhibit 15** details the Act, as well as Federal and State provisions. As part of the Response for this RCS, Respondents are required to provide information on how they support, communicate, ensure and comply with these requirements. **Respondents are expected to be as detailed as possible.**

G. **LEASE TERM AND CONTRACTUAL RELATIONSHIP**

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

Respondents are advised to read the draft Lease included as **Exhibit 1**, to which the Successful Respondent shall be bound.

This RCS is for a non-exclusive Lease with the City. The City will not enter into an exclusive Lease with a Successful Respondent. At any time, the City has the right to award Leases to other operators for Sleep Suite at the Airport and/or future Sleep Suites that may be located within the existing



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locations or in later additions to locations throughout the Airport.

The Initial Term of the Lease shall commence on July 1, 2020 and shall extend until Lessee begins Sleep Suite operations included under this Lease for T4 or February 28, 2021, whichever is earlier.

The Primary Term of the Lease shall commence when Lessee begins Sleep Suite operations included under this Lease for T4, or March 1, 2021, whichever occurs earlier. The Primary Term will expire on December 31, 2027, unless this Lease is terminated earlier as hereinafter provided. If Lessee begins all operations on a day other than the first day of the month, all monetary obligations under the Lease will be prorated for the remainder of the month.

There are two one-year renewal options from January 1, 2028 until December 31, 2028 and January 1, 2029 until December 31, 2029. The option to extend the contract is at the sole discretion of the Aviation Director and will be exercised only if it is in the City's best interest to do so.

H. EXECUTION OF THE LEASE

The City will send the final Lease to the recommended Respondent after Phoenix City Council approves the Award Recommendation. Within 60 days from the date the Lease was sent, the recommended Respondent must sign and submit the final Lease to the City. The City may request City Council approval to award the Lease to the next highest qualified Respondent in the event the City does not receive the signed Lease and all other required documentation from the recommended Respondent within 60 days. The Lease terms may be amended at the sole discretion of the City at any time during the RCS process and/or prior to execution.

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

I. GUARANTEE INSTRUMENTS

1. Response Guarantee: Responses must be accompanied by a ten-thousand dollar (\$10,000) Response Guarantee in the form of a cashier's check payable, without condition or restrictive endorsement, to the "City of Phoenix". **Each Respondent's Response Guarantee must be submitted in a separate sealed envelope clearly marked "Response Guarantee"**



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along with the Response.

Response Guarantees of all unsuccessful Respondents will be returned, without interest, immediately after formal award of the Lease has been made by the Phoenix City Council or after all responses have been rejected by the City.

The Response Guarantee of the Successful Respondent will be returned, without interest, immediately after Successful Respondent has furnished the City with the Performance Guarantee instruments and insurance policies required by the Lease. Should the Successful Respondent fail to execute the Lease or furnish the Performance Guarantee instruments or insurance within 30 days from the date the Lease was sent, then the Successful Respondent's Response Guarantee will be forfeited as liquidated damages.

Performance Guarantee: Upon execution of the Lease, the Successful Respondent will be required to post and maintain with the City a Performance Guarantee in the form of a Letter of Credit (LOC) in the amount of six (6) months' MAG rent or a Cash Deposit in the amount of six (6) months' MAG rent. The LOC shall be in the form provided in **Exhibit 4**. The Cash Deposit shall be submitted with the form provided in **Exhibit 5**.

Adjustments to Performance Guarantee:

City may increase the amount of the Performance Guarantee from time to time so that it is equal to or greater than six (6) months of MAG paid to the City then in effect. City may increase the amount of the Performance Guarantee by giving the Successful Respondent at least thirty (30) days prior notice of the amount of the increase. The amount of the Performance Guarantee may be increased for any reason the City deems appropriate, including (1) an increase of the Successful Respondent's financial obligations under the Lease, (2) Successful Respondents failure to pay any MAG, Additional Payment, or any other amount when due, or (3) Successful Respondent's financial condition changes to the extent that City is concerned about Successful Respondent's ability to perform under the Lease. Successful Respondent shall pay to City the additional amount necessary to increase the Performance Guarantee upon notice from City.

Letter of Credit or Cash: If the Performance Guarantee is in the



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form of an irrevocable standby Letter of Credit (LOC), then the Successful Respondent shall use the City's LOC form, attached hereto and marked **Exhibit 4**. The LOC shall be issued by either: (1) a financial institution with counters in the Phoenix metropolitan area at which the City may make draws on the LOC; or (2) a financial institution with headquarters in the United States on which City may make telefacsimile draws. Unless City receives a written extension of the LOC in a form acceptable to City at least sixty (60) days before the end of the term of the LOC, City, without notice to Successful Respondent, may draw upon the full amount of the LOC and retain all proceeds as a cash performance guarantee. Any changes to the LOC required provisions must be approved in advance by the Aviation Director. If the Performance Guarantee is in the form of cash, Successful Respondent shall deliver to City a completed **Cash Deposit for Performance Guarantee Form** attached hereto and marked **Exhibit 5**.

Duty to Restore: The Performance Guarantee insures the full and timely performance by Successful Respondent of all its obligations under the Lease and is security payment by Successful Respondent of all claims by City. City may draw on or make a claim against the Performance Guarantee if Successful Respondent breaches or fails to perform under the Lease. If City draws on or makes a claim against the Performance Guarantee, then Successful Respondent, upon demand from City, shall replenish the Performance Guarantee to its previous amount within thirty (30) days of City's draw or claim.

Return: After the expiration or earlier termination of the Lease, City will return the Performance Guarantee to the Successful Respondent less any Fees, Additional Payment, or any other amount due to City.

2. Employee Fidelity Bond: Upon execution of the Lease, the Successful Respondent will be required to post and maintain with the City a bond covering employees required to handle money in the amount of one (1) month's proposed MAG.

J. PRE-RESPONSE MEETING

Respondents are strongly encouraged to attend the Pre-Response meeting that will be held at the City of Phoenix Aviation Department Office, Phoenix Aviation Advisory Board (PAAB) Room, 2485 East Buckeye Road, on the date and time listed on page 1. Please register



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for this meeting and the tour (if applicable) by visiting <https://www.eventbrite.com/e/airport-concessions-pre-response-meeting-tour-tickets-79074793837>.

A virtual tour for Sleep Suites is available by visiting: <https://solicitations.phoenix.gov/Solicitations/Details/660>

K. QUESTIONS AND ANSWERS (Q&A) PROCESS

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

If Respondents discover any mistakes, improprieties or defects, they may submit a report of any mistakes, improprieties or defects in writing to the Procurement Officer at busopps.aviation@phoenix.gov no later than the question deadline listed on page 1.

Respondents and their Partners are encouraged to submit questions as a team rather than individually to avoid submitting repetitive questions, which will allow Aviation to answer all questions more efficiently.

All questions about this RCS, including the draft Leases, must be submitted in writing no later than the question deadline listed on page 1 to busopps.aviation@phoenix.gov. All written questions will be responded to in writing and available at: <https://solicitations.phoenix.gov/Solicitations/Details/660>.

L. ADDENDUM TO RCS

Aviation may amend this RCS before or after the solicitation deadline listed on page 1. Changes to this RCS will be in writing as an addendum and posted at: <https://solicitations.phoenix.gov/Solicitations/Details/660>. Respondents are responsible to check the website and review all updates and postings.

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

M. RESPONDENT EXCEPTIONS

The City will award the Lease on a fair and competitive basis and will not accept any changes to the material provisions or requirements of this



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RCS or Lease. Respondents that take exception to, add to, or subtract from any material provision or requirement of this RCS or Lease may be considered as attempting to change the provisions or requirements of this RCS to gain an unfair advantage over other Respondents. Responses including such exceptions or changes, or that are conditional, are subject to rejection as non-responsive Responses. Non-material exceptions or changes will only be considered if approved by the City during the Q&A process. No new exceptions or changes will be considered after the recommended Respondent has been identified.

N. AIRPORT SECURITY

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

Successful Respondents must comply with all airport security requirements. Visit: <https://skyharbor.com/docs/default-source/default-document-library/newcompanyinformationmanual.pdf> for current information and <https://skyharbor.com/Business/RulesAndRegulations> for current Airport Rules and Regulations.

O. EXCLUSIVE BEVERAGE RIGHTS

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

P. CONSOLIDATED RECEIVING AND DISTRIBUTION CENTER (CRDC)

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

Q. COMMERCIAL DELIVERY ON THE AIRFIELD

PHX reserves the right to regulate and approve the size of all large



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commercial delivery vehicles to be used on the Airfield by the Successful Respondent and/or joint venture partners and all of the Successful Respondents' authorized vendors.

R. RESPONSE LIMITATION TO THIS RCS

Respondents may submit only one (1) Response for this RCS.

The following shall be deemed Multiple Responses:

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

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

Respondent and an entity or person affiliated with the Respondent include:

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



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one Respondent is also the president, vice president, officer (including chief operating officer, chief executive officer, and chief financial officer), agent, majority owner or stockholder, management employee, managing partner, or controlling owner of any other Respondent.

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

CONTINGENT RESPONSES WILL BE REJECTED.



SECTION II – SCOPE OVERVIEW

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II. SCOPE OVERVIEW

The Successful Respondent will be responsible to develop, design, construct, maintain, manage, and operate an airport sleep suite concept that can accommodate multiple suites that provide a private, clean, quiet, and secured atmosphere for passengers located on the international concourse (gates B15-28) of T4 at PHX. The location on the international concourse has east exposure and window views of Camelback Mountain and the airfield.

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

- Optimize sales and rental revenues over the term of the lease;
- Increase opportunity for local and small business participation;
- Select Respondents, including their joint venture partner(s) (if any), who have experience in the successful operation of a Sleep Suite concept;
- Select Respondents based on the entire Response, not solely based on the highest projected gross sales and/or rental revenues; and
- Select Respondents based on a number of factors including Respondents' ability to provide the highest quality customer service and goods and convenience to the traveling public, in addition to the expectation of reasonable rental revenues.

All Respondents must demonstrate not only Sleep Suite experience and financial ability, but also creativity in proposing a Sleep Suite concept that will enhance the customer experience in Terminal 4.

A. AMENITIES

Respondent may propose optional use amenities that include but are not limited to:

- Entertainment such as;
 - Television
 - Music
 - Reading Material; and/or
 - Gaming



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- Retail such as;
 - Alcoholic/Non-alcoholic beverages and pre-packaged snacks approved by the Aviation Department available for purchase at the front desk (current AZ Liquor License must be provided on or before Commencement Date) that is not in conflict alcoholic/non-alcoholic beverages and pre-packages snacks sold at adjacent retailers that will be available for purchase at the front desk
 - Travel size sundries that is not in conflict with merchandise sold at adjacent retailers that will be available for purchase at the front desk

Respondent must provide:

- Restroom/Shower facilities: one men's and one women's
- High Speed WIFI, separate from terminal WIFI
- Compliance with ADA Regulations

B. STAFFING AND OPERATIONS

Successful Respondent must:

- Provide staffing plan for sleep suite location, corporate management support; inventory/delivery logistics for delivery and replenishment of on-site stock; employee training programs, employee retention and incentive programs, customer service programs and policies & operations procedures
- Provide a staffed receptionist desk for customer service
- Provide facility maintenance plan including disposal of trash, and cleaning services. Must commence no later than 15 minutes after customer check-out
- Ensure on-duty employees have uniformed dress attire; and
- Sleep suite security plan

Hours of Operation:

The Sleep Suite operation must be open for business seven (7) days a week, three hundred sixty-five (365) days a year.

C. CONCESSION SPACES

The Sleep Suite Rent Percentage Rental Rates and Minimum Annual Guarantee (MAG) table located in Section II(D) provides a breakdown (square footage) of the concession space allotted. A map of the location is available at

<https://solicitations.phoenix.gov/Solicitations/Details/660>.



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D. MINIMUM ANNUAL GUARANTEED RENT (MAG) OR PERCENTAGE RENT

During the term of the Lease, the Successful Respondent shall pay MAG or Percentage Rent derived from gross sales of goods and services, whichever is greater.

The MAG per concession space and Percentage Rental Rate are non-negotiable. MAG per concession space and Percentage Rental Rate are set based on PHX historical and market data.

Respondents' first year MAG is based on the MAG provided in the schedule below. In subsequent years of the Lease, MAG for each concession space shall be established at 85% of the annual rent revenues paid during the preceding year or 100% of MAG for each concession space for the first Lease year, whichever is greater.

Percentage Rent shall be calculated at the percentage of gross sales set forth in the schedules below:

SLEEP SUITE Percentage Rental Rates and Minimum Annual Guarantee (MAG)

Store ID #	Square Footage	Percentage Rent				MAG
T4, N4	1,445 square feet	10% Sleep Suite Services	14% Optional Alcohol Sales	12% Optional Pre-packaged snacks and non-alcohol beverage sales	12% Optional Sundries Retail	\$170,000



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E. RENT UPON OPENING

Beginning on the Initial Term, the Successful Respondent for Sleep Suite will pay percentage rent only until all operations under their lease begins or February 28, 2021, whichever is earlier. Beginning on the Primary Term, March 1, 2021, Successful Respondent will pay percentage rent or MAG, whichever is greater.

F. ADDITIONAL SPACE

Limited airport storage and office space (support space) may be made available to the Successful Respondents. Additional support space, if available, would be charged at the rate for the terminal in effect at the time of leasing. The current terminal rate is \$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, Successful Respondents may need to secure off-airport storage, office and distribution space to support their airport operations.

G. “AS IS” CONDITION AND CAPITAL INVESTMENTS

The concession space will be available to the Successful Respondents in an "as is" condition. All capital investments must be provided by the Successful Respondents in compliance with **Exhibit 28**. Respondents are responsible for proposing designs and operations in compliance with all lease requirements.

All capital investments will be evaluated according to the value and appropriateness of improvements considering the concepts described in this RCS. The Successful Respondents are required to spend a minimum of \$350 per square foot per concession space for leasehold improvements and trade fixtures. In the event the Successful Respondents do not spend the total capital investment proposed for each concession space, the unspent balance must be remitted to the City no later than four (4) months after commencement of the primary term of the Lease. Architectural and engineering fees are excluded from the calculation of capital investment for each concession space.

All concession spaces must be maintained in "opening day" condition throughout the term of the Lease. Concession spaces that are not maintained in "opening day" condition will not be considered for a lease option renewal by the Aviation Director.



SECTION III – EVALUATION CRITERIA AND RESPONSE INSTRUCTIONS

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III. EVALUATION CRITERIA AND RESPONSE INSTRUCTIONS

A. EVALUATION CRITERIA

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

1. Proposed Concepts and Service/Merchandise Plan 0-250 Points

- a. Narrative description of concept and pricing for Sleep Suite
- b. Narrative description of merchandise plan and pricing
- c. Narrative description of concept's unique attributes
- d. If concept is licensed, provide the specific involvement of the licensor(s) in the operation of the concept

2. Design and Quality of Tenant Improvements 0-225 Points

- a. Capital Investment
- b. Creativity and innovation for the interior and exterior design
- c. Overall quality of construction materials for flooring, wall coverings, fixtures, display units, signage, etc.
- d. Efficiency of the interior layout plan (i.e. lobby, receptionist desk, use of technology, etc.)
- e. Construction Schedule
- f. Construction floor plan/layout
- g. Design components related to environmental sustainability and conservation

3. Management, Marketing, and Operations Plan 0-225 Points

- a. Staffing Plan including the qualifications and experience of the on-site staff
- b. Incentive programs for retention of staff
- c. Training programs for customer service
- d. Policies and procedures for managing customer complaints and emergency situations
- e. Communication methods used to notify employees of employment related regulations, including the Equal Pay Act and monitoring practices to ensure compliance
- f. Use of social media to advertise and implement promotional opportunities and discounts to customers which encourages purchases



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- and increases sales
- g. Improve customer service and the customer’s buying experience through the use of technology
- h. The management of inventory, cash controls, and physical security
- i. Product delivery and merchandise stocking during normal business hours and during emergency situations and monitoring plan
- j. Facility maintenance for normal repairs, frequency of cleaning and trash removal, and replacement of equipment and fixtures
- k. Approach to sustainability, conservation and operating “green,” composting, recycling, etc.
- l. If is licensed, the involvement of the licensor(s)

4. Experience and Qualification 0-200 Points

- a. Experience in airport and non-airport venues operating a similar concept
- b. Experience operating multiple concession spaces simultaneously and experience with the proposed concept
- c. Years of experience operating and managing a variety of concepts
- d. Sales performance of concession spaces operated by Respondent
- e. Years and types of experience operating a similar concept

5. Proposed Business Plan 0-100 Points

- a. Business plan with projected annual and aggregate gross sales and rent revenues during the lease term
- b. Assumptions in support of the gross sales and Pro Forma financial projections
- c. Financial capability to fund the proposed Capital Investment

Total Points Available 1000 Points

B. DELIVERY OF RESPONSES

Respondent must submit Responses in a sealed package marked with the following information:

- Respondent’s Name
- Respondent’s Address (as shown on the Certification Page)
- AVN RCS 20-021
- RCS Response To: Sleep Suite

Respondent’s sealed package(s) must include the following:

- One (1) original Response with an authorized original signature.
- Eight (8) hard copies of the Response.



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- One (1) electronic copy of the Response on a USB drive or CD-ROM, using unlocked pdf format and in the same page order as the hard copy.
- One (1) set of material boards, (11" x 17").
- Two (2) hard copies and two (2) electronic copy (USB drive) of the Small Business Outreach Requirements documentation as specified in Section III (G).
- Completed and signed Conflict of Interest and Solicitation Transparency Disclosure Form (**Exhibit 13**).
- Statements regarding any Agreement with Labor Organizations as specified in Section III (H).

Responses **must** be received by the Aviation Department's administrative receptionist during normal business hours of 8:00 a.m. to 5:00 p.m. Phoenix time before the solicitation deadline and at the address listed on Page 1. The prevailing clock will be the Aviation Department's clock. Respondents may correct or withdraw their Response any time before the solicitation deadline listed on Page 1.

Responses received after the solicitation deadline date and time will be rejected as non-responsive, unless Good Cause is shown. If a late Response is submitted, the Aviation Department will document the date and time of receipt of the late Response, keep the Response, and notify the Respondent that its Response was disqualified for being a late Response.

Responses must include all the following and must be organized using the Tab numbers listed below:

TAB 1 – GENERAL INFORMATION

- Cover Letter (1-page limitation) including the following information on the first page of the letter:
 - Name of Respondent. If Respondent is a joint venture, then indicate all partners and each partner's percentage of ownership interest in joint venture.
 - Names of all sublessees, if any.
 - List concept and names of firm(s) that will be operating the proposed concept



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- Table of Contents for entire Response with page numbers included
- Conflict of Interest and Solicitation Transparency Disclosure Form **(Exhibit 13)**
- Notarized Affidavit **(Exhibit 14)**
- Letter of Declaration **(Exhibit 16)**
- Business References **(Exhibit 18)**
- Bank’s Letter of Commitment - Respondents must provide a letter from their bank communicating the bank’s commitment to provide the Respondent, if successful, with a Letter of Credit as that term is defined in Section I (I)(1), in an amount equal to six (6) months’ Minimum Annual Guarantee (MAG), as that term is defined in Section II (D). If the Respondent intends to submit a cash deposit in lieu of a Letter of Credit, the Respondent must submit a letter from the Respondent’s bank confirming the ability of the Respondent to provide a cash deposit in an amount equal to six (6) months’ MAG.
- Statement regarding any Agreement with Labor Organization as specified in **Section III (H)**
- Insurance Requirements **(Exhibit 11)**

TAB 2 – PROPOSED CONCEPT AND SERVICE/MERCHANDISE PLAN

Respondents should provide a narrative regarding the proposed concept and service/merchandise plan, and include the following in Tab 2 of their Response:

- Concept description and prices **(Exhibit 23)**
- National name brands and local and regional concepts **(Exhibit 23)**
- Sample merchandise list/menus showing the range of prices **(Exhibit 24)**
- Describe why concept was chosen
- Describe any unique attributes
- If concept is licensed, provide the specific involvement of the licensor in the operation of the concept
- Copy of license and/or letter(s) of intent from concept owner(s) to issue license to Respondent

TAB 3 – DESIGN AND QUALITY OF TENANT IMPROVEMENTS

Respondents should provide a narrative regarding the design and quality of tenant improvements and include the following in Tab 3 of their Response:



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- Proposed Capital Investment in the Aggregate – minimum \$350 per square foot (**Exhibit 28**).
- Description of design and layout/floor plan, including any unique attributes
 - Architectural renderings (11"x17") including:
 - Exterior – overall design to include color scheme, signage and graphics, lighting, etc.
 - Interior – overall design to include color scheme, materials, lighting, displays, etc.
 - Layout of interior- i.e. lobby, receptionist desk, use of technology, etc.
- Detailed approach to phasing the construction of the Sleep Suite space
- Material boards – one board, no larger than 11" x 17" and weighing no more than 12 pounds. The board should include samples of the floor and wall coverings, ceiling treatments, service counters and display and lighting fixtures, and all proposed interior and exterior signage.
 - Copies of material boards on 8.5" x 11" paper and an electronic version on a USB drive
- Provide a description of the concession space design intent and proposed capital investment, including design components related to environmental sustainability and conservation.

TAB 4 MANAGEMENT/MARKETING/OPERATIONS PLAN

Respondents should provide a narrative regarding the management, marketing, and operations plan, and include the following in Tab 4 of their Response. Responses should also include the approach to any applicable requirements in the Sleep Suit Operating and Service Standards Manual (**Exhibit 9**) and Draft Lease (**Exhibit 1**).

- Staffing plan for an average day
- Qualifications and experience of the on-site team (**Exhibit 22**)
- Respondent's on-site manager(s) who will be responsible for the operations of Concession Spaces under the Lease, including handling emergency situations and customer service issues
- Management Plan – The management plan must contain:
 - Recruiting and training programs
 - Customer service program and methods to continuously monitor customer service, i.e., mystery shoppers, comment cards, social media
 - Policy for handling customer complaints
 - Policy for handling emergency situations



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- Employee incentives for retaining and motivating staff, including training programs, leadership and career advancement opportunities, and employee recognition
- Proposed communication to employees of the Equal Pay Act and method to monitor compliance with the Act
- Marketing Plan – The marketing plan must contain:
 - Use of social media to promote concept
 - Promotions and discounts attributed to customer loyalty programs, employees, military, etc. (include sample materials)
- Operations Plan – The operations plan must contain:
 - Use of technology to improve customer service (i.e. website or application to reserve/pay)
 - Approach to sustainability, conservation and operating “green,” composting, recycling, etc.
 - Facility maintenance plan, which includes normal repairs and maintenance of concession space, and equipment, frequency of cleaning and equipment maintenance plan and replacement of equipment and fixtures due to normal wear and tear
 - A secured atmosphere for each suite. Include all security measures such as inventory, cash controls, and all security hardware and/or software
 - Product delivery and merchandise stocking during normal business hours and during emergency situations and monitoring plan
 - If is licensed, the involvement of the licensor(s)

TAB 5 QUALIFICATIONS AND EXPERIENCE OF RESPONDENT OR JOINT VENTURE PARTNERS

Respondents should provide a narrative regarding the overall experience and qualification of the Respondent, and include the following in Tab 5 of their Response:

- Respondent’s Qualifications & Experience
 - Experience in airports, non-airport venues
 - Number of years of experience operating and managing similar concepts and the sales performance of concession spaces operated by Respondent.



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Respondent must complete the following:

- Respondent's Qualifications & Experience (**Exhibit 19**) and Contact Information for Locations Provided (**Exhibit 19.1**)
- Experience of Respondent with proposed or similar concepts (**Exhibit 21**)

TAB 6 PROPOSED BUSINESS PLAN

Respondent shall provide a narrative regarding their business plan, and include the following:

- Projected Gross Sales and Rental Revenues (**Exhibit 27**)
- Pro Forma Financial Statements for Concession Space and in the Aggregate for each lease year (**Exhibit 25**)
- Assumptions that support annual Gross Sales and Pro Forma Financial Projections (**Exhibit 25.1**)
- Documentation of Respondent's or joint venture partners' if any, financial capability to fund internally and/or finance proposed Capital Investment such as audited financial statements and/or letters of intent from financial institutions.

C. FORM OF RESPONSE

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

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

- Narrative portions of the Response shall be submitted on 8.5" x 11" paper with Arial font of at least 12 point.
- The Response and each hard copy shall each be submitted in a 3-ring 8.5" x 11" binder.
- The pages of the Response must be numbered. Pages must be numbered by section (example: Tab 2's page numbers are 2-1, 2-2, 2-3, etc.).

Forms are provided as part of the RCS to organize the information to be



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

Responses are limited to thirty (35) double-sided (or 70 single-sided), letter-size pages typed in 12-point Arial font. The pages of each Response must be numbered. Exhibits and financial information, including the Pro Forma, will not be counted towards the 35 double-sided (or 70 single-sided) page limit. **Respondents are responsible for reading and complying with all requirements of this RCS.**

D. WITHDRAWAL / CORRECT RESPONSE

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

E. LATE RESPONSES

Responses received after the deadline date and time will be rejected as non-responsive, unless Good Cause is shown. If a late Response is submitted, the Aviation Department will document the date and time of the submittal of the late Response, keep the Response and notify the Respondent that its Response was disqualified for being late.

F. RESPONSE RESULTS

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

The City will post Respondent's name on the City's website, <https://solicitations.phoenix.gov/Awards> within five (5) calendar days of the response opening. Once the City has evaluated the Responses, the City will post an award recommendation on the website. The City will not provide any further notification to unsuccessful Respondents.

G. SMALL BUSINESS OUTREACH REQUIREMENTS DOCUMENTATION

In a separate sealed package marked "Small Business Outreach Requirements" within the same sealed package as the items listed above,



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all Respondents will submit two (2) hard copies of documentation of its compliance with the Small Business Outreach Requirements described in **Exhibit 12**. In addition, all Respondents must submit two electronic copies of the documentation on two USB drives.

Respondents must document their efforts to: 1) identify business opportunities that Small Businesses can perform as partners or as suppliers of goods and services, 2) conduct outreach and broadly solicit responses for business opportunities from Small Businesses, 3) evaluate and negotiate with Small Businesses, and 4) communicate outcomes to all Small Businesses that responded to the Respondent's outreach efforts, and notify them whether or not the Small Business was selected.

The separate sealed package marked "Small Business Outreach Requirements" must include the following:

1. Outreach to Small Businesses
2. All supporting documentation required (**Exhibit 16 – Form EO2**).
3. Small Business Utilization Commitment (**Exhibit 17 – Form EO3**).

H. LABOR ORGANIZATION DOCUMENTATION

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

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

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



SECTION IV – DETERMINATION OF RESPONSIVENESS AND RESPONSIBILITY AND EVALUATION

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IV. DETERMINATION OF RESPONSIVENESS AND RESPONSIBILITY AND EVALUATION

A. RESPONSIVENESS AND RESPONSIBILITY

Responses will be reviewed for responsiveness and responsibility, documentation of minimum qualifications, completeness, and adherence to RCS requirements.

The qualifications will be reviewed by the Procurement Officer or an evaluation panel in accordance with the criteria set forth in this RCS. If a Respondent's Response is deemed not Responsive or not Responsible or does not meet the minimum qualifications, then no additional opportunity to supplement the qualifications will be afforded to the Respondent.

The City reserves the sole right to determine the sufficiency of qualifications and experience of all Respondents.

B. EVALUATION

The Aviation Department will appoint evaluation panel(s) to evaluate all Responsive Responses and recommend the Respondent(s) to be awarded the Lease resulting from this RCS. The Aviation Director may accept the evaluation panel's recommendation and submit it to the Phoenix City Council for approval or may reject the recommendation. If only one Response is Responsive to this RCS, then the Aviation Director shall have the discretion to determine whether the evaluation panel or staff will evaluate the Responsive Response.

The evaluation panel may interview all Respondents or create a short-list of Respondents to interview. The same evaluation panel will be used for the short-list and the interview process. A short-list of Responses, when used, is a list of Responses identified by the evaluation panel, based on the evaluation criteria in this RCS, as those that have a substantial chance of resulting in a Lease award in comparison to all Responsive Responses submitted. The evaluation panel may consider information from the interviews or demonstrations that clarifies the written Responses.

The evaluation panel will score the Responses by consensus based on the evaluation criteria. The City will retain the consensus scoring for each criterion for each Respondent. **The City does not retain individual panelists' scores.**



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C. DISCUSSIONS

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



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V. GENERAL TERMS AND CONDITIONS OF THE RESPONSE

A. SOLICITATION TRANSPARENCY POLICY

1. Commencing on the date and time a solicitation is published, potential or actual Respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer or their designee) at a public meeting, posted under Arizona Statutes, until the resulting agreement is awarded or all Responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation. As long as the solicitation is not discussed, potential or actual Respondents may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff who is not involved in the selection process.
2. Potential or actual Respondents may discuss their Response or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice will identify the participants and the subject matter, as well as invite the public to participate.
3. With respect to the selection of the successful Respondent, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective or actual Respondents.
4. This policy is intended to create a level playing field for all Respondents, assure that contracts are awarded in public, and protect the integrity of the selection process. **RESPONDENTS THAT VIOLATE THIS POLICY WILL BE DISQUALIFIED.** After official Notice is received by the City for disqualification, the Respondent may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.



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5. "To discuss" means any contact by the potential or actual Respondent, regardless of whether the City responds to the contact. Respondents that violate this policy will be disqualified until the resulting agreement is awarded, or all Responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the agreement, as long as the City cancels with a statement that the City will rebid the solicitation.
6. With respect to the selection of the Successful Respondent, the City Manager and City Manager's Office will continue the past practice of exerting no undue influence on the process.

B. AWARD RECOMMENDATION

All award recommendations will be posted on the following phoenix.gov website: <https://solicitations.phoenix.gov/Awards>

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

C. DISCLOSURE OF CONFIDENTIAL AND PROPRIETARY INFORMATION

1. All materials submitted by Respondents are the property of the City and become a matter of public record available for review pursuant to Arizona law. A Respondent may request specific information contained within its Response be treated by the procurement officer as confidential or proprietary (collectively confidential) provided the Respondent clearly labels the information "confidential". To the extent necessary for the evaluation process, information marked as "confidential" will not be treated as confidential.
2. Once the procurement file becomes available for public inspection, the procurement officer will not make any information identified by the Respondent as "confidential" available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the procurement officer will notify a Respondent in writing of any request to view any portion of its



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offer marked "confidential." The Respondent will have seven (7) calendar days to obtain a court order enjoining such disclosure. If the Respondent does not provide the procurement officer with a court order enjoining release of the information during the designated time period, the procurement officer will make the information requested available for inspection.

D. CITY'S RESERVATION OF RIGHTS

The City may:

1. Accept or reject any or all Responses in whole or in part;
2. Cancel this RCS in whole or in part;
3. Negotiate any Response elements in a manner that does not create an unfair advantage for any Respondent;
4. Reissue this RCS with or without modification;
5. Waive any non-material defects in any Response or the procurement process; and
6. Take any other legal action deemed to be in the City's best interest.

E. CITY'S RIGHT TO DISQUALIFY FOR CONFLICT OF INTEREST

The City may disqualify a Response if the Respondent has a real or apparent conflict of interest disclosed in its Response or discovered from any other source. During the term of the Contract resulting from this RCS, the Successful Respondent's employees may not be involved in any other Aviation-related business, including as an employee, owner, subtenant and/or joint venture partners, or consultant, which presents a real or apparent conflict of interest. All determinations regarding conflicts of interest will be made at the sole discretion of the Aviation Director, whose decision is final.

F. RESPONDENT INCURRED COSTS

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

G. CITY'S SOLE DETERMINATION OF RESPONSIVENESS AND RESPONSIBILITY AND RIGHT TO INVESTIGATE

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



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

H. TITLE VI SOLICITATION NOTICE

The City of Phoenix, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all Respondents or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBE or ACDBE will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

I. RESPONDENT CERTIFICATION AND AFFIDAVIT

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

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

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

J. PROTEST POLICY

1. Conditions for Protest:

- a. An aggrieved party may protest the contents of the RCS up to seven (7) calendar days before the solicitation deadline listed on page 1 when the protest is based on alleged mistakes, improprieties or defects. If an aggrieved party submits a protest based on alleged mistakes, improprieties or defects, they must also submit a Response by the solicitation deadline listed on page 1 if they want to be considered for award of the Agreement. Any potential



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Respondent should identify any alleged mistakes, improprieties or defects through the Q&A process in Section I (K).

- b. Respondents may protest an adverse determination issued by the Procurement Officer regarding whether the Respondent is responsible or its Response is responsive within seven (7) calendar days of the date the Respondent was notified of the adverse determination.
- c. Respondents may protest an award recommendation within seven (7) calendar days of its posting at: <https://solicitations.phoenix.gov/awards>

If the Respondent can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The date the Award Recommendation Notice is posted will initiate the seven (7) day Protest Period. That is, the date the Notice is posted will be day zero (0), with the following day counted as day one (1) and so forth through Close of Business (5:00 PM local Phoenix time) on calendar day seven (7).

2. Submitting a Protest

- a. Protests received after the protest due dates set forth in this RCS will not be considered, except for Good Cause.
- b. In the event the aggrieved party submits a public records request after receiving the applicable notice but prior to the deadline to file a protest, the Procurement Officer will extend the deadline one day for every day between the day the City receives the public records request and the day the public records are produced, the request is otherwise addressed by the City or a court of competent jurisdiction enjoins disclosure of the requested records.
- c. To be considered, all protests must be submitted in writing and must include:
 - RCS number and title;
 - Name, address, telephone number, and email address of the protester;
 - Detailed statement of the legal or factual basis of the protest including any copies of relevant documents;



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- The relief requested;
 - Signature of the protester or its authorized representative;
 - A Respondent protesting an award recommendation will also establish in its protest that it had a substantial chance of being awarded the Agreements and will be harmed by the recommended award.
- d. The Procurement Officer for the solicitation has the authority to review, decide and settle protests.
- e. Deadlines in the solicitation are not required to be postponed solely on the basis of receiving a solicitation protest. Only upon written notice from the Procurement Officer will a solicitation deadline be postponed, at the City's sole discretion.
- f. The Procurement Officer will issue a protest decision in writing within a reasonable period of time stating the reason for the protest decision and advising the aggrieved party or respondent of its right to appeal in accordance with Phoenix City Code.
- g. The Procurement Officer will not review any supplements or amendments to a Respondent's original protest or any additional protests submitted by the same Respondent. The Procurement Officer will provide the recommended Respondent copies of award recommendation protest(s) and the City's written decision by fax or email and regular mail with return receipts requested for all methods of delivery.

K. LEGAL WORKER REQUIREMENTS

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

1. RESPONDENT and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.
2. A breach of warranty under paragraph 1 will be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.



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3. The City retains the legal right to inspect the papers of the RESPONDENT or subcontractor employee(s) who work(s) on the resulting Lease to ensure that RESPONDENT or subcontractor is complying with the warranty under paragraph 1.

L. **NON-DISCRIMINATION / EQUAL OPPORTUNITY**

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

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

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

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

Compliance with Nondiscrimination Requirements:

During the performance of the resulting Lease or Contract, the Successful Respondent, for itself, its assignees, and successors in interest, agrees as follows:

1. **Compliance with Regulations:** The Successful Respondent (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Successful Respondent, with regard to the work performed by it during the contract, 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. The Successful Respondent will not participate directly or



SECTION V – GENERAL TERMS AND CONDITIONS OF THE RESPONSE

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indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Successful Respondent for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Successful Respondent of the Successful Respondent's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Successful Respondent will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Successful Respondent will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Successful Respondent's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Successful Respondent under the contract until the Successful Respondent complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.

Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects, June 19, 2018, pages 17-18 (available on Federal Aviation Administration website)

6. **Incorporation of Provisions:** The Successful Respondent will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant



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thereto. The Successful Respondent will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Successful Respondent becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Successful Respondent may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Successful Respondent may request the United States to enter into the litigation to protect the interests of the United States.

M. AFFIRMATIVE ACTION COMPLIANCE CERTIFICATION

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

N. NON-DISCRIMINATION / EQUAL OPPORTUNITY

The City extends to all Respondents an equal economic opportunity to compete for City business and strongly encourages the participation of ACDBE firms and Small Business, as required under 49 CFR Part 23.25. The Successful Respondent is required to adopt and incorporate the following nondiscrimination policy statement in all contractual arrangements (49 CFR Part 23.25):

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

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

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

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



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EXHIBIT 1

DRAFT LEASE

SLEEP SUITE

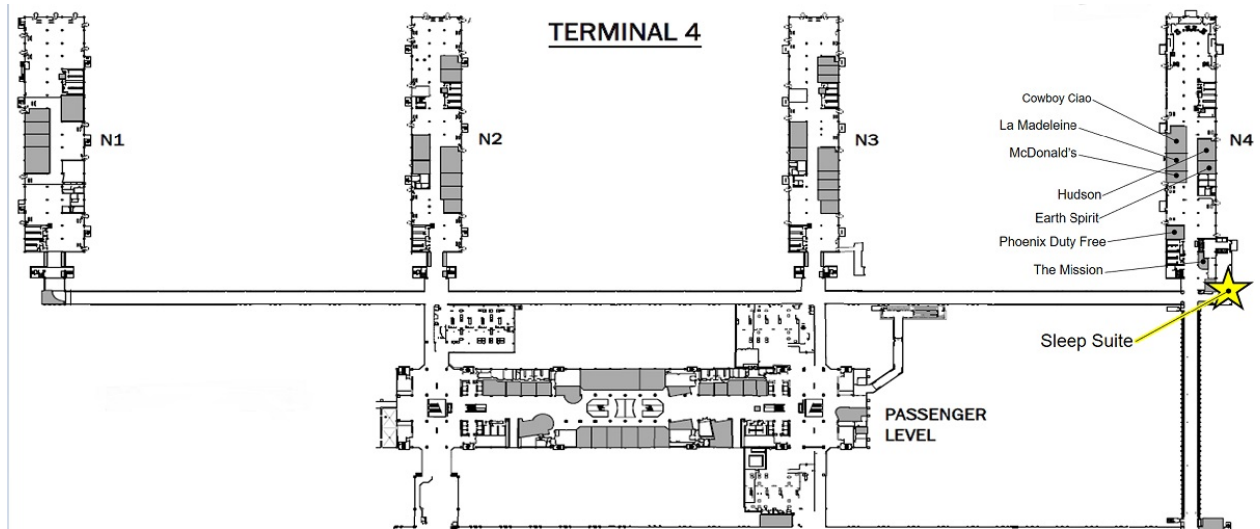
Available at: <https://solicitations.phoenix.gov/Solicitations/Details/660>



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EXHIBIT 2 PREMISES



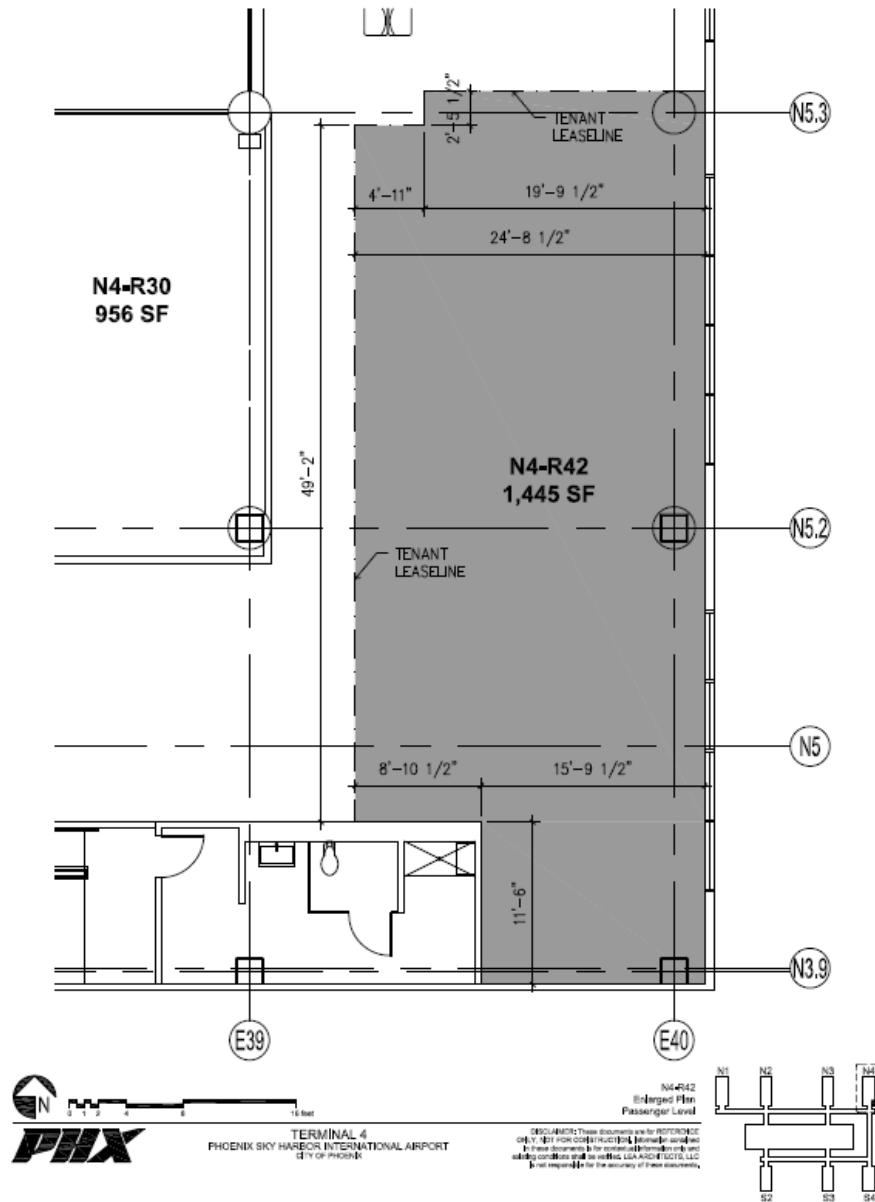


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EXHIBIT 3

LEVEL OF DETAIL FOR N4-R42





SECTION VI – EXHIBITS

**CITY OF PHOENIX
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EXHIBIT 4

LETTER OF CREDIT FORM

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

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

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

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

1. A certificate purportedly signed by Aviation Director, or by any other director of the City of Phoenix Aviation Department, stating one or more of the following:
 - A. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. [REDACTED] as Company Name has failed to perform its obligations under or failed to comply with its Agreement No., or any amendments thereto, or any replacement agreement, and the City requires payment under this Standby Letter of Credit of \$ [REDACTED].
 - B. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. [REDACTED] as Company Name has failed to provide a replacement Standby Letter of Credit prior to sixty (60) days before the expiration date as required by its Agreement No. or any amendments thereto, or any replacement agreement, and the City of Phoenix requires payment under this Standby Letter of Credit of \$ [REDACTED].



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

2. This original Standby letter of credit for endorsement.

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

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

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

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

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

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

[Bank]

By: _____
Authorized Signature



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EXHIBIT 5

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 [Lease 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 [Lease 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 six months' Minimum Annual Guarantee of payments under its [Lease No. TBD – dated] or [Permit No. _____].

The amount of this performance guarantee established as of the date of the [Lease No. TBD – dated] or [Permit No. _____] may become inadequate during the [Lease 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 [Lease 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



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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 [Lease No. TBD – dated] or [Permit No. _____].

If [Insert Tenant Name] fully and faithfully performs every provision of the [Lease 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 [Lease 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 [Lease 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: _____



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EXHIBIT 6

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.



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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



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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



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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



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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.



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4. The exercise by the City of any of its rights under Section C of this Exhibit shall not release Contractor from any obligation it would otherwise have under this Exhibit.
5. The covenants of this Exhibit shall survive the termination of this Contract.
- D. AZPDES STORMWATER GENERAL PERMIT COMPLIANCE SUPPLEMENT

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

Revised April 4, 2012



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EXHIBIT 7

SUPPLEMENT TO 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.



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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.



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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;



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- 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 6**.

Revised April 4, 2012
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EXHIBIT 8

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.



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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



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property and facilities thereon and hold the same as if this Contract had never been made or issued.

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

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

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

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

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

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



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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



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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



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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.



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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. § 23214(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



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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.



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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).



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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.

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Revised 2/1/19



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EXHIBIT 9

Sleep Suite Operating and Service Standards Manual

- Section 1 – Cleanliness Standards**
- Section 2 – Premises Standards**
- Section 3 – Storage Space / Delivery Standards**
- Section 4 – Information, Directions & Signs Standards**
- Section 5 – Employee Standards**
- Section 6 – Operational Standards**

Section 1 - Cleanliness Standards

A Required Plan By Lessee (Facility Maintenance Plan) shall be in effect during the entire Term of this Lease that addresses the following:

- 1.1 All Premises shall be kept clean and well-maintained. Upon customer check-out, cleaning services shall commence no later than 15 minutes after sleep suite usage.
- 1.2 All garbage shall be removed from counters and tables within five (5) minutes.
- 1.3 Carpeting shall be vacuumed or cleaned daily or immediately when soiled.
- 1.4 Entrance doors, glass windows and display cases shall be clean and free of smears, smudges, and dirt.
- 1.5 Sales and cashier areas shall be clean and organized.
- 1.6 Light fixtures and their attachments shall be kept clean and free of dust.
- 1.7 Delivery palettes shall be neatly stacked/organized (while on loading dock or outside the Premises) between deliveries.
- 1.8 All cardboard boxes shall be broken down and placed within the designated cardboard receptacles.
- 1.9 Hallways, elevators and areas around the Premises shall be free of Lessee-generated garbage.
- 1.10 Garbage shall be disposed of by placing accumulated garbage in Lessor-provided garbage compactor(s) and compacted.
- 1.11 Air conditioning, heating registers, and vents shall be clean.



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Section 2 - Premises Standards

- 2.1 Floors within the Premises shall be free of garbage, stains, holes, potential trip hazards and shall be clean and well-maintained.
- 2.2 All display cases and fixtures shall be in good condition with no broken pieces, deep scratches or graffiti.
- 2.3 All walls, ceilings, glass surfaces and fixtures shall be free of dust, stains, and well maintained.
- 2.4 All lights shall be in working order with burned out bulbs replaced within 24 hours.
- 2.5 Shipping materials, packaging, and delivery carts shall be stored out of the passenger's view when not in use.
- 2.6 Cleaning supplies and equipment shall be stored out of the public view.
- 2.7 Closet doors shall be kept closed.
- 2.8 The personal belongings of employees shall not be in the public view.
- 2.9 All entrances to Sleep Suite concession unit shall be free from obstruction(s), including concession merchandise, sales/advertising stanchions, and Lessee-generated garbage.
- 2.10 Lessee-provided air conditioning and heating units shall be maintained as required.
- 2.11 If music is played in the Sleep Suite concession unit, volume levels shall be appropriately set as to not disturb any other customers utilizing Sleep Suite concession unit services.

Section 3 - Storage Space / Delivery Standards

- 3.1 Products and merchandise stocked in Lessee's support space shall not block doors, electrical panels or hinder the fire suppression system.
- 3.2 Lessee shall not erect walls within the storage space to create office space, private storage or additionally secured areas.
- 3.3 Lessee shall be responsible for communicating with Lessor's Operations Division to make arrangements for escorting deliveries to Sleep Suite



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concession unit located post- security, if necessary.

Section 4 - Information, Directions and Signs Standards

- 4.1 Store policies pertaining to credit cards, returns/refunds, shall be clearly displayed.
- 4.2 Clearly display a toll-free number for customer complaints or customer compliments.
- 4.3 Hours of operation shall be fully displayed.
- 4.4 Handwritten and unprofessional signs shall not be used.
- 4.5 Illuminated signs shall be in proper working condition.
- 4.6 All signage/postings shall comply with Exhibit 3 of the Lease. All necessary licenses, permits, notices and inspection certificates on the Premises will be clearly displayed.

Section 5 - Employee Standards

Employees shall:

- 5.1 Project a friendly and attentive demeanor, and have a positive attitude towards customers and fellow employees at all times.
- 5.2 Provide appropriate attention to customers, purchasing, asking questions, or needing assistance and not gather to chat while on duty.
- 5.3 Make every effort to satisfy a customer's needs, even when those needs are outside the employee's scope of work.
- 5.4 Maintain appropriate eye contact and a pleasant tone of voice while conversing with customers and fellow employees.
- 5.5 Provide each customer with correct change, a receipt, and a "thank you."
- 5.6 Be well informed, capable of providing directions and knowledgeable about where and how to obtain requested information or service for customers.
- 5.7 Remain calm when encountering an upset customer, try to calm the customer, listen carefully and show empathy with the customer's problem. When



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encountering a dissatisfied customer, employees should obtain the facts; state any applicable policy clearly and politely; and be able to offer a solution or an adequate alternative to the customer. If unable to satisfy the customer or resolve the issue, employees shall direct the customer to the immediate supervisor.

- 5.8 Be trained on how to obtain assistance to resolve customer questions, address language barriers, and respond to medical and operational emergencies.
- 5.9 Refrain from using foul or inappropriate language at all times.
- 5.10 Ensure on-duty employees have clean, uniformed dress attire.

Employees shall not:

- 5.11 Eat, drink or chew gum in the view of customers.
- 5.12 Sleep on duty or in a public area.
- 5.13 Use cell phones and personal music devices while on duty.
- 5.14 Wear sunglasses indoors while on duty, unless medically required and accompanied by a doctor's note.

Section 6 - Operational Standards

- 6.1 Provide and implement the following Required Plans By Lessee during Hours of Operation:
 - Staffing Plan for sleep suite location, including qualifications and experience of the on-site staff
 - Corporate management support, inventory/delivery logistics Plans for delivery and replenishment of on-site stock
 - Employee Training Plan; Employee Retention and Incentive Plan; Customer Service Plan; and policies & operations procedures
- 6.2 Employees have sufficient cash available immediately upon opening to make change for early morning sales.
- 6.3 All complaints be dealt with promptly and documented appropriately.
- 6.4 All odor-producing operations, products and equipment must be controlled



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by wrapping, enclosing, containing or other treating to prohibit the entry of objectionable odors into public spaces. Objectionable odors include odors of machinery, electrical devices, perfumes and perfume products, cleansers, and oils.

- 6.5 All prepackaged food items shall be labeled with an “expiration date.” No items shall be offered for sale or remain on shelves after the expiration dates and times.
- 6.6 Provide and implement a staffed receptionist desk during Hours of Operation with line of sight visibility of individual suites to enhance customer service.
- 6.7 Provide and implement a Required Plan By Lessee (Sleep Suite Security Plan) within the Premises, that addresses the following: a secured atmosphere for each individual suite room, security measures such as inventory, cash controls, and all security hardware and/or software during Hours of Operation to ensure customer safety and security.
- 6.8 If alcoholic beverages are to be served in accordance with all applicable laws, they must be locked at all times to ensure customer safety and security.



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EXHIBIT 10

TENANT DESIGN CRITERIA

Visit <https://solicitations.phoenix.gov/Solicitations/Details/660>

To view the T4 Retail Tenant Design Criteria

THE TENANT DESIGN CRITERIA IS PROVIDED AS A REFERENCE
GUIDELINE FOR THIS LEASE AGREEMENT.

ALL RESPONDENTS ARE RESPONSIBLE FOR REVIEWING **EXHIBIT 10** IN ITS
ENTIRETY PRIOR TO SUBMITTING A RESPONSE(S) TO THIS RCS.



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EXHIBIT 11

INSURANCE REQUIREMENTS

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

1. INDEMNIFICATION CLAUSE:

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

2. INSURANCE REQUIREMENTS:

Lessee and its Partners shall procure and maintain for the term of the Lease, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Lease.

Lessee shall deliver to Lessor, prior to its occupancy of the Premises, a certificate of insurance acceptable to Lessor in the amounts as stated within Section 11.2. Lessor reserves the right to review the sufficiency of and to modify the insurance requirements of this Lease at the time MAG is reviewed for adjustment in order to determine whether existing insurance requirements are reasonable, adequate and commercially available so that Lessee’s operations are insured to protect the Lessor’s interests. Lessee shall maintain insurance coverage throughout the term of the Lease or Lessor may terminate this Lease. Additional insurance coverage may be required depending on the type of concession services being provided.



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These insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained in this Lease. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Lessee from liabilities that might arise out of this Lease. Lessee is free to purchase such additional insurance as Lessee determines necessary.

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

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

Policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury and liability assumed under an insured **contract**.

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

- a. The policy must 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 of the property subject to this Lease.
- b. Policy must 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 Lease.

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

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

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

Workers' Compensation Statutory

Employers' Liability
Each Accident \$100,000



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Disease – Each Employee \$100,000
Disease – Policy Limit \$500,000

- a. Policy must contain a waiver of subrogation against the City of Phoenix.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under A.R.S. 23-901, **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

4. Property Insurance

- Coverage for Lessee’s leasehold improvements Replacement Value
- Coverage for Lessee’s contents/equipment Replacement Value
- a. Property insurance must be written on an all risk, replacement cost coverage, including coverage for flood and earth movement.
- b. The City of Phoenix must be named as a loss payee on property coverage for Lessee’s leasehold improvements.
- c. Policy must contain a waiver of subrogation against the City of Phoenix.

5. Fidelity Bond or Crime Insurance – Employee Theft

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

Bond or Policy Limit: \$10,000

- a. The bond or policy shall include coverage for all directors, officers, agents and employees of the Lessee.
- b. The bond or policy must include coverage for third party fidelity, i.e. property of the Lessor that is held by the Lessee in any capacity, or property for which the Lessee 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 Lessee even if those limits of liability are in excess of those required by this Lease.
 - 2. The Lessee insurance coverage will be primary insurance and non-contributory with respect to all other available sources.
- C. **NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of this Lease, the Lessee must provide to the City, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for



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any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to:

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

- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Lessee from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Lessee shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Lease. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Lease must be in effect at or prior to commencement of this Lease and remain in effect for the duration of the Lease. Failure to maintain the insurance policies as required by this Lease or to provide evidence of renewal is a material breach of contract. The City Department, Lease number and location or description are to be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Lease at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

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

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



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

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

- F. **SUBCONTRACTORS:** Lessee's certificate(s) shall include all contractors and subcontractors as additional insureds under its policies or Lessee shall furnish to the City separate certificates and endorsements for each contractor or subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Lease must have prior approval from the City of Phoenix Law Department, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.



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EXHIBIT 12

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

SECTION I DEFINITIONS

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

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

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

City means the City of Phoenix.

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

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

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

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



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

EOD means the City of Phoenix Equal Opportunity Department.

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

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

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

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

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

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

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

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

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



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Business Concern” are used interchangeably in this Lease Clause.

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

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

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

SECTION II GENERAL REQUIREMENTS

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



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by the City and the Successful Respondent, and each Subcontract signed by the Successful Respondent and a Subcontractor, must include the following assurance *verbatim*:

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

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

SECTION III REQUIRED OUTREACH EFFORTS

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

SECTION IV SUBMITTAL REQUIREMENTS

Forms EO2 and EO3, along with supporting documentation for Form EO2 are due with the Response.

A. Form EO2. Each Respondent shall complete and submit Form EO2 documenting its diligent, good-faith 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);



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- c. Scope of work solicited (brief description, percentage of contract value);
- d. Solicitation method (personal contact, telephone, fax, e-mail, other);
- e. Selection process; and
- f. Communication of selection outcome to each participant*.

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

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

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

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



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other organizations.

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

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

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

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

D. Failure to Meet Small Business Outreach Requirements. The Compliance Specialist will determine, in writing, whether 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 Lease award. The City shall send written notice to Respondent stating the basis for the Compliance Specialist’s decision.

E. Administrative Reconsideration. Within seven (7) business days of being informed by the Contract Specialist that the proposer/respondent or awardee/contractor of its nonresponsive or noncompliant status, the firm may request administrative reconsideration. Since the ACDBELO does not have any



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role in the determination of nonresponsive/noncompliance determination issued by Contract Specialist, the ACDBELO shall serve as the Administrative Reconsideration Officer. The appellant must make this request in writing to the following reconsideration official:

Donald R. Logan, Director
City of Phoenix Equal Opportunity Department
200 West Washington Street, 15th Floor
Phoenix, AZ 85003
Phone: (602) 262-6258
Fax: (602) 534-1785
TTY: (602) 534-1557
Email: Donald.Logan@phoenix.gov

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

SECTION V POST-AWARD GENERAL REQUIREMENTS

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

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

- B. **Post-Award Relief from DBE Requirements.** After Lease award, the City will not grant relief from the proposed ACDBE, DBE or Small Business utilization except in extraordinary circumstances. The Successful Respondent's request to modify ACDBE, DBE or 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.



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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.

If an approved ACDBE or DBE allows its ACDBE or DBE status to expire or its ACDBE or DBE certification is removed during the course of the subcontract, the City will consider all work performed by the ACDBE or DBE under the original contract to count as ACDBE or DBE participation. No increased scopes of work negotiated after expiration or revocation of the ACDBE's or DBE's certification may be counted. Likewise, any work performed under a Lease extension granted by the City may not be counted as ACDBE or DBE participation.

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

SECTION VI. RECORDS & REPORTING REQUIREMENTS

- A. Records.** During performance of the Lease, the Successful Respondent shall keep all records necessary to document ACDBE, DBE and Small Business participation. The Successful Respondent shall provide the records to the City within 72 hours of the City's request and at final completion of the Lease. The City will prescribe the form, manner, and content of reports. The required records include:
1. A complete listing of all Subcontractors and suppliers on the project;
 2. Each Subcontractor's and supplier's scope performed;
 3. The dollar value of all subcontracting work, services, and procurement;
 4. Copies of all executed Subcontracts, purchase orders, and invoices;
- Total operating expenses and total costs of goods sales; and
5. Copies of all payment documentation.
- B. Reports.** The Successful Respondent shall be required to track and report all Small Business participation that occurs as a result of a contract, procurements, purchase orders, subleases, JV, goods/services or other arrangements involving sub-tier participation. Such documentation must be entered monthly into the internet based



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reporting program Business2Government (B2G) System at
www.phoenix.diversitycompliance.com.

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

1. Failure to Foster Small Business Participation

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

D. Counting of Small Business Participation:

1. In instances where Small Business participation occurs as the result of a JV arrangement with a Respondent, the Successful Respondent is required to complete JV documentation, and cooperate and participate in a review of the participation of the JV partners at least once a year. The review will determine the percentage of participation that will be counted for Small Businesses and the participation of ACDBE firms to be reported to the Federal Aviation Administration each year of the Lease.

2. If an approved ACDBE allows its ACDBE status to expire or its ACDBE certification is removed during the course of the subcontract, the City will consider all work performed by the ACDBE under the original contract to count as ACDBE participation. No increased scopes of work negotiated after expiration or revocation of the ACDBE's certification may be counted. Likewise, any work performed under a Lease extension granted by the City may not be counted as ACDBE participation.



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EXHIBIT 13

CONFLICT OF INTEREST AND SOLICITATION TRANSPARENCY DISCLOSURE FORM

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

.

1. Name of person submitting this disclosure form.

First	MI	Last	Suffix
-------	----	------	--------

2. Contract Information

Solicitation # or Name:

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

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

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

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



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

7. Disclosure of Conflict of Interest:

A. City Code Section 43-34

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

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

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

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

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



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employees).

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

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

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

8. Acknowledgements

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

- I understand that a person or entity who seeks or applies for a city contract, or any other person acting on behalf of that person or entity, is prohibited from contacting city officials and employees regarding the contract after a solicitation has been posted.
- This "no-contact" provision only concludes when the contract is awarded at a City Council meeting. If contact is required with City official or employees, the contact will take place in accordance with procedures by the City. Violation of this prohibited



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contacts provision, set out in City Code Sections 2-190.4 and 43-36, by respondents, or their agents, will lead to **disqualification**.

B. Fraud Prevention and Reporting Policy

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

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

OATH

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

PRINT NAME

TITLE

SIGNATURE

DATE

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



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EXHIBIT 14

AFFIDAVIT

Assurances

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

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

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



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Legal Status

- 1. In the past 7 years, have you personally, or any business with which you have been involved, been declared bankrupt...
2. Have you personally, or any business with which you have been involved, ever been a defaulter as surety upon any obligation to the City?
3. Are there any pending liens, claims or litigation in excess of \$1,000,000 involving Respondent?
4. Has the Respondent been involved in any lawsuits in the past 5 years?
5. Have any of the Respondent's contracts been terminated prior to their expiration terms, voluntarily or involuntarily, within the last 5 years?
6. Has the Respondent, or any corporation or other entity that has, directly or indirectly, a controlling interest in the Respondent...
7. Respondent intends to operate the business as a (check one):
8. Respondent intends to operate the following Rental Car Center, Food, Beverage, and Retail for the term of the Lease:

Legal Name, dba Trade Name, a Legal Entity



SECTION VI – EXHIBITS

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

Printed Name of Authorized Person: _____

Title: _____

Business Address of Respondent: _____

Telephone: _____ Email: _____

Signature of Authorized Person*: _____

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

NOTARIZED

State of _____ County of _____

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

Notary Public (signature)

Affix Notary Seal



SECTION VI – EXHIBITS

**CITY OF PHOENIX
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EXHIBIT 15

LETTER OF DECLARATION

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

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

By: _____
Print Name

Signature

Date: _____

PHOENIX CITY CODE (PCC)

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

18-21 Requirements of suppliers and lessees

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

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



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FEDERAL

Equal Pay/Compensation

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

STATE

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

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

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

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

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

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

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

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



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EXHIBIT 16

Form – EO-2 / SMALL BUSINESS OUTREACH EFFORTS (Due with Response at Time of Submittal and every year on the anniversary of the contract)



City of Phoenix
 Airport Concession Disadvantaged Business Enterprise (ACDBE) Program

Form – EOD-2 / SMALL BUSINESS OUTREACH EFFORTS (Due with Response at Time of Submittal and every year on the anniversary of the contract)

Successful Respondent's Name: _____	Contract Title/Number: _____
--	---------------------------------

Successful Respondent must conduct outreach efforts and submit documentation of those outreach efforts as described in Airport Concession Disadvantaged Business Enterprise (DBE) Program Race- and Gender-Neutral Contract Clause (Contract Clause). Detailed instructions for this form are included in the Contract Clause. Supporting documentation is required for Columns D and F. Successful Respondent should make additional copies of this form as needed.

(A) Business Name and Contact Information	(B) Business Type	(C) Opportunity for Small Business Participation	(D) Solicitation Method	(E) Was this firm selected as a participant?	(F) Communication of final selection outcome
Name: _____ Address: _____ City, State, Zip: _____ Phone Number: _____ Range of Annual Gross Receipts: _____	<input type="checkbox"/> ACDBE <input type="checkbox"/> DBE <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> SBE - City of Phoenix Certified <input type="checkbox"/> Unknown	<input type="checkbox"/> JV Partner __% <input type="checkbox"/> Supplier-Goods Cost of Goods Sold \$ _____ Description of Goods _____ <input type="checkbox"/> Supplier-Services Expenses \$ _____ Description of Services _____	<input type="checkbox"/> Newspapers or Websites <input type="checkbox"/> Trade and/or Professional Listing <input type="checkbox"/> Business Outreach Events <input type="checkbox"/> E-mail blast <input type="checkbox"/> Other	<input type="checkbox"/> Firm was selected <input type="checkbox"/> Firm was NOT selected Please provide an explanation, if this firm was not selected _____	Firms must be notified of final selection outcome prior to submittal of this form. When was firm notified? _____ How was the selection outcome communicated to this firm? _____
Name: _____ Address: _____ City, State, Zip: _____ Phone Number: _____ Range of Annual Gross Receipts: _____	<input type="checkbox"/> ACDBE <input type="checkbox"/> DBE <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> SBE - City of Phoenix Certified <input type="checkbox"/> Unknown	<input type="checkbox"/> JV Partner __% <input type="checkbox"/> Supplier-Goods Cost of Goods Sold \$ _____ Description of Goods _____ <input type="checkbox"/> Supplier-Services Expenses \$ _____ Description of Services _____	<input type="checkbox"/> Newspapers or Websites <input type="checkbox"/> Trade and/or Professional Listing <input type="checkbox"/> Business Outreach Events <input type="checkbox"/> E-mail blast <input type="checkbox"/> Other	<input type="checkbox"/> Firm was selected <input type="checkbox"/> Firm was NOT selected Please provide an explanation, if this firm was not selected _____	Firms must be notified of final selection outcome prior to submittal of this form. When was firm notified? _____ How was the selection outcome communicated to this firm? _____



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EXHIBIT 17



City of Phoenix

Airport Concession Disadvantaged Business Enterprise (ACDBE) Program

ACDBE-Race- & Gender-Neutral

FORM EO3 SMALL BUSINESS UTILIZATION COMMITMENT

Solicitation Name:

On behalf of the Successful Respondent, I certify under the penalty of perjury that the information submitted herein is true and correct:

1. The firms indicated as "Selected" in **Form EO2 Small Business Outreach Efforts**, will participate in this contract;
2. The Successful Respondent will comply with the Race- and Gender-Neutral post-award compliance requirements as stated in the ACDBE contract clause;
3. Successful Respondent understands and agrees that any and all changes or substitutions to subcontracts with Small Businesses must be authorized by the Phoenix ACDBE Compliance Specialist prior to implementation; and
4. The following statement is true and correct:

The proposed total Small Business participation on this contract will be:

_____ %

Company Name: _____

Company Mailing Address: _____

Representative Name: _____

Title: _____

Email Address: _____

Phone Number: _____

Signature: _____ Date: _____



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EXHIBIT 18

RESPONDENT REFERENCES

Respondent to provide three business references that are familiar with the Respondent's operations and have provided substantially similar services as described in this RCS.

Respondent must list contact information for the business references in the spaces provided below.

1) Reference Contact Name: _____
Reference Contact Title: _____
Company Name: _____
Address: _____
Phone #: _____ Email: _____

2) Reference Contact Name: _____
Reference Contact Title: _____
Company Name: _____
Address: _____
Phone #: _____ Email: _____

3) Reference Contact Name: _____
Reference Contact Title: _____
Company Name: _____
Address: _____
Phone #: _____ Email: _____



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EXHIBIT 19

RESPONDENT’S QUALIFICATIONS AND EXPERIENCE

Microsoft Excel Worksheet available at:
<https://solicitations.phoenix.gov/Solicitations/Details/662>

EXHIBIT 19 - Respondent's Qualifications and Experience

Name of Respondent:

Name of Entity or Person Satisfying Minimum Qualifications:

Airport Sleep Suite, miniature hotel, spa and/or other business accommodations in locations in a shopping center, airport, transportation center, or other prominent setting									
Name of Airport City, State and Country	Term of Contract (Begin & End Date)	Enplanements (Avg. During Lease Term)	Total Sq. Ft. Operated	Total No. of Units Operated	Annual Retail Gross Sales Generated by Units				
					2015	2016	2017	2018	2019
1.									
2.									
3.									
4.									
5.									

Non-Airport Sleep Suite, miniature hotel, spa and/or other business accommodations in locations in a shopping center, airport, transportation center, mall or other prominent setting									
Name of Venue, City, State and Country	Term of Contract (Begin & End Date)	Name or Type of Concept(s)	Total Sq. Ft. Operated	Total No. of Units Operated	Annual Retail Gross Sales Generated by Units				
					2015	2016	2017	2018	2019
1.									
2.									
3.									
4.									
5.									

Note: The experience of the entity or person satisfying the minimum qualifications must be listed on this form.

This Exhibit is limited to one (1) page.



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EXHIBIT 20

RESPONDENT’S EXPERIENCE MANAGING AND OPERATING A VARIETY OF CONCEPTS

Microsoft Excel Worksheet available at:
<https://solicitations.phoenix.gov/Solicitations/Details/660>

EXHIBIT 20 - Respondent's Experience Managing and Operating a Variety of Concepts

Name of Respondent:

Name of Entity or Person Satisfying Minimum Qualifications:

Experience Managing and Operating Concepts at Airports				
Name of Airport, City, State and Country	Term of Contract (Begin & End Dates)	List National Brand Name Concepts	List Local / Regional Concepts	List Other Concepts
1.				
2.				
3.				
4.				
5.				

Experience Managing and Operating Concepts at Non-Airport Venues				
Name of Retail Venue, City, State and Country	Term of Contract (Begin & End Dates)	List National Brand Name Concepts	List Local / Regional Concepts	List Other Concepts
1.				
2.				
3.				
4.				
5.				

Note: The experience of the entity or person satisfying the minimum qualifications must be listed on this form.

This Exhibit is limited to one (1) page.



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EXHIBIT 21

EXPERIENCE OF RESPONDENT OR JOINT VENTURE PARTNER WITH PROPOSED CONCEPTS

Microsoft Excel Worksheet available at:

<https://solicitations.phoenix.gov/Solicitations/Details/660>

EXHIBIT 21 - Experience of Respondent or Joint Venture Partner with Proposed Concepts

Name of Respondent:

Name of Entity or Person Satisfying Minimum Qualifications:

Name of Proposed Operator (If Operator is not Respondent, then indicate the legal relationship with Respondent; i.e. joint venture partner)	Name of Proposed Concept	Operator's Experience with Proposed Concept						
		Name of Proposed or Similar Concept	Location of Concept (or Similar Concept) Indicate Name of Airport or Address of Street Location	Sq. Ft.	Indicate How Concept is Operated, i.e. License, Franchise, Owner / Operator or Other	No. of Years Operated by Proposed Operator	Most Recent Year	
							Year	Gross Sales
		1.						
		2.						
		3.						
		1.						
		2.						
		3.						
		1.						
		2.						
		3.						
		1.						
		2.						
		3.						

Note: The experience of the entity or person satisfying the minimum qualifications must be listed on this form.

This Exhibit is limited to one (1) page.



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EXHIBIT 22

QUALIFICATIONS AND EXPERIENCE OF RESPONDENT’S ON-SITE MANAGER

Microsoft Excel Worksheet available at:
<https://solicitations.phoenix.gov/Solicitations/Details/660>

EXHIBIT 22 - Qualifications and Experience of Respondent's On-Site Manager

Name of Respondent:
 Name of Proposed On-Site Manager:
 On-Site Manager's Proposed Shifts:

Qualifications and Experience	Name and Location of Store	Position Title	Brief Description of Responsibilities	No. Yrs. at Store	Dates
A. Mgmt. Experience in Retail Industry	1. 2. 3. 4. 5.				
B. Experience Managing Stores in an Airport	1. 2. 3. 4. 5.				
C. Other Qualifying Factors (List and/or Describe)					

Separate sheets are required for each Manager.



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EXHIBIT 23

Concept Description

Microsoft Excel Worksheet available at:

<https://solicitations.phoenix.gov/Solicitations/Details/660>

EXHIBIT 23 - Concept Description

Name of Respondent:

Store ID	Category	Square Feet	Name of Proposed Concept	Name of Operator	Briefly Describe Concept (Include any national or local/regional brand name affiliation)
N4-R42	Sleep Suite	1,445			

Total Square Footage 1,445



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EXHIBIT 24

VARIETY OF PRODUCTS AND RANGE OF PRICE POINTS

Microsoft Excel Worksheet available at:
<https://solicitations.phoenix.gov/Solicitations/Details/660>

EXHIBIT 24 - Variety of Products and Range of Price Points

Name of Respondent:

Store ID	Retail Category	Name of Proposed Concept	Name of Operator	Square Feet	List Variety of Products and Provide Prices or Range of Prices for Products			
					Item/Product	Price	Item/Product	Price
N4-R42	Sleep Suite			1,445	1.		6.	
					2.		7.	
					3.		8.	
					4.		9.	
					5.		10.	

This Exhibit is limited to one (1) page.



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EXHIBIT 25 PRO FORMA

EXHIBIT 25 - Pro Forma Financial Projections and Cash Flow

Name of Respondent:

Store ID#:

Name of Operator & Concept:

Square Feet:

Financial Categories	CY 2021		CY 2022		CY 2023		CY 2024		CY 2025		CY 2026		CY 2027	
	Amount	% Gross Sales	Amount	% Gross Sales	Amount	% Gross Sales	Amount	% Gross Sales	Amount	% Gross Sales	Amount	% Gross Sales	Amount	% Gross Sales
Gross Sales	\$ -	100.0%	\$ -	100.0%	\$ -	100.0%	\$ -	100.0%	\$ -	100.0%	\$ -	100.0%	\$ -	100.0%
Cost of Goods Sold	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%
Gross Profit	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%
Operating Expenses														
Salaries and Benefits	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%
Other Operating Expenses(1)	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%
License & Franchise Fees	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%
Rent	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%
General & Admin. Exps.	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%
All Other Expenses(2)	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%
Total Operating Expenses	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%
Cash Flow from Operations	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%

1. Include marketing, advertising, maintenance and repairs, insurance, utilities, communication, etc. expenses.

2. List on Exhibit 25.1 the expenses comprising All Other Expenses.



SECTION VI – EXHIBITS

CITY OF PHOENIX
Aviation Department
Contracts & Services
2485 East Buckeye Road,
Phoenix, AZ 85034

EXHIBIT 25.1 ASSUMPTIONS

EXHIBIT 25.1 - Assumptions

Name of Respondent:

Store ID#:

Name of Concept/Operator:

Square Feet:

Factors Affecting Financial Projections	List and Describe all Factors
1. Annual Enplanements	Provided by Aviation
2. Annual Inflation Rate = 0%	Pro Forma financial statement projections for all years must be expressed in constant U.S. dollars (no inflation).
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

Separate sheets are required for each concept.



SECTION VI – EXHIBITS

**CITY OF PHOENIX
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EXHIBIT 26

PROJECTED SEVEN-YEAR GROSS SALES BY CONCESSION SPACE AND IN THE AGGREGATE

EXHIBIT 26 - Projected Seven-Year Gross Sales by Concession Space and in the Aggregate

Name of Respondent:

Store ID	Name of Proposed Concept	Square Feet	Seven-Year Gross Sales Projections						
			CY 2021	CY 2022	CY 2023	CY 2024	CY 2025	CY 2026	CY 2027
N4-R42		1,445							
Total Sq. Ft. and Gross Sales		1,445	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Projected Enplanements			19,500,000	19,800,000	20,100,000	20,300,000	20,600,000	20,900,000	21,200,000
Sales/Square Foot			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Sales/Enplanement			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

This Exhibit is limited to one (1) page.



SECTION VI – EXHIBITS

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Contracts & Services
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EXHIBIT 27

Projected Seven-Year Rent Revenues by Concession Space and in the Aggregate

EXHIBIT 27 - Projected Seven-Year Rent Revenues by Concession Space and in the Aggregate

Name of Respondent:

Store ID	Name of Proposed Concept	Square Feet	% Rent(1)	First Yr. Total MAG(2)	Seven-Year Rent Revenue Projections																													
					CY 2021		CY 2022		CY 2023		CY 2024		CY 2025		CY 2026		CY 2027																	
					Rent	Rent/Sq.Ft.	Rent	Rent/Sq.Ft.	Rent	Rent/Sq.Ft.	Rent	Rent/Sq.Ft.	Rent	Rent/Sq.Ft.	Rent	Rent/Sq.Ft.	Rent	Rent/Sq.Ft.																
N4-R42						\$ -	-		\$ -	-		\$ -	-		\$ -	-		\$ -	-		\$ -	-		\$ -	-		\$ -	-		\$ -	-		\$ -	-
Total		-		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	

1. Represents the stipulated percentage rental rate for the concept or the average rental rate expected for the concept based on the stipulated percentage rental rate for the merchandise categories that are part of the concept.
2. For each concept, First Year Total MAG = MAG per Square Foot (stipulated by the City) multiplied by the Square Feet.

This Exhibit is limited to one (1) page.



SECTION VI – EXHIBITS

**CITY OF PHOENIX
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EXHIBIT 28

Proposed Capital Investment by Concession Space and in the Aggregate

EXHIBIT 28 - Proposed Capital Investment by Concession Space and in the Aggregate

Name of Respondent:

Store ID	Name of Concept	Name of Operator	Square Feet	Proposed Capital Investment(1) Minimum = \$350/Sq. Ft	
				Total \$	\$/Sq.Ft.
N4-R42			1,445	\$	-
Total			1,445	\$ -	\$ -

1. Architectural and engineering fees must be excluded from the Capital Investment dollars.