



CITY OF PHOENIX

**Water Services Department
Daniel Rice
Procurement Officer**

**200 W. Washington St., 9th Floor
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**INVITATION FOR BID
IFB-2021-WWT-419 (DJR)**

HYDROCHLORIC (MURIATIC) ACID - REQUIREMENTS CONTRACT



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Phoenix, AZ 85003**

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

SOLICITATION RESPONSE CHECK LIST

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

- All forms have been completed and signed, including Solicitation Disclosure form.
- All Submittals are included.
- Reviewed and verified prices offered.
- Checked price extensions and totals.
- Included any required drawings or descriptive literature.
- If required, checked and included the amount of the offer surety.
- Reviewed the insurance requirements, if any, to assure compliance.
- Included signed addenda, if any.
- Included one (1) original PDF copy submitted electronically via email; the Offer as indicated in Submittal section.
- The electronic submission via email must have the solicitation number on the subject line.
- The body of the email must clearly show your company name and address, the solicitation number, solicitation title, and the Offer opening date.
- All forms have been completed and signed, including Solicitation Disclosure form.
- All items listed in Section VI, Submittals are included.

Email the response timely – City must receive Offers no later than the date and time indicated in the Schedule of Events or addenda.



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1. DESCRIPTION – STATEMENT OF NEED - TERM:

1.1 The City of Phoenix invites sealed offers for the supply of Hydrochloric (Muriatic) Acid for a five-year period commencing on or about January 1, 2021, in accordance with the specifications and provisions contained herein or the “Effective Date” which is upon award by City Council, conditioned upon signature and recording by the City Clerk’s department, as required by the Phoenix City Code, whichever is later.

1.2 This solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800-367-8939 for assistance.

1.3 Notwithstanding the foregoing, this Agreement will terminate upon the earliest occurrence: by reaching the end of the term including any extensions exercised, or termination pursuant to the provisions of this Agreement.

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

3. SCHEDULE OF EVENTS:

ACTIVITY	LOCATION	DUE DATE AND TIME All times are Phoenix local time
Pre-Offer Conference	via WEBEX by appointment only (schedule by 07/27/2020, 2:00 pm)	Tuesday, July 28, 2020 1:00 PM
Written Inquiries	wsdprocurement@phoenix.gov	Tuesday, August 4, 2020 2:00 PM
Offers Due Electronically	wsdprocurement@phoenix.gov	Tuesday, August 18, 2020, 2020 2:00 PM

A Pre-Offer Conference will be held electronically via WEBEX or some other means by appointment only. Offerors that plan on attending must provide confirmation of attendance by emailing wsdprocurement@phoenix.gov no later than Monday, July 27, 2020, 2:00 pm. The City reserves the right to change dates and/or locations as necessary.



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4. PREPARATION OF OFFER:

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



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any minimum specifications or criteria specified are not responsive and should not be submitted.

4.4.6 Offer responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products offered. Offers submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.

4.4.7 Prices will be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price will prevail unless obviously in error.

5. **OBTAINING A COPY OF THE SOLICITATION AND ADDENDA:** Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/>. Internet access is available at all public libraries. Any interested offerors without internet access may obtain this solicitation by calling the Procurement Officer or picking up a copy during regular business hours at the City of Phoenix Water Services Department, Procurement Division, 200 W. Washington St. 9th, Floor, Phoenix, AZ 85003. It is the Offeror's responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their offer.
6. **EXCEPTIONS:** Offeror must not take any exceptions to any terms, conditions or material requirements of this solicitation. Offers submitted with exceptions may be deemed non-responsive and disqualified from further consideration in the City's sole discretion. Offerors must conform to all the requirements specified in the solicitation. The City encourages Offerors to send inquiries to the procurement officer rather than including exceptions in their Offer. See Inquiries and Schedule of Events.
7. **INQUIRIES:** All questions that arise relating to this solicitation should be directed via email to the Procurement Officer and must be received by the due date indicated in the Schedule of Events. The City will not consider questions received after the deadline.

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



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

8. **ADDENDA:** The City of Phoenix will not be responsible for any oral instructions made by any employees or officers of the City of Phoenix regarding this solicitation. Any changes will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the offer submittal.
9. **BUSINESS IN ARIZONA:** The City will not enter contracts with Offerors (or any company(ies)) not granted authority to transact business, or not in good standing, in the state of Arizona by the Arizona Corporation Commission, unless the offeror asserts a statutory exception prior to entering a contract with the City.
10. **LICENSES:** If required by law for the operation of the business or work related to this Offer, Offeror must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.
11. **CERTIFICATION:** By signature in the offer section of the Offer and Acceptance page(s), Offeror certifies -
 - The submission of the offer did not involve collusion or other anti-competitive practices.
 - The Offeror must not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
 - The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.
12. **SUBMISSION OF OFFER:**
 - 12.1 Many City departments have reduced the number of employees onsite in City buildings due to the COVID-19 pandemic. If you will be responding to this solicitation, please submit your bid **electronically** via email to wsdprocurement@phoenix.gov.
 - 12.2 Offers must be in possession of the Department on or prior to the exact time and date indicated in the Schedule of Events. Late Offers will not be considered. The date and time on the email will provide proof of submission



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and verification if the bid was received on or prior to the Due Date and Time. The prevailing clock will be the City Department's email.

12.3 Offers must include the solicitation number on the subject line of the email when submitting their bid.

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

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

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

15. PRE-AWARD QUALIFICATIONS: Items 15.1 through 15.3 must be provided at the time of submittal to be considered a responsive offer.

15.1 Safety Data Sheet (SDS).

15.2 Proof of compliance with NSF requirement.

15.3 Certified quality analysis of the product offered as performed by an independent third party laboratory certified by the appropriate



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Environmental State Agency. The laboratory analysis provided will be reviewed by City Lab to determine suitability for the City.

16. AWARD OF CONTRACT: Upon notification of recommendation of award, the successful Offeror will have 15 calendar days to submit items 16.1 through 16.5.

16.1 Hazardous Material Transporters Security Requirements (see Section V - Scope of Work, Item 8.7.2).

16.1.1 Written affirmation that the requirements of 49 CFR Part 172.800 and 172.804 regarding Hazardous Material Transportation Security Plan Implementation have been met.

16.1.2 Written agreement that transportation of any of the chemicals identified in this Contract will not be assigned or subcontracted without the prior written agreement of the City of Phoenix.

16.2 Hazardous Materials Transportation Security Plan (see Section V – Scope of Work, Item 8.7.3) - Verification that the shipper and carrier of hazardous materials have each met the requirements of 49 CFR 172.800 and 49 CFR 172.804 for the Hazardous Materials Transportation Security Plan.

16.3 Emergency Response Information (see Section V – Scope of Work, Item 8.7.4) - Information that will be used in the mitigation of an incident involving hazardous materials which includes, at a minimum, the following:

16.3.1 The basic description and technical name of the hazardous material as required by 40 CFR 172.202 and 40 CFR 172.203(k);

16.3.2 Immediate hazards to health;

16.3.3 Risks of fire and health;

16.3.4 Immediate precautions to be taken in the event of an accident or incident;

16.3.5 Immediate methods for handling fires;

16.3.6 Initial methods for handling spills or leaks in the absence of fire; and,

16.3.7 Preliminary first aid measures.

16.4 Emergency Response Telephone Number (see Section V – Scope of Work, Item 8.7.6) - An emergency response telephone number, including the area code or International access code, for use in the event of an emergency



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involving the hazardous material. This information shall be provided in Section VI – Submittals, Paragraph 5, EMERGENCY TWENTY-FOUR HOUR SERVICE

- 16.5** Certificate of Insurance (see Section IV – Insurance and Indemnification) - A complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this solicitation. Insurance requirements are non-negotiable.
- 16.6** Unless otherwise indicated, award(s) will be made to the most responsive, responsible Offeror(s) who are regularly established in the service, or providing the goods, contained in this solicitation and who have demonstrated the ability to perform in an acceptable manner.
- 16.7** Factors that may be considered by the City include:
- Technical capability of the Offeror to accomplish the scope of work required in the Solicitation. This may include performance history on past and current government or industrial contracts; and,
 - Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation; and,
 - Safety record; and,
 - Vendor history of complaints and termination for convenience or cause.
- 16.8** Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.
- 16.9** A response to a solicitation is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Offers do not become contracts until they are executed by the Deputy Finance Director or Department Director. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.
- 17. CITY'S RIGHT TO DISQUALIFY FOR CONFLICT OF INTEREST:** The City reserves the right to disqualify any Offeror based on any real or apparent conflict



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

18. SOLICITATION TRANSPARENCY POLICY:

18.1 Commencing on the date and time a solicitation is published, potential or actual offerors or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under Arizona Statutes, until the resulting contract(s) are awarded to all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation.

18.2 As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff.

18.3 Offerors may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

18.4 With respect to the selection of the successful Offerors, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.

18.5 This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. **OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED.** After official Notice is received by the City for



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disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.

- 18.6** “To discuss” means any contact by the Offeror, regardless of whether the City responds to the contact. Offerors that violate this policy will be disqualified until the resulting contract(s) are awarded, or all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

19. PROTEST PROCESS:

- 19.1** Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an amendment to the solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City’s best interests to set new deadlines, amend the solicitation, cancel or re-bid.
- 19.2** Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.
- 19.3** Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.
- 19.4** Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The City will post recommendations on the City’s website to award the contract(s) to an Offeror(s). Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the City’s full and final discretion.
- 19.5** All protests will be in writing, filed with the Procurement Officer identified in the solicitation and include the following:
- 19.5.1 Identification of the solicitation number;
 - 19.5.2 The name, address and telephone number of the protester;



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19.5.3 A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;

19.5.4 The form of relief requested; and,

19.5.5 The signature of the protester or its authorized representative.

19.6 The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is complete. All protests and appeals must be submitted in accordance with the City's Procurement Code, (Phoenix City Code, Ch. 43) and any protests or appeals not submitted within the time requirements will not be considered. Protests must be filed with the Procurement Officer.

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

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



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- 22. RIGHT TO DISQUALIFY:** The City reserves the right to disqualify any Offeror who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The City further reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest that is disclosed by the Offeror submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of a solicitation response, the Offeror waives any right to object now or at any future time, before any agency or body including, but not limited to, the City Council of the City or any court as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City. The City reserves the right to replace the disqualified Offeror.
- 23. CONTRACT AWARD:** The City reserves the right to award a contract by individual line items, by group, all or none, or any other combination most advantageous to the City. The City reserves the right to multiple award.
- 24. DETERMINING RESPONSIVENESS AND RESPONSIBILITY:**
- 24.1** Offers will be reviewed for documentation of any required qualifications, and completeness and compliance with the solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.
- 24.2** Responsiveness: Nonresponsive Offers will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers will render an Offer nonresponsive.
- 24.3** Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the Offeror, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible Offeror. Responsibility includes the Offeror's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.
- 25. EQUAL LOW OFFER:** Contract award will be made by putting the names of the tied vendors in a cup for a blind drawing limited to those bidders with tied offers. If time permits, the offerors involved will be given an opportunity to attend the drawing. The drawing will be witnessed by at least three persons, and the contract file will contain the names and addresses of the witnesses.
- 26. DETERMINING RESPONSIVENESS AND RESPONSIBILITY:**
- 26.1** Offers will be reviewed for documentation of minimum qualifications, completeness, and compliance with the Solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.



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- 26.2** Responsiveness: Nonresponsive Offers will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers (as the case may be) will render an Offer nonresponsive.
- 26.3** Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and an Offer that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as nonresponsive. Alternatively, the City in its sole discretion may instruct in writing that any Offeror remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so in writing, the City may determine the Offer to be nonresponsive.
- 26.4** Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the contractor, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible contractor. Responsibility includes the Offeror's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.
- 26.5** The Procurement Officer will review each Offer to determine if the Offeror is responsible. The City's determination as to whether an Offeror is responsible will be based on all information furnished by the Offeror, interviews (if any), and information received from Offeror's references, including information about Offeror's history, terminations for convenience or cause, contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the Contract resulting from the solicitation will not be made until any necessary investigation, which each Offeror agrees to permit by submitting its Offer, is made by the City as it deems necessary. A review of responsibility may occur up to contract award.
- 26.6** The Offeror's unreasonable failure to promptly supply information about an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Offeror.



SECTION II – STANDARD TERMS AND CONDITIONS

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1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of Offer as non-responsive.

Should: Indicates something that is recommended but not mandatory. If the Contractor fails to provide recommended information, the City may, at its sole option, ask the Contractor to provide the information or evaluate the offer without the information.

May: Indicates something that is not mandatory but permissible.

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

“A.R.S.” Arizona Revised Statute

“Buyer” or “Procurement Officer” City of Phoenix staff person responsible for the solicitation. The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor's performance under this contract.

"City" The City of Phoenix

"Contractor" The individual, partnership, or corporation who, as a result of the competitive process, is awarded a contract by the City of Phoenix.

"Contract" or "Agreement" The legal agreement executed between the City of Phoenix, AZ and the Contractor.

“Days” Means calendar days unless otherwise specified.

“Water Services Director” The contracting authority for the Water Services Department, City of Phoenix, AZ, authorized to sign contracts and amendments thereto on behalf of the City of Phoenix, AZ.



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

2. CONTRACT INTERPRETATION:

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

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

2.2.1 Special terms and conditions.



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2.2.2 Standard terms and conditions.

2.2.3 Amendments.

2.2.4 Statement or scope of work.

2.2.5 Specifications.

2.2.6 Attachments.

2.2.7 Exhibits.

2.2.8 Instructions to Contractors.

2.2.9 Other documents referenced or included in the Solicitation.

2.3 ORGANIZATION – EMPLOYMENT DISCLAIMER: The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the agreement are considered to be City's employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.

2.4 SEVERABILITY: The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

2.5 NON-WAIVER OF LIABILITY: The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.



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2.6 PAROL EVIDENCE: This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

3. CONTRACT ADMINISTRATION AND OPERATION:

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

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

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



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

3.3.1 For a Contractor with 35 employees or fewer: Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, Contractor agreements or subleases of this agreement entered into by supplier/lessee.

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



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

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

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

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

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

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

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

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



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

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

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

The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement. The City further reserves the right to make unannounced inspections of the Contractor's facilities (during normal business hours).

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

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

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

3.8 CONTINUATION DURING DISPUTES: Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to



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perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.

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

4. COSTS AND PAYMENTS:

4.1 GENERAL: Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within 30 to 45 calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Offer.

4.2 PAYMENT DEDUCTION OFFSET PROVISION: Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.

4.3 LATE SUBMISSION OF CLAIM BY CONTRACTOR: The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.

4.4 DISCOUNTS: Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.

4.5 NO ADVANCE PAYMENTS: Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.

4.6 FUND APPROPRIATION CONTINGENCY: The Vendor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Vendor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually



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adopted, said determination being the determination of the City Council at the time of the adoption of the budget.

- 4.7 MAXIMUM PRICES:** The City will not be invoiced at prices higher than those stated in any contract resulting from this Offer. Contractor certifies, by signing this Offer that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Offer and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.
- 4.8 F.O.B. POINT:** All prices are to be quoted F.O.B. delivered, unless specified elsewhere in this solicitation.
- 5. CONTRACT CHANGES:**
- 5.1 CONTRACT AMENDMENTS:** Contracts will be modified only by a written contract amendment signed persons duly authorized to enter into contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, will affect or modify any of the terms or obligations contained or to be contained in the contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.
- 5.2 ASSIGNMENT - DELEGATION:** No right or interest in this contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.
- 5.3 NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source when necessary.
- 6. RISK OF LOSS AND LIABILITY:**
- 6.1 TITLE AND RISK OF LOSS:** The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service



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at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.

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

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

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

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

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



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authorized representative, performance becomes unsatisfactory, the City will notify the Contractor.

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

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

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

7. CITY'S CONTRACTUAL RIGHTS:

- 7.1** Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

- 7.2 NON-EXCLUSIVE REMEDIES:** The rights and remedies of the City under this Contract are non-exclusive.

- 7.3 DEFAULT IN ONE INSTALLMENT TO CONSTITUTE BREACH:** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.

- 7.4 ON TIME DELIVERY:** Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.



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- 7.5 DEFAULT:** In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.
- 7.6 COVENANT AGAINST CONTINGENT FEES:** Seller warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.
- 7.7 COST JUSTIFICATION:** In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.
- 7.8 WORK PRODUCT, EQUIPMENT AND MATERIALS:** All work product, equipment, or materials created or purchased under this contract belongs to the City and must be delivered to the City at City's request upon termination of this contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this contract that are "works for hire" within the meaning of the copyright laws of the United States, including any right to derivative use of the material.
- 8. CONTRACT TERMINATION:**
- 8.1 GRATUITIES:** The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.



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8.2 CONDITIONS AND CAUSES FOR TERMINATION:

8.2.1 This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving 30-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

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

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

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



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9. **STATE AND LOCAL TRANSACTION PRIVILEGE TAXES:** In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden is on the person who is conducting business in Arizona and the City of Phoenix. The legal liability to remit the tax is on the person conducting business in Arizona. Any failure by the Contractor to collect applicable taxes from the City shall not relieve the Contractor from its obligation to remit taxes. It is the responsibility of the prospective Offeror to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your Offer. You may also find information at <https://www.phoenix.gov/finance/plt> or <https://www.azdor.gov/Business.aspx>. Once your Offer is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City agrees to remit any overpayments back to the City for miscalculations on taxes included in an Offer price.
10. **TAX INDEMNIFICATION:** Contractor shall, and require the same of all subcontractors, pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require the same of all subcontractors, hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
11. **TAX RESPONSIBILITY QUALIFICATION:** Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege taxes, Use taxes or similar excise taxes, are currently paid (except for matters under legal protest). Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in Arizona statutes relative to State Transaction Privilege Taxes or Use Taxes. Contractor agrees to provide written authorization to the City Finance Department and to the Arizona State Department of Revenue to release tax information relative to Arizona Transaction Privilege Taxes or Arizona Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.



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- 12. NO ISRAEL BOYCOTT:** By entering into this contract, the Contractor certifies that they are not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel.



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1. **FOB POINT:** Prices quoted shall be FOB destination and delivered and unloaded, as required, to the destination point(s) identified on the purchase order(s).
2. **DELIVERY TIMEFRAME:** All deliveries shall be made between the hours of 6:00 a.m. and 2:30 p.m., local time, Monday through Friday, excluding City holidays.
3. **PRICE:** All prices submitted shall be firm and fixed for the initial first year period of the contract. Thereafter, price increases will be considered annually provided the adjustments are submitted in writing with 30 days' notice to the Procurement Officer. Price increase requests shall be accompanied with written documentation to support the increase, such as a letter from the manufacturer, published price index, applicable change in law, etc. Price decrease requests do not require supporting documentation and are allowed at any time during the contract term.

The City will be the sole judge in determining the allowable increase amount. Price increases agreed to by any staff other than the Water Services Director are invalid. The Contractor acknowledges and agrees to repay all monies paid because of a requested price increase unless the increase was specifically approved, in writing, by the Water Services Director.

4. **METHOD OF ORDERING:** Contractor shall deliver items and/or services only upon receipt of a written purchase order. All Contractor invoices and packing/delivery tickets must include the City of Phoenix purchase order number.
5. **METHOD OF INVOICING:** Invoice must be emailed in .pdf format to invoices@phoenix.gov and must include the following:
 - City purchase order number or shopping cart number.
 - Items listed individually by the written description and part number.
 - Unit price, extended and totaled.
 - Quantity ordered, back ordered, and shipped.
 - Applicable tax.
 - Invoice number and date.
 - Delivery address.
 - Payment terms.



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- FOB terms.
 - Remit to address.
6. **METHOD OF PAYMENT:** Payment to be made from Contractor's invoice and a copy of the signed delivery/service ticket submitted to cover items received and accepted during the billing period.
 7. **PARTIAL PAYMENTS:** Partial payments are not authorized on individual written contract order release number(s) issued. Payment will be made upon final delivery and acceptance of all supplies or services ordered on each contract order release number issued against the agreement.
 8. **SUPPLIER PROFILE CHANGES:** It is the responsibility of the Contractor to promptly update their profile in procurePHX at www.phoenix.gov/procure. If Contractor's legal identify has changed, the Procurement Officer must be notified immediately. Failure to do so may result in non-payment of invoices and contract termination.
 9. **AUTHORIZED CHANGES:** The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within thirty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the Deputy Finance Director or Department Director prior to the institution of the change.
 10. **SUSPENSIONS OF WORK:** The Procurement Officer and the project manager reserve the right to suspend work wholly or in part if deemed necessary for the best interest of the City. This suspension will be without compensation to the Contractor, other than to adjust the contract completion/delivery requirements.
 11. **PERFORMANCE INTERFERENCE:** Contractor will notify the City's department contact immediately of any occurrence and/or condition that interferes with the full performance of the contract, and confirm it in writing within 24 hours.

Department Contact: Will be provided after award of contract.

Phone: Will be provided after award of contract.



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12. **COOPERATIVE AGREEMENT:** In addition to the City and with approval of the Contractor, this contract may be extended for use by other municipalities and government agencies in the State of Arizona. A current listing of eligible entities may be found at www.mesaaz.gov/business/purchasing/save.

Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective entity. Orders placed by other agencies and payment thereof will be the sole responsibility of that entity. The City shall not be responsible for any disputes arising out of transactions made by other entities who utilize this solicitation.

13. **ADVERTISING:** Contractor will not advertise or publish news releases concerning this contract without the prior written consent of the Deputy Finance Director or Department Director, and the City will not unreasonably withhold permission.
14. **STRICT PERFORMANCE:** Failure of either party to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract, or by law, will not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.
15. **LICENSES AND PERMITS:** Contractor will keep current Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.
16. **PROCUREMENT REPORTS:** Contractor shall submit procurement reports upon request by the City. Reports shall be submitted in an electronic format acceptable to the City during the term of this contract and any extensions commencing one month after start period. Total purchases for each division must be shown on a separate line. Report should be rounded to the nearest dollar. Contractor will provide sample forms for approval by the City.
17. **COMMUNICATION IN ENGLISH:** It is mandatory that the Contractor's lead person assigned to any City facility can speak, read, and write in English to effectively communicate with City staff.
18. **TRANSITION OF CONTRACT:** Contractor will, without limitation, provide important information to a successor Contractor and the City to ensure continuity of service at the required level of proficiency and agrees to provide to the City all files, supplies, data, records, and any other properties or materials of the City, which the City owns or has rights to pursuant to this contract and which are in the possession



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of Contractor. The provisions of this section will survive the expiration or termination of this contract.

- 19. BACKGROUND SCREENING:** Contractor agrees that all Contractor and subcontractors' workers (collectively "Contract Worker(s)") pursuant to this Agreement will be subject to background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense, unless otherwise provided for in the scope of work. Contractor's background screening will comply with all applicable laws, rules and regulations. Contractor further agrees that the background screening is necessary to preserve and protect the public health, safety and welfare. The City requires a completed Contract Worker Badge/Key/Intrusion Detection Responsibilities Agreement for each Contract Worker who requires a badge or key.

19.1 Background Screening Risk Level: The City has established two levels of risk: Standard and Maximum risk. If the scope of work changes, the City may amend the level of risk, which could require the Contractor to incur additional contract costs to obtain background screens or badges.

19.2 Terms of This Section Applicable to all Contractor's Contracts and Subcontracts: Contractor will include Contract Worker background screening in all contracts and subcontracts for services furnished under this agreement.

19.3 Materiality of Background Screening Requirements; Indemnity: The background screening requirements are material to City's entry into this agreement and any breach of these provisions will be deemed a material breach of this contract. In addition to the indemnity provisions set forth in this agreement, Contractor will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Contractor. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor's services under this Agreement or Contractor's failure to comply with this section. Therefore, Contractor and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.

19.4 Continuing Duty; Audit: Contractor's obligations and requirements will continue throughout the entire term of this Agreement. Contractor will maintain all records and documents related to all background screenings and the City reserves the right to audit Contractor's records.



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19.5 Variances and Exemptions: Contract Workers who fall under the following areas may be considered exempt from this policy:

- Federal Homeland Defense Bureau.
- Transportation Security Administration.
- Federal Aviation Administration.
- Department of Public Safety (DPS) Administration – presenting a current Level One Department of Public Safety fingerprint card.
- Arizona or other State Bars.
- Other background checks performed within the last three to five years may be approved if they fit all required criteria herein, at the City's discretion.

19.6 Contractor's Default; Liquidated Damages; Reservation of Remedies for Material Breach: If Contractor is required to access any City facilities without an escort, City badging is required. Contractor's default under this section will include, but is not limited to, the following:

- Contract Worker gains access to a City facility(s) without the proper badge or key;
- Contract Worker uses a badge or key of another to gain access to a City facility;
- Contract Worker commences services under this agreement without the proper badge, key or background screening;
- Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable background screening; or
- Contractor fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement.
- Contractor acknowledges and agrees that the access control, badge and key requirements in this section are necessary to preserve and



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protect the public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this section within three business days (excluding weekends and City holidays) from the date notice of default is sent by the City. The parties agree that Contractor's failure to properly cure any default under this section will constitute a breach of this section. In addition to any other remedy available to the City at law or in equity, the Contractor will be liable for and pay to the City the sum of \$1,000.00 for each breach by Contractor in this section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this agreement if Contractor breaches this section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages if Contractor breaches this section. The parties further agree that three breaches by Contractor in this section arising out of any default within a consecutive period of three months or three breaches by Contractor in this section arising out of the same default within a period of 12 consecutive months will constitute a material breach of this agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this agreement, at law and in equity including, but not limited to, termination of this agreement.

19.7 Employee Identification and Access: Contract Workers are forbidden access to designated restricted areas. Access to each building will be as directed by the authorized Phoenix authorized representative. Contract Workers are not authorized access other than during scheduled hours. Access to the building will be directed by the City's authorized representative.

Only authorized Contract Workers are allowed on the premises of the City facilities/buildings. Contract Workers are not to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person is an authorized Contract Worker.

Unless otherwise provided for in the scope of work:

- Contract Workers must **always** have city issued badges and some form of verifiable company identification (badge, uniform, employee id).
- Contractor will supply a list of the names and titles of all employees requiring access to the buildings. It is the Contractor's responsibility to provide updates and changes of personnel as necessary.



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19.8 Key Access Procedures: If the Contractor Worker’s services require keyed access to enter a City facility(ies), a separate key issue/return form must be completed and submitted by the Contractor for each key issued. Contractor must submit the completed key issue/return form to the appropriate badging office.

19.9 Stolen or Lost Badges or Keys: Contractor must immediately report lost or stolen badges or keys to the City’s appropriate badging office. If the badge/key was stolen, Contract Worker’s must report the theft to their local police department. Prior to issuance of a new badge or key, a new badge application or key issue form must be completed, submittal of a police department report for stolen badges, and applicable payment of the fee(s) listed herein.

19.10 Return of Badge or Key: All badges and keys are the property of the City and must be returned to the City at the badging office within one business day (excluding weekends and City holidays) of when the Contract Worker’s access to a City facility is no longer required to furnish the services under this agreement. Contractor will collect a Contract Worker’s badge and key(s) upon the termination of the Contract Worker’s employment; when the Contractor Worker’s services are no longer required at a City facility(s); or upon termination, cancellation or expiration of this agreement.

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

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

20. BACKGROUND SCREENING – MAXIMUM RISK:

20.1 The current risk level and background screening required is **MAXIMUM RISK**.

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

- work directly with vulnerable adults or children, (under age 18); or
- any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or



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- unescorted access to:
 - City data centers, money rooms, high-valve equipment rooms; or
 - Unescorted access to private residences; or
 - Access to critical infrastructure sites/facilities.

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

20.4 Additional Maximum Risk Background Checks: Maximum screening will additionally require:

- Driving records (for driving positions only).

20.5 Contractor Certification; City Approval of Maximum Risk Background Screening: Unless otherwise provided for in the Scope of Work, Contractor will be responsible for:

- Determining whether Contract Worker(s) are disqualified from performing work for the City for maximum risk level background checks; and,
- Submitting pass/fail results to the City for approval; and,
- Reviewing the results of the background check every three to five years, dependent on scope; and,
- To engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
- Submitting the list of qualified Contract Workers to the contracting department; and,
- If, upon review of the background information, the City will advise the Contractor if it believes a Contract Worker should be disqualified. The Contractor will evaluate the Contract Worker and if the Contractor



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believes that there are extenuating circumstances that suggest that the person should not be disqualified, the Contractor will discuss those circumstances with the contracting department. The contracting department decision on disqualification of a Contract Worker is final.

- For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
- By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current.
- The City final documented decision will be an “approve” or “deny” for identified Contract Workers.
- The City will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the Contractor, or any contracted agency that assists with review, after the City’s completed review.
- By executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all such background screening requirements for the maximum risk background screening, and verified legal worker status, as required.
- Contract Workers will not apply for the appropriate City of Phoenix identification and access badge or keys until Contractor has received the City’s written acceptance of Contract Worker’s maximum risk background screening. The City may, in its sole discretion, accept or reject any or all the Contract Workers proposed by Contractor for performing work under this Agreement. A Contract Worker rejected for work at a maximum risk level under this agreement will not be proposed to perform work under other city contracts or engagements without city’s prior written approval.

20.6 The City may, at any time, in its sole discretion, refuse to allow an employee access to an area for any of the following reasons, but not limited to:

- Conviction of a felony.



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- Conviction of a misdemeanor (not including traffic or parking violation).
- Any outstanding warrants (including traffic and parking violations).
- A person currently on parole or probation.
- A person currently involved in an investigation.

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

20.8 Additional City Rights Regarding Security Inquiries:

20.8.1 In addition to the foregoing, the City reserves the right, but not the obligation, to:

- Have a Contract Worker be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) or Phoenix City Code § 4-22 or both;
- Act on newly acquired information, whether or not such information should have been previously discovered;
- Unilaterally change its standards and criteria relative to the acceptability of Contract Workers; and
- Object, at any time and for any reason, to a Contract Worker performing work, including supervision and oversight, under this Contract.

21. CONFIDENTIALITY AND DATA SECURITY: All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this Agreement is confidential, proprietary information



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owned by the City, the Contractor shall not disclose data generated in the performance of the service to any third person.

Contractor agrees to abide by all current applicable legal and industry data security and privacy requirements and subject to Payment Card Industry Standards, if applicable. A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

- 22. SECURITY INQUIRIES:** Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor's expense, be subject to background and security checks and screening at the request of the City. Contractor shall perform all such security inquiries and shall make the results available to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Contractor for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City's prior approval.

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

- Require an employee/prospective employee of the Contractor to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. 41-1750 (G) (4);
- Act on newly acquired information whether or not such information should have been previously discovered;
- Unilaterally change its standards and criteria relative to the acceptability of Contractor's employees and/or prospective employees; and
- Object, at any time and for any reason, to an employee of Contractor performing work (including supervision and oversight) under this Agreement. Contractor will bear the costs of all inquiries requested by the City.



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- 23. MISCELLANEOUS FEES:** Additional charges for fuel surcharges, delivery charges, dealer prep, environmental fees, waste disposal, shop supplies, set-up, freight and/or shipping and handling, etc. will not be paid. These costs must be incorporated in the pricing provided in Attachment C – Bid Sheet.
- 24. HAZARDOUS MATERIALS REQUIREMENT SDS:** Contractor shall provide a copy of the current Safety Data Sheet (SDS) for the product(s) offered. The SDS must include all chemical compounds present in concentrations greater than 0.1% for each product offered by CAS number; no “trade secret” or otherwise defined ingredients shall be accepted by the City. The Contractor shall provide required safety and health training for City employees on each product offered and for proper use, storage, and disposal, when requested by the City. The Contractor further agrees to accept returned empty containers for disposal purposes, if and when requested by the City. The cost for any requested training and disposal of used containers shall be included in the offered price for the product. The Contractor shall also accept returned product that was purchased as a result of this solicitation and for which the City no longer needs the product. Returned product will be in its original container(s), unopened, and must be returned to the Contractor at least 45 calendar days after the end of the project. All products must be labeled per 29CFR 1910.1200.
- 25. OSHA LAWS AND REGULATIONS: EMERGENCY SPILL RESPONSE PLAN -** Contractor shall determine whether products selected could require an emergency spill response plan for any hazardous material used. If such determination is made, a plan for directing employees in proper response procedures must be submitted.
- At a minimum, the response plan must address the following:
- Provide a description of equipment on site available to contain and/or respond to an emergency/spill of the material.
 - Notification procedures.
 - Response coordination procedures between Contractor and the City.
 - Provide a Site Plan showing the location of stored hazardous materials and location of spill containment/response equipment.
 - Provide a description of the training provided to the Contractor employees.
- 26. SAMPLES:** The City reserves the right to request a product sample for evaluation purposes. Any samples requested shall be provided at no cost or obligation to the City of Phoenix. The City will be the sole judge of acceptability. Any sample



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submitted shall create an express warranty that the whole of the goods shall conform to the sample submitted. All samples become the property of the City unless designated otherwise by the Contractor.

- 27. NSF CERTIFICATION:** All materials, equipment, supplies, chemicals, or products that come into contact with drinking water or drinking water treatment chemicals shall conform to American National Standards Institute/NSF standards 60 and/or 61 as evidenced by certification from either Underwriters Laboratories or NSF International.

Proof of this certification shall be provided with the bid submittal and shall also be provided with every product shipment. All products provided in response to this solicitation shall be certified by the U.S. EPA Water Sense Partnership program for water efficiency.

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SECTION IV – INSURANCE AND INDEMNIFICATION

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- 1. INDEMNIFICATION:** Contractor must indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees (hereinafter referred to as “Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers’ Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee must, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the City.

Contractor (as “Indemnitor”) agrees to indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents and employees (as “Indemnitee”) from and against any and all demands, claims, complaints, losses, damages, actions or causes of action, assessments, liabilities, costs or expenses including, without limitation, interest, penalties and reasonable attorney’s fees and reasonable expenses of investigation and remedial work (including investigations and remediation by engineers, environmental consultants and similar technical personnel) asserted against or imposed upon or incurred by Indemnitee arising in connection with, or resulting from, any Environmental Law, including but not limited to, any use, generation, storage, spill, release, discharge or disposal of any Hazardous Substance that is now or comes to be located on, at, about or under the property or because of, or in connection with, the violation of any Environmental Law (hereinafter collectively referred to as “Claims”) to the extent that such Claims are caused by the Fault of the Indemnitor, its officers, officials, agents, employees, contractors, volunteers, tenants, subtenants, invitees or licensees. As used in this section: (a) “Hazardous Substances” are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) “Environmental Law” means federal, state or local laws and regulations, including common law, that relate to health, safety or environmental protection; and (c) “Fault” means those nonculpable acts or omissions giving rise to strict liability



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under any Environmental Law pertaining to Hazardous Substances, as well as culpable conduct (negligence or willful misconduct). In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the City.

- 2. INSURANCE REQUIREMENTS:** Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontractors. Contractor and subcontractors must maintain that insurance until all of their obligations have been discharged, including any warranty periods under this Contract.

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

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

2.1.1 Commercial General Liability – Occurrence Form

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

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

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

2.1.2 Automobile Liability

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



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Combined Single Limit (CSL) \$1,000,000

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

2.1.3 Worker’s Compensation and Employers’ Liability

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

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

2.1.4 Pollution Legal Liability

If the Scope of Services in this Contract requires the transportation of any hazardous materials, the Contractor must provide coverage with limits of at least:

Per Occurrence	\$5,000,000
Annual Aggregate	\$5,000,000

- The policy should be written on an “occurrence” basis with no sunset clause or if written on a “claims-made” basis, it must be maintained for a period of not less than 8 years with the retroactive date to be prior to or held constant with the date of this contract.
- Such insurance must name the City of Phoenix and its subsidiaries and affiliates as Additional Insureds with respect to liability arising out of the activities performed by, or on behalf of the Contractor.



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- The policy must include coverage for:
 - On and off-site cleanup of sudden and gradual pollution conditions arising from the Contractor’s facility.
 - Third-party claims for on and off-site bodily injury including sickness, disease, mental anguish or shock sustained by any person, including death and medical monitoring costs.
 - Third-party claims for property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs and the loss of use of tangible property that has not been physically injured or destroyed and diminution in value.
 - Claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo if the Scope of Services in the Contract requires the transportation of any hazardous materials.
 - Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensation damages.
- 3. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies are to contain, or be endorsed to contain, the following provisions:
 - 3.1 On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
 - 3.2 The Contractor’s insurance coverage must be primary insurance and non-contributory with respect to all other available sources.
- 4. **NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, hand delivered or sent by facsimile transmission to **City of Phoenix, Water Services Department, Procurement Section, 200 W. Washington St., 9th Floor, Phoenix, AZ 85003** or at wsdprocurement@phoenix.gov.
- 5. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the above-



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required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

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

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

All certificates required by this Contract must be sent directly to **City of Phoenix, Water Services Department, Procurement Section, 200 W. Washington St., 9th Floor, Phoenix, AZ 85003** or at **wsdprocurement@phoenix.gov**. The City project/contract number and project description are to be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

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



SECTION V – SCOPE OF WORK

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1. **PURPOSE:** This contract provides a supply of hydrochloric (muriatic) acid for the Water Services Department (“WSD”) on an as-needed basis.
2. **BACKGROUND:** It is imperative that the City of Phoenix (“City”) has a reliable supply of hydrochloric (muriatic) acid that is National Sanitation Foundation (“NSF”) certified, and meets the latest ASTM International standards.

Hydrochloric (muriatic) acid is used by WSD to descale the chemical scrubber equipment installed at various WSD facilities. The chemical scrubber equipment is utilized by WSD to maintain compliance with the provisions stipulated with each facility’s permit via odor/corrosion control, as required by the Arizona Department of Environmental Quality, Aquifer Protection Permit, and the Maricopa County Air Quality Permit.

3. **CERTIFIED ANALYSIS AND STANDARDS:** The Contractor shall supply hydrochloric (muriatic) acid priced per 100% dry weight equivalent, ensuring that all materials, equipment, supplies, chemicals, or products that come into contact with drinking water or drinking water treatment chemicals conform to the following standards:

- 3.1 NSF certification is required for the use of hydrochloric (muriatic) acid. During the certification process, the Contractor shall demonstrate that the chemical will not cause health issues.

- 3.2 Certified quality analysis of the product as performed by an independent third party laboratory that is certified by the appropriate Environmental Protection Agency (EPA) authority.

4. **CHEMICAL SPECIFICATIONS:**

- 4.1 Hydrochloric (muriatic) acid shall meet the ASTM International standard E1146, or latest edition.

5. **ENVIRONMENTAL RISK REQUIREMENTS:**

- 5.1 The City reserves the right to have Phoenix Fire Department and Water Services Department representatives inspect the Contractor’s facilities for compliance with all applicable health and safety laws and regulations prior to award of the contract.

- 5.2 Contractor shall remain in compliance with all Department of Transportation (DOT), EPA, and Occupational Safety and Health Administration (OSHA) requirements for delivering and handling hazardous materials.

- 5.3 The Phoenix Fire Department may require periodic inspections of the Contractor’s facilities throughout the duration of the contract. If the



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contractor is found not to be in compliance with the applicable laws or regulations, the City reserves the right to terminate the contract.

5.4 The Contractor shall adhere to all applicable U.S. DOT, EPA, and OSHA regulations. The delivery truck shall carry appropriate PPE. Failure to adhere to these laws and regulations may result in a termination of the contract.

6. INSPECTION:

6.1 All chemicals will be inspected before acceptance by an authorized representative of WSD for conformance to all requirements of this specification.

6.2 Should deficiencies be found, it shall be the responsibility of the Contractor to remove the product in question, make necessary corrections, and then replace the product to WSD for re-inspection and acceptance at no additional expense or obligation to the City.

7. PRE-DELIVERY REQUIREMENTS:

7.1 Upon arrival at plant, the Contractor's Driver ("Driver") shall check-in with guard at the security gate and present the delivery receipt, SDS, and other paperwork to City personnel.

7.2 If the Driver is expected to be late, the Driver shall contact WSD.

8. DELIVERY REQUIREMENTS:

8.1 Delivery is required within the timeframes specified by the Contractor in Attachment C – Bid Sheet, after receipt of a purchase order from authorized WSD staff.

8.1.1 Deliveries are allowed between the hours noted in the Section III - Special Terms and Conditions, Paragraph 2, DELIVERY TIMEFRAME.

8.2 The Contractor shall ensure that delivery trucks are dedicated to material being delivered or are thoroughly cleaned to maintain NSF compliance of delivered chemical.

8.3 The Driver shall check in and out with the security guard at the gate of each facility.

8.4 The following shall accompany each delivery and be given to the authorized City personnel at each facility receiving the product:

8.4.1 Certified weight certificate.



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- 8.4.2 A Safety Data Sheet shall be given to the authorized City personnel at each facility receiving the product.
- 8.4.3 A certificate of accurate analysis (product concentration level) generated by the manufacturer and specific to each delivery. The methods in the ASTM International standard E1146 (or latest edition) shall be followed in determining the hydrochloric (muriatic) acid concentration.
- 8.4.4 The bill of lading showing product compliance with NSF requirements.
- 8.5** The product in each delivery shall be sampled and tested in accordance with procedures outlined in ASTM International standard E1146 (or latest edition).
- 8.5.1 The Driver shall draw a 100 ml sample from each delivered load for verification of the supplied certificate of accurate analysis.
- 8.5.2 The sample taken will be tested by the City's Lab to verify the concentration. The final invoiced price for the delivery is based on the concentration.
- 8.5.3 If the City's analysis does not agree with the analysis supplied by the Contractor, the City reserves the right to obtain an independent laboratory analysis. Results of this analysis will be considered the final basis for billing or billing adjustments.
- 8.5.4 If a shipment fails to meet the applicable percentage of active chemical or other specification, including the lack of appropriate NSF certification stamps on all Bills of Lading, the delivery will be rejected and Contractor will be notified.
- 8.5.5 The City reserves the right to request more samples from the truck contents at the time of delivery.
- 8.5.6 If the City requests a sample from a shipment, the Contractor shall collect the sample using the City's sample container. The Contractor may inspect the container prior to drawing the sample.
- 8.6** Containers, drums, and totes shall be supplied to WSD as returnable containers. Deposit charges are not allowed. The Contractor shall pick up empty containers/drums/totes when making deliveries.
- 8.7** The Contractor shall adhere to the following Department of Transportation and City of Phoenix Requirements.



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- 8.7.1 Tank Trailer and Truck Tractor Requirements:
 - 8.7.1.1 The truck tractor and tank trailer(s) utilized for shipment of chemicals, shall be in good condition, shall be pneumatic tired, and must conform to all Federal, State, County and City regulatory requirements as to licensing, dimensions, weights, safety and all other requirements that may be specified.
- 8.7.2 Hazardous Material Transporters Security Requirements - Upon notification of recommendation of award the successful Offeror must:
 - 8.7.2.1 Affirm, in writing, that the requirements of 49 CFR Part 172.800 and 172.804 regarding Hazardous Material Transportation Security Plan Implementation have been met.
 - 8.7.2.2 Further agree that transportation of any of the chemicals identified in this Contract will not be assigned or subcontracted without the prior written agreement of the City of Phoenix.
- 8.7.3 Hazardous Materials Transportation Security Plan – The Contractor shall have on file with the WSD verification that the shipper and carrier of hazardous materials have each met the requirements of 49 CFR 172.800 and 49 CFR 172.804 for the Hazardous Materials Transportation Security Plan.
- 8.7.4 Emergency Response Information shall be on file with the WSD. This information will be used in the mitigation of an incident involving hazardous materials and, at a minimum, must contain the following information:
 - 8.7.4.1 The basic description and technical name of the hazardous material as required by 40 CFR 172.202 and 40 CFR 172.203(k),
 - 8.7.4.2 Immediate hazards to health,
 - 8.7.4.3 Risks of fire and health,
 - 8.7.4.4 Immediate precautions to be taken in the event of an accident or incident,
 - 8.7.4.5 Immediate methods for handling fires,
 - 8.7.4.6 Initial methods for handling spills or leaks in the absence of fire; and,



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8.7.4.7 Preliminary first aid measures.

8.7.5 Emergency response information must be printed legibly in English, be available for use away from the package containing the hazardous material, and presented on a shipping paper.

8.7.6 The Contractor shall provide an emergency response telephone number, including the area code or International access code, for use in the event of an emergency involving the hazardous material. This information shall be provided in Section VI – Submittals, Paragraph 5, Emergency Twenty-Four Hour Service.

8.7.6.1 The telephone with that number must be monitored at all times that the hazardous material is in transit, including storage time, by a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information.

8.7.6.2 The emergency response phone number shall be on the shipping paper immediately following the description of the hazardous material.

8.7.7 Contractor shall follow all safety procedures:

8.7.7.1 If a spill should occur, the Driver is responsible to report the spill to City staff.

8.7.7.2 The incident shall be noted on the bill of lading and signed and dated by the Driver.

9. UNLOADING REQUIREMENTS:

9.1 The Contractor shall unload the hydrochloric (muriatic) acid at the City's designated unloading areas, and shall provide labor, material, equipment, and supplies necessary for unloading at the locations specified.

9.2 City personnel will monitor the Driver, or other personnel identified by the Contractor, to accept deliveries.

9.3 Delivery drivers must adhere to the following safety procedures upon arrival at the plant:

9.3.1 Check safety devices (shower, eyewash, and communications) for proper operation.



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9.3.2 Remain in attendance at all times to ensure that unloading/loading is performed to completion.

9.4 The Driver must be experienced in the transfer procedures and requirements of hydrochloric (muriatic) acid and completely knowledgeable in the application of any emergency procedures required during operation.

9.5 Personal Protective Equipment (PPE) must be equipped on delivery trucks and available for use as required by Occupational Safety and Health Administration (OSHA) standards.

9.5.1 The Driver shall don appropriate PPE and clear the area of personnel not appropriately protected.

9.5.2 Should the Driver exhibit or experience symptoms of illness such as dizziness, cramps, dryness, etc., the Driver should immediately terminate transfer operations and seek first aid.

10. POSITIVE TRAIN CONTROL (PTC) REQUIREMENTS: PTC requirements on January 1, 2016, primarily consisting of US Department of Transportation – Federal Railroad Administration Title 49 Code of Federal Regulations Part 236, Subpart I. FRA published final rule amendments on September 27, 2010 and on May 14, 2012 or current. Contractor must work with the City on PTC transportation issues which may arise during the life of the contract, and provide alternate transportation at no additional cost and time delay to the City on the chemicals being provided.

11. ESTIMATED QUANTITIES:

11.1 The Contractor shall provide all product requested by the City on an as-needed basis.

11.2 The table below shows the estimated annual usage.

11.3 Product shall be priced and invoiced in gallons.

11.4 It is anticipated that various water treatment plants will shut down for maintenance throughout the life of the contract.

Item No.	Estimated Annual Quantity	Description
1.	100 each	Hydrochloric (Muriatic) Acid 31.45% Solution, 330-gallon tote
2.	10 each	Hydrochloric (Muriatic) Acid 30% Solution, 55-gallon drum
3.	20 each	Hydrochloric (Muriatic) Acid 30% Solution, 1-gallon container



SECTION VI – SUBMITTALS

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1. **COPIES:** Please submit one original PDF copy electronically via email to the following: wsdprocurement@phoenix.gov.
 - 1.1 **Please submit only the Submittal Section, do not submit a copy of the entire solicitation document.** This offer will remain in effect for a period of 180 calendar days from the opening date, and is irrevocable unless it is in the City's best interest to release offer(s).

2. **OFFER SUBMITTAL FORMAT:** The written offer should be –
 - Typewritten for ease of evaluation;
 - Signed by an authorized representative of the Offeror;
 - Submitted with contact information for the individual(s) authorized to negotiate with the City;
 - Submitted with a table of contents and tabbed per the following major sections:
 - Tab 1 Table of Contents.
 - Tab 2 Attachment A – Solicitation Transparency Form.
 - Tab 3 Attachment B – Professional References.
 - Tab 4 Attachment C – Bid Sheet.
 - Tab 5 Pre-Award Qualifications as instructed in Section I – Instructions, Paragraph 15:
 - Safety Data Sheet (SDS).
 - Proof of Compliance with NSF Requirement.
 - Certified quality analysis of the product offered as performed by an independent third party laboratory certified by the appropriate Environmental State Agency. The laboratory analysis provided will be reviewed by City Lab to determine suitability for the City.
 - Tab 6 Section VI – Submittals.
 - Costs and Payments.
 - Emergency Twenty-Four Hour Service contact information.
 - Offer page.
 - Tab 7 Signed Addendum(s), if any.



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3. COSTS AND PAYMENTS:

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

[] Contractor offers a prompt payment discount of either _____% - 30 days or 0% – 45 days - to apply after receipt of invoice or final acceptance of the products (invoice approval), whichever date is later, starts the 30 days. If no prompt payment discount is offered, the default is 0%, net 45 days; effective after receipt of invoice or final acceptance of the products, whichever is later. Payment terms offering a discount will not be considered in the price evaluation of your offer.

[] Contractor may be paid immediately upon invoice approval, if enrollment is made to the Single Use Account (SUA) Program, administered by the City’s servicing bank (“Bank”). By checking this box, the vendor accepts transaction costs charged by their merchant bank and agrees not to transfer to the City those extra charges. The City will not pay an increase in our services for the SUA charges; if an audit uncovers an upcharge for the SUA charges the vendor will owe the City all costs. The vendor may opt-out of the SUA program once, but then may not rejoin during the same contract term. For more information about the SUA program or to enroll, send email to mailbox.sua@phoenix.gov.

4. ESTIMATED QUANTITIES OR DOLLAR AMOUNTS: Quantities and dollar amounts listed are the City’s best estimate and do not obligate the City to order or accept more than City’s actual requirements during the period of this agreement, as determined by actual needs and availability or appropriated funds. It is expressly understood and agreed that the resulting contract is to supply the City with its complete actual requirement for the contract period.

5. EMERGENCY TWENTY-FOUR HOUR SERVICE: Emergency 24-hour service is to be provided by Contractor at no additional cost. The Contractor will provide an emergency contact person, with phone number, who is authorized to release material to the City of Phoenix during non-business hours, in the event of an emergency repair requirement. Any changes in contacts must be promptly submitted to the City.

Name _____

Telephone Number _____

Alternate Contact _____

Telephone Number _____



SECTION VI – SUBMITTALS

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OFFER

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

Arizona Sales Tax No. _____

Use Tax No. for Out-of State Suppliers _____

City of Phoenix Sales Tax No. _____

Arizona Corporation Commission File No. _____

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

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

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

Authorized Signature

Date

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

Printed Name and Title
(Member, Manager, President)

Address _____
City, State and Zip Code _____
Telephone Number _____
Company’s Fax Number _____
Company’s Toll Free # _____
Email Address _____



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ACCEPTANCE OF OFFER

The Offer is hereby accepted.

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

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

CITY OF PHOENIX
A Municipal Corporation
Ed Zuercher, City Manager

_____ Awarded this ____ day of _____ 2020
Director or delegate, Department

City Clerk

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